

**AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE GOOSE CREEK SANITARY SEWER EXTENSION
PROJECT FROM WEST OF I-65 TO THE EAST SIDE OF I-65
COF Contract No. 2014-0177**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 201_, by and between the **City of Franklin, Tennessee** ("City") and **HETHCOAT & DAVIS, INC.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") for the Preliminary Engineering of the Goose Creek Sanitary Sewer Extension Project from West of I-65 to the East Side of I-65 ("Project"), dated the 9th day of September 2014; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$120,725.00), 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 Engineering Services For the Goose Creek Sanitary Sewer Extension Project from West of I-65 to the East Side of I-65 (COF Contract No. 2014-0177), dated the 8th day of September, 2015; and

WHEREAS, said Amendment No 1 stipulated that the Consultant would be paid a not to exceed fee of \$11,810.00, as authorized by the City Engineer as detailed in the Fee Schedule; and

WHEREAS, the City and Consultant realize the need for additional engineering services related to permitting and construction services support to fully complete the Project's final design and construction; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services for the Goose Creek Sanitary Sewer Extension Project from West of I-65 to the East Side of I-65, as described in Exhibit A dated September 15, 2016, in the amount of **TWENTY-SIX THOUSAND SIX HUNDRED FIVE AND NO/100 DOLLARS (\$26,605.00)**; 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. Consultant agrees to perform the work as proposed in their September 15, 2016, letter of proposal (**Exhibit A**) which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the work as described in Exhibit A an amount not to exceed **TWENTY-SIX THOUSAND SIX HUNDRED FIVE AND NO/100 DOLLARS (\$26,605.00)**.

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 September 9, 2014 and Amendment 1 dated September 8th, 2015 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

HETHCOAT & DAVIS, INC.

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

September 15, 2016

COF 2014-0177
Amendment 2
PG 1 of 2
Exhibit A

Mr. Patricia McNeese, PE
City of Franklin
109 Third Avenue South
Franklin, TN 37064

**Re: Request for Additional Engineering Services related to
Permitting & Construction Services Support
Fire Hall Sewer Extension**

Dear Patricia:

We are requesting an additional service amendment for additional services related to the permit revisions and additional construction services for the current Fire Hall Sewer Extension project.

In our original contract proposal dated July 11, 2014, we identified construction phase services for engineering and resident project representation based on a five (5) month contract period. At the time of this proposal, only the sanitary sewer improvements were considered. Since that time, additional reclaimed water work has been added to the contract and as a result of that addition, the overall construction time period was lengthened to seven (7) months to allow the contractor adequate time to complete the project scope. As a result of this change, we request an increase in fees to accommodate this increased construction period.

Additionally, due to the lengthy time frame required for easement acquisition, the original TDOT permit that was approved in June 2015 expired in June 2016. In conjunction, the crossing of I65 was increased to accommodate the addition of the reclaimed water line. Due to the expiration of the original permit as well as the need to upgrade the permit to reflect the change in crossing size, the TDOT permit had to be re-worked and resubmitted for approval. As a result of this effort, we request a small increase in fees to cover this permit renewal.

The cost for these additional services is as follows:

- TDOT Permit Update & Renewal - \$605.00
- Additional Engineering Construction Phase Services for two months - \$7,000.00
- Additional Resident Project Representative Services for two months - \$19,000.00

We respectfully request a contract amendment in the lump sum amount of \$26,605.00.

We sincerely appreciate the opportunity to work with you and the City of Franklin. If you should have any questions or require additional information, please call.

Hethcoat & Davis, Inc.



Keith Davis, PE,
Secretary

Cc: Cory Borum, H&D