

**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR EAST McEWEN DRIVE PHASE 4 IMPROVEMENTS -
FINAL DESIGN
COF Contract No. 2015-0052**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2020, by and between the **City of Franklin, Tennessee** ("City") and **Sullivan Engineering, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled East McEwen Drive Phase 4 Improvements - Final Design, dated the 24 day of March 2015; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of Seven Hundred Thirteen Thousand and No/100 Dollars (\$713,000.00), as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, on April 11, 2017, the Board of Mayor and Aldermen approved Amendment No. 1 to the Agreement with the Consultant for additional engineering services in the amount not-to-exceed One Hundred Twenty-One Thousand Nine Hundred Ninety-Eight and 65/100 Dollars (\$121,998.65); and

WHEREAS, on April 24, 2018, the Board of Mayor and Aldermen approved Amendment No. 2 to the Agreement with the Consultant for additional engineering services in the amount not-to-exceed Two Hundred Fifty-Five Thousand Five Hundred and No/100 Dollars (\$255,500.00); and

WHEREAS, the City and Consultant realize the need for additional 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, as described in Exhibit A dated February 6, 2020, in the amount of **EIGHTY-TWO THOUSAND FIVE HUNDRED EIGHTY-NINE AND 32/100 DOLLARS (\$82,589.32)**; 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 their February 6, 2020, 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 **EIGHTY-TWO THOUSAND FIVE HUNDRED EIGHTY-NINE AND 32/100 DOLLARS (\$82,589.32)**.

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 March 24, 2015, Amendment 1 dated April 11, 2017 and Amendment 2 dated April 24, 2018 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

Sullivan Engineering, Inc.

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator

Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney