

**AMENDMENT NO. 2 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE BOBBY DRIVE WATER LINE IMPROVEMENTS PROJECT  
COF Contract No. 2015-0075**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the **City of Franklin, Tennessee** ("City") and **OHM ADVISORS** ("Consultant").

**WITNESSETH:**

**WHEREAS**, City and Consultant entered into a Professional Services Agreement ("Agreement") COF Contract No. 2015-0075 for the Preliminary Engineering of the Bobby Drive Water Line Improvements ("Project"), dated the 12<sup>th</sup> day of May 2015; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a not to exceed fee of FIFTY-FIVE THOUSAND THREE HUNDRED THIRTEEN AND NO/100 DOLLARS (\$55,313.00), as authorized by the City Engineer and as detailed in the Fee Schedule; and

**WHEREAS**, the City and the Consultant amended this agreement through Amendment No. 1 to Professional Services Agreement for the Bobby Drive Water Line Improvements Project, dated the 8<sup>th</sup> day of September, 2015; and

**WHEREAS**, said Amendment No. 1 stipulated that the Consultant would be paid a not to exceed fee of TWENTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$25,500.00), as detailed in the Fee Schedule; and

**WHEREAS**, the City and Consultant realize the need for additional work to prepare the legal descriptions and update the exhibit maps for all of the necessary easements required to complete the Project's construction; and

**WHEREAS**, the Consultant has provided a Proposal for an increase in engineering services for the Bobby Drive Water Line Improvements Project, as described in Attachment A dated April 17, 2017, in the amount of **SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00)**; and

**WHEREAS**, the City has reviewed the Proposal and desires to enter into an amendment to the Agreement to include the final design as stated above for the Project as proposed by the Consultant.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. Consultant's Responsibilities and Duties. The Consultant shall perform the work as proposed in the Scope as found in the April 17, 2017, letter of proposal (**Attachment A**) which includes the Scope of Services for this Amendment. Attachment A shall be considered as an integral part hereof.

3. City's Responsibilities and Duties. The City shall pay Consultant in an amount not to exceed **SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00)** for the additional services as described in Attachment A.

The City reserves the right to issue any payments jointly to the Consultant and Sub-Consultant when the City receives information that the Consultant has not paid its Sub-Consultant.

4. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

5. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

6. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

7. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

8. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

9. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement dated May 12, 2015, and its subsequent amendment, are unchanged and remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**OHM ADVISORS**

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator  
Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Kristen L. Corn, Assistant City Attorney



ARCHITECTS. ENGINEERS. PLANNERS.

April 17, 2017

Mr. Mark Hilty  
Director of Water Management  
City of Franklin  
124 Lumber Drive  
Franklin, TN 37064

RE: Bobby Drive Water Main Improvements  
Amendment #2 to Scope of Engineering Services  
COF Contract # 2015-0075

Dear Mr. Hilty:

The Bobby Drive Water Main project began March 2015. The alignment contemplated by the City under the original scope had been revised pursuant to City direction September 2015 and OHM Advisors prepared documents and obtained approvals for the water main project based on the revised alignment under the original scope contract and Amendment #1. Based on the original alignment, OHM had anticipated that approximately 20 to 25 easements would be needed. OHM actually prepared 53 easement exhibits for the project. After approvals were in hand, the City endeavored to obtain the necessary easements from property owners to construct the project. This has been a slow process and over time, when asked, OHM has updated and revised easements at no additional cost to the City. Ben Worley recently contacted OHM to provide legal descriptions for all easements and update all exhibits with the most current owner information.

We have prepared the following scope amendment for additional services to COF Contract No. 2015-0075 based on conversations with Ben Worley regarding the City of Franklin's current needs.

## **REVISED SCOPE OF SERVICES**

### **Task 2 – Revised Easement Descriptions and Exhibits (\$6,000)**

OHM Advisors will provide 53 easement descriptions and exhibits for each parcel in connection with construction easements needed for the Bobby Drive Watermain project. OHM will research ownership of parcels, compare to original documents on file and update easement exhibits as needed. OHM will provide legal descriptions in WORD format for inclusion in easement documents to be prepared by the City of Franklin.

## **SCHEDULE**

This work was completed and provided to Ben Worley on April 6, 2017.

## **COMPENSATION**

As indicated, the services outlined above have substantially exceeded our initial agreed upon scope and fee for this work and we are requesting a partial reimbursement for these efforts in the form of a fixed fee cost of six thousand dollars (\$6,000.00).



**CLOSING**

OHM sincerely appreciates the ability to work with the City on this project and desires to continue this valuable relationship. Please do not hesitate to contact me at (615) 445.9421 to discuss this further.

Respectfully,  
Orchard, Hiltz & McCliment, Inc. (OHM Advisors)

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Paula K. Hepp  
Project Manager

cc: Steve Chizek, Principal, OHM Advisors

*Ben Worley*