

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE CURD BRANCH AND WATSON BRANCH  
INTERCEPTOR SEWER IMPROVEMENTS PROJECT  
COF Contract No. 2014-0033**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **City of Franklin, Tennessee** ("City") and **Smith Seckman Reid, Inc.** ("Consultant").

**WITNESSETH:**

**WHEREAS**, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled Curd Branch and Watson Branch interceptor Sewer Improvements Projects (COF Contract No. 2014-0033), dated the 25th day of February 2014; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a not to exceed fee of **ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS** (\$115,000.00), and

**WHEREAS**, the City and Consultant realize the need for additional professional services 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 Attachment A dated March 31, 2017, in the amount of **FORTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS** (\$45,500.00); 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 March 31, 2017, letter of proposal (**Attachment 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 **Attachment A** an amount not to exceed **FORTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$45,500.00)**.

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 February 25, 2014 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**Smith Seckman Reid, 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



COF 2014-0033  
Attachment A  
PG 1 of 2

March 31, 2017

Ms. Michelle Hatcher, P.E.  
City of Franklin, Tennessee  
Water Management Department  
124 Lumber Drive  
Franklin, TN 37064

RE: **CITY OF FRANKLIN, TENNESSEE**  
**Curd & Watson Branch Interceptor Sewer Improvements**  
**Fee Increase – Resident Project Representative Services**  
**SSR No. 13-41-032.0**

Dear Ms. Hatcher:

Per the Water Management Department's request, we are pleased to provide Construction Administration and **Resident Project Representative (RPR)** services for the Curd & Watson Branch Interceptor Sewer Improvements. The scope of services shall include the following:

1. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR shall provide full-time representation during the bulk of the project, but may provide representation to a lesser degree during certain portions of the Work.
2. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are specified in the attached Section 00 66 00. These services are estimated at 40 hours per week for a 10.5 week timeline. Another amendment may be necessary if RPR services extend past this schedule. In addition, we are also requesting additional funds for Construction Administration services related to project management when providing RPR services. We are respectfully requesting a fee increase of \$40,000.00 (RPR) + \$5,500.00 (CA) = **\$45,500.00** for the services described above and reimbursables related to RPR services.

We appreciate the opportunity to provide these additional services to the City of Franklin. The total adjusted fee ceiling of \$160,500.00 will not be exceeded without prior approval by the City. If the City is in agreement with the terms of this fee increase, we will execute a formal amendment to our original contract and commence RPR services starting April 3<sup>rd</sup>. If you have any questions or concerns regarding this request, please do not hesitate to call me at (615)460-0543.

Sincerely,

**SMITH SECKMAN REID, INC.**

A handwritten signature in black ink, appearing to read "Paolo Fonda". The signature is stylized with a large, looped "P" and a cursive "Fonda".

Paolo M. Fonda, P.E.

Attachments

Cc: Paul Holzen, Mark Hilty – Franklin  
JHB, ATJ, File (1)