

**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE HOLIDAY COURT PUMP STATION REPLACEMENT PROJECT
COF Contract No. 2016-0330**

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") (COF Contract No. 2016-0330) entitled Professional Services Agreement For the Holiday Court Pump Station Replacement Project ("Project"), dated the 10th day of January 2017; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a Not to Exceed fee of \$71,760.00; and,

WHEREAS, the City and the Consultant amended this agreement through Amendment No. 1 To Professional Engineering Services For the Holiday Court Pump Station Replacement Project, dated the 11th day of April, 2017; and

WHEREAS, said Amendment No. 1 stipulated that the Consultant would be paid a not to exceed fee of \$5,900.00; and

WHEREAS, the City and the Consultant amended this agreement through Amendment No. 2 To Professional Engineering Services For the Holiday Court Pump Station Replacement Project, dated the 14th day of November, 2017; and

WHEREAS, said Amendment No. 2 stipulated that the Consultant would be paid a not to exceed fee of \$11,909.00; and

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

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services for the Holiday Court Pump Station Replacement Project, as described in **Attachment A** dated November 2, 2018, in the amount of **FIVE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$5,900.00)**; 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 November 2, 2018, 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 the Consultant in an amount not to exceed **FIVE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$5,900.00)** 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 January 10, 2017, and its subsequent amendments, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

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:

Tiffani M. Pope, Staff Attorney



November 2, 2018

Ms. Patricia McNeese, P.E.
Engineering Department
City of Franklin, TN
109 3rd Avenue, South
Franklin, TN 37064

**Re: Engineering Services Proposal – Revision 4
Holiday Court Sewer Pump Station Replacement
Franklin, TN**

Dear Patricia:

Per our email correspondence that occurred between October 16th, 2018 and November 1st, 2018, the City has made some concessions with the Robeson property owner in order to facilitate acquisition of a temporary construction access easement. A portion of these concessions include modifications to the easement boundary and alignment. As a result, the temporary easement exhibit and description that was created by Hethcoat & Davis, Inc. as part of Easement Revision No. 3 is no longer valid. Other components of the plans and specifications are also effected by the easement modification. Additional work tasks related to the easement modification include:

- Revision of the easement exhibit and description to match the new boundary and alignment limits as provided by the City
- Plan Sheet C-2 drawing and note revisions due to easement modification
- Plan Sheet D-1 drawing and note revision due to easement modification
- Specification revisions to address equipment/material storage and haul-off

Additionally, during our correspondence it was recommended by Hethcoat & Davis, Inc. that a pump station site access detail be included on the plans so the Owner, Engineer, and Contractor will have a clear understanding of the requirements related to site access and available work area. This detail will indicate work space limits and address requirements for access, easements, marking easement edges inside/outside pavement, clear zone areas in the parking lot, and traffic control requirements/standards.



Hethcoat & Davis, Inc. proposes to provide the aforementioned scope of services for the following fees:

❖ Plan/Spec. Revisions & Changes	\$5,100
❖ Coordination/Review with City	<u>\$800</u>
❖ Total for PSA Revision #4	\$5,900

If this proposal is acceptable, please prepare a standard City Professional Services Agreement for signature and approval.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Keith Davis", is written over a faint, larger blue outline of the same signature.

Keith Davis, PE
Secretary