

**AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT
FOR FIGUERS DRIVE AREA DRAINAGE IMPROVEMENTS
PROJECT
COF Contract No. 2013-0182**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2016, by and between the **City of Franklin, Tennessee** ("City") and **NEEL-SCHAFFER, INC.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled Preliminary Engineering of the Figuers Drive Area Drainage Improvements ("Project"), dated the 26th day of November 2013; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of **EIGHTY-TWO THOUSAND AND NO/100 DOLLARS (\$82,000.00)**, as authorized by the City Engineer and as detailed in the fee Schedule; and

WHEREAS, on August 26, 2015, the Board of Mayor and Aldermen approved Amendment No. 1 to the Professional Services Agreement with the Consultant for additional design work to complete the final design for the Project's East Option 2 and West Option 1 tasks in the amount of **ONE HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$125,200.00)**, and

WHEREAS, the City and Consultant realize the need for additional utility design work for the Project due to circumstances beyond the control of the Consultant; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services for water and sanitary sewer designs, as described in Exhibit A dated August 19, 2016, in the amount of **TWENTY-NINE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$29,500.00)**; and

WHEREAS, the City has reviewed the Proposal and desires to enter into an agreement for the Project as proposed.

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 its August 19, 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-NINE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$29,500.00)**.

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 November 26, 2013 and Amendment 1 dated August 25, 2015 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

NEEL-SCHAFFER, 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

August 19, 2016

Mr. William G. Banks
City of Franklin
Staff Engineer
City Hall
109 3rd Avenue South
Franklin, Tennessee 37064

REF: Exhibit A – Proposal for Additional Design Engineering for Water/Sewer Improvements within Figuers Drive Drainage Improvement Area

Dear Mr. Banks,

We appreciate you contacting Neel-Schaffer concerning additional design engineering for the water and sewer improvements to be incorporated within the drainage improvements on Figuers Drive. The following is our best interpretation of the scope and tasks that have been previously discussed with you. The tasks for each improvement include development of final plans and specifications and assistance with the bid process.

The design will implement the existing survey obtained from the drainage improvement project to the maximum extent possible, but limited survey will be required within the right-of-way of Alicia Drive.

Scope of Work

The proposed scope of work for each option is described in Exhibit A.1 for water line improvements and Exhibit A.2 for sewer improvements.

Fee

The proposed professional fee for each phase of the project is shown below.

Phase 1 – Figuers Drive/Alicia Drive Water Improvements

This improvement generally consists of replacing approximately 1,450 linear feet of existing 6 inch transite water line on Figuers Drive and Alicia Drive with a new water line of a material and size as selected by the City.

The proposed maximum hourly fee for the Scope of Work contained in Exhibit A.1 (Water Improvements), will be **\$15,500.00**. Services outlined herein will not exceed **\$15,500.00** without your written authorization.

Phase 2 – Figuers Drive Sewer Improvements

This improvement generally consists of intercepting the existing 8 inch gravity sewer line from the Franklin Elementary School on Figuers Drive and installing approximately 500 linear feet of new 8 inch gravity sewer line and manholes along Figuers Drive to a new manhole on the 10 inch gravity sewer line on Alicia Drive.

The proposed maximum hourly fee for the Scope of Work contained in Exhibit A.2 (Sewer Improvements), will be **\$14,000.00**. Services outlined herein will not exceed **\$14,000.00** without your written authorization.

Overall Project Fee

The proposed total not-to-exceed fee for the combined Scope of Work contained in Exhibit A.1 (Water Improvements) and A.2 (Sewer Improvements), will be **\$29,500.00**. Services outlined herein will not exceed **\$29,500.00** without your written authorization.

Project Schedule

It is anticipated the above Scope of Work will be completed within 90 days of receipt of Notice-to-Proceed.



Date: 08-19-16

Thomas M. Allen, P.E.
Senior Project Manager
Neel-Schaffer, Inc.



Exhibit A.1

Scope of Work

Figuers Drive Water Line Replacement – Development of Final Contract Plans and Specifications

Background

The proposed drainage improvements on Figuers Drive, Alicia Drive, and Perkins Drive will pose survivability concerns with the exiting transite water line.

Figuers Drive/Alicia Drive Water Improvements

This improvement generally consists of replacing approximately 1,450 linear feet of existing 6 inch transit water line on Figuers Drive and Alicia Drive with a new water line of a material and size as selected by the City.

Scope of Work

The Scope of Work for the water line improvements, including development of final plans and specifications, is listed below. Design will, to the extent possible, utilize the topographic survey previously performed for the drainage improvements project. However, topographic data was not originally collected along Alicia Drive between its intersection with Figuers Drive and Battle Avenue; therefore, limited topographic data within the right-of-way of Alicia Drive will be collected within these limits to support the design of the new water line.

Figuers Drive/Alicia Drive Water Improvements

1. Prepare technical documentation regarding pipe material, sizes, and pressure rating for water line improvements;
2. Determine construction limits and easements for proposed water line improvements;
3. Prepare draft plans and specifications and submit to City for review;
4. Obtain necessary permits;
5. Obtain topographic survey data within right-of-way of Alicia Drive between its intersection with Figuers Drive and Battle Avenue;
6. Meet with City to discuss alignment, material, and pipe size requirements;
7. Incorporate City comments and submit final plans and specifications to City (3 iterations of comments);
8. Provide an Engineer's Opinion of Probable Construction Cost at the 60%, 90% and final plan stages (Engineer's Opinion of Probable Construction Costs will be based on City unit prices – right of way costs will not be included in this Opinion of Probable Construction Costs); and
9. Assist City with the bidding process by providing responses to Contractor questions regarding water line improvements and performing other tasks as required.

Exhibit A.2

Scope of Work

Figuers Drive Sewer Improvements – Development of Final Contract Plans and Specifications

Background

The proposed drainage improvements on Figuers Drive will conflict with an existing gravity sewer line that serves Franklin Elementary School and adjacent residential areas.

Figuers Drive Sewer Improvements

This improvement generally consists of intercepting the existing 8 inch gravity sewer line running from the Franklin Elementary School on Figuers Drive and installing approximately 500 linear feet of new 8-inch gravity sewer line and manholes along Figuers Drive to a new manhole on the 10-inch gravity sewer line on Alicia Drive. The abandoned section of the existing sewer will be capped where cut and plugged in the manhole.

Scope of Work

The Scope of Work for the sewer line improvements, including development of final plans and specifications, is listed below. Design will, to the extent possible, utilize the topographic survey previously performed for the drainage improvements project.

Figuers Drive Sewer Improvements

1. Prepare technical documentation regarding pipe capacity, slope, and velocity for sewer line improvements;
2. Determine construction limits and easements for proposed sewer line improvements;
3. Prepare draft plans and specifications and submit to City for review;
4. Obtain necessary permits;
5. Meet with City to discuss alignment, material, and pipe size requirements;
6. Incorporate City comments and submit final plans and specifications to City (3 iterations of comments);
7. Provide an Engineer's Opinion of Probable Construction Cost at the 60%, 90% and final plan stages (Engineer's Opinion of Probable Construction Costs will be based on City unit prices – right of way costs will not be included in this Opinion of Probable Construction Costs); and
8. Assist City with the bidding process by providing responses to Contractor questions regarding water line improvements and performing other tasks as required.