



City of Franklin

109 3rd Ave S
Franklin, TN 37064
(615)791-3217

Meeting Agenda Capital Investment Committee

Thursday, June 25, 2015

1:00 PM

Board Room

Call To Order

Approval of Minutes

1. [15-0590](#) Approval of Committee Minutes from May 28, 2015
2. [15-0539](#) Discussion on Mack Hatcher Parkway Northbound at Liberty Pike, NO TURN ON RED SIGN

Sponsors: Engineering
Attachments: [NTOR 2015 CIC recommendation Exhibit 1.docx](#)
3. [15-0581](#) Consideration of Final Change Order for the Charlton Green Sanitary Sewer Improvements Project (COF Contract No. 2014-0065) for a DECREASE in cost of \$10,369.10 (06-25-15 CIC)

Sponsors: Engineering
Attachments: [C2014-0065_CharltonGreenSewer_FinalCO.docx](#)
[C2014-0065_CharltonGreenSewer_PaySummary.xlsx](#)
4. [15-0582](#) Consideration of a Utility Relocation Agreement (COF Contract No. 2015-0043) with ATMOS Energy Corporation for the Hillsboro Road Improvements Project Phase 2, from Independence Square to Mack Hatcher Parkway, in the estimated amount of \$193,000.00 (06-25-15 CIC)

Sponsors: Engineering
Attachments: [C2015-0043_HillsboroPh2_ATMOSRelocation_DRAFT.docx](#)
5. [15-0585](#) *Consideration of a Utility Relocation Agreement (COF Contract No. 2015-0044) with AT&T Tennessee for the Hillsboro Road Improvements Project Phase 2, from Independence Square to Mack Hatcher Parkway, in the estimated amount of \$140,130.60 (06-25-15 CIC; Deferred from 7/14/15 BOMA; 08/25/15 WS)

Sponsors: Engineering
Attachments: [COF 2015-0044 HillsboroPh2 ATT Signed](#)

6. [15-0586](#) Consideration of a Professional Services Agreement (COF Contract No. 2015-0150) for Limited Construction Administration and Final Design Services for the Hillsboro Road Improvements Project Phase 2, from Independence Square to Mack Hatcher Parkway, in the amount of \$36,884.15 (06/25/15 CIC)
- Sponsors:** Engineering
- Attachments:** [C2015-0150_HillsboroPh2_SEI_CA_PSA_Attachment_A.pdf](#)
[00025436](#)
7. [15-0587](#) Discussion of the Application of a Flashing Yellow Left Turn Arrow on Hillsboro Road at Fieldstone Parkway
- Sponsors:** Engineering
- Attachments:** [FYA Exhibit.pdf](#)
8. [15-0578](#) Transportation Projects Status Report
- Sponsors:** Engineering
9. [15-0579](#) Water and Sewer Projects Status Report
- Sponsors:** Engineering
10. [15-0580](#) Stormwater Projects Status Report
- Sponsors:** Engineering

Other Business

Adjournment

ANYONE REQUESTING ACCOMMODATIONS DUE TO DISABILITIES SHOULD CONTACT A.D.A. COORDINATOR, AT 550-5721 AT LEAST 10 DAYS PRIOR TO THE MEETING, IF POSSIBLE.

EXHIBIT 1



R10-11



R10-11a



R10-20aP

Request for Construction Change
Change Order (FINAL)

City of Franklin
Engineering Office
109 Third Avenue South
Franklin, TN 37064

Contract No. 2014-0065
Project Charlton Green Sanitary Sewer Improvements

Whereas, we Underground Pipe & Construction, LLC entered into a contract with the CITY OF FRANKLIN, on May 13, 2014, for the construction by said Contractor of the above designated contract; and Whereas, certain items of construction encountered are not covered by the original contract, we desire to submit the following additional items of construction to be performed by the Contractor and paid by the City at the prices scheduled therefore below:

Reason for Change Order:

- Final Adjusting Change Order reflecting balance remaining at end of the contract
- Address time increase for completion of project (additional 8 days)

Attachments (List documents supporting change):

- Summary of Payments to Underground Pipe & Construction, LLC for work performed.

CHANGE IN CONTRACT PRICE:
Original Contract Price
<u>\$429,999.00</u>
Net Increase (Decrease) from previous Change Orders No. 0 to 1:
<u>\$45,675.00</u>

CHANGE IN CONTRACT TIMES:
Original Contract Times:
Substantial Completion: <u>March 10, 2015</u>
Ready for final payment: <u>April 9, 2015</u>
Net change from previous Change Orders No. 0 to 1:
Substantial Completion: <u>0 days</u>
Ready for final payment: <u>0 days</u>

Contract Price prior to this Change Order: <u>\$475,674.00</u>
Net increase (decrease) of this Change Order: <u>(\$10,369.10)</u>
Contract Price with all approved Change Orders: <u>\$465,304.90</u>

Contract Times prior to this Change Order: Substantial Completion: <u>March 10, 2015</u> Ready for final payment: <u>April 9, 2015</u>
Net increase (decrease) this Change Order: Substantial Completion: <u>120 days</u> Ready for final payment: <u>128 days</u>
Contract Times with all approved Change Orders: Substantial Completion: <u>March 18, 2015</u> Ready for final payment: <u>April 17, 2015</u>

Now, Therefore, We, Underground Pipe & Construction, LLC (Contractor), hereby agree to this Supplemental Agreement consisting of the above mentioned items and prices, and agree that this Supplemental Agreement is hereby made a part of the original contract and will be performed by this Contractor in accordance with specifications thereof, and that the original contract remain in full force and effect, except in so far as specifically modified by this supplemental Agreement.

RECOMMENDED FOR APPROVAL BY:

By: _____
CITY PROJECT MANAGER

By: _____
DIRECTOR OF ENGINEERING

Date: _____

Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Date: _____

APPROVED:

By: _____
OWNER (Authorized Signature)

Date: _____

**CHARLTON GREEN SANITARY SEWER
IMPROVEMENTS PROJECT**

Underground Pipe & Construction
213 Church Street
Dickson, TN 37055

				CONTRACT		Pay Request #1		Pay Request #2		Pay Request #3		Pay Request #4		Pay Request #5		TOTAL	
Item #	Item Name	QTY.	UNIT	Unit Price	Total Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Total Cost
303-01	MIN. AGG., TYPE A BASE, GRADING D GRAVEL	540	TON	\$15.00	\$8,100.00	0	\$0.00	105.79	\$1,586.85	142.33	\$2,134.95	186.94	\$2,804.10	0	\$0.00	435.06	\$6,525.90
307-01.08	Asphalt concrete mix (PG64-22)(BPMB-HM) Grading BM-2	192	TON	\$100.00	\$19,200.00	0	\$0.00	0	\$0.00	45	\$4,500.00	108	\$10,800.00	0	\$0.00	153	\$15,300.00
702-01.01	CONCRETE CURB REPAIR	100	LF	\$30.00	\$3,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	124	\$3,720.00	124	\$3,720.00
712-99.91	TRAFFIC CONTROL (INCL. STEEL PLATES)	1	LS	\$10,000.00	\$10,000.00	0.5	\$5,000.00	0.25	\$2,500.00	0.25	\$2,500.00	0	\$0.00	0	\$0.00	1	\$10,000.00
717-01	TEMPORARY FACILITIES AND CONTROLS (MOBILIZATION)	1	LS	\$25,000.00	\$25,000.00	1	\$25,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$25,000.00
795-14.01	CLASS A CONCRETE	2	CY	\$1,000.00	\$2,000.00	0	\$0.00	5	\$5,000.00	0	\$0.00	0	\$0.00	0	\$0.00	5	\$5,000.00
797-05.01	8" DIP GRAVITY SEWER	424	LF	\$219.00	\$92,856.00	105	\$22,995.00	40	\$8,760.00	200	\$43,800.00	63	\$13,797.00	0	\$0.00	408	\$89,352.00
797-05.51	8" PVC GRAVITY SEWER	727	LF	\$209.00	\$151,943.00	0	\$0.00	482	\$100,738.00	256	\$53,504.00	0	\$0.00	0	\$0.00	738	\$154,242.00
797-05.79	6" PVC GRAVITY SEWER	40	LF	\$100.00	\$4,000.00	0	\$0.00	0	\$0.00	101	\$10,100.00	56	\$5,600.00	0	\$0.00	157	\$15,700.00
797-06.65	BORE/JACK 18 IN STEEL CASING PIPE- UNCON.	110	LF	\$200.00	\$22,000.00	80	\$16,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	80	\$16,000.00
797-07.02	48 IN MANHOLE (0-6 FT DEPTH)	6	EA	\$4,500.00	\$27,000.00	1	\$4,500.00	5	\$22,500.00	0	\$0.00	1	\$4,500.00	0	\$0.00	7	\$31,500.00
797-07.03	VERTICAL SIDEWALL	8	VF	\$150.00	\$1,200.00	3	\$450.00	6	\$900.00	0	\$0.00	0	\$0.00	0	\$0.00	9	\$1,350.00
797-07.56	MANHOLE DROP CONNECTION ASSEMBLY	1	EA	\$3,000.00	\$3,000.00	1	\$3,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$3,000.00
797-07.57	WATER-TIGHT MANHOLE FRAME & COVER	1	EA	\$1,000.00	\$1,000.00	1	\$1,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$1,000.00
797-07.58	DOGHOUSE MANHOLE CONNECTION	1	EA	\$6,500.00	\$6,500.00	1	\$6,500.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$6,500.00
797-10.02	CONNECT 8 IN SEWER TO EXISTING MANHOLE	2	EA	\$1,000.00	\$2,000.00	0	\$0.00	0	\$0.00	2	\$2,000.00	1	\$1,000.00	0	\$0.00	3	\$3,000.00
797-10.06	CONNECT 6 IN LATERAL TO SEWER LINE	6	EA	\$1,000.00	\$6,000.00	0	\$0.00	0	\$0.00	4	\$4,000.00	3	\$3,000.00	0	\$0.00	7	\$7,000.00
797-10.24	RETIRE IN PLACE SEWER PUMP STATION	1	LS	\$5,000.00	\$5,000.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$5,000.00	0	\$0.00	1	\$5,000.00
797-11.25	RETIRE IN PLACE 48 IN MANHOLE	3	EA	\$1,000.00	\$3,000.00	0	\$0.00	0	\$0.00	0	\$0.00	3	\$3,000.00	0	\$0.00	3	\$3,000.00
797-11.31	RETIRE IN PLACE EX 8" SEWER	900	LF	\$8.00	\$7,200.00	0	\$0.00	0	\$0.00	0	\$0.00	880	\$7,040.00	0	\$0.00	880	\$7,040.00
801-01	SEEDING WITH MULCH	1	UNIT	\$5,000.00	\$5,000.00	0	\$0.00	0	\$0.00	0	\$0.00	1	\$5,000.00	0	\$0.00	1	\$5,000.00
	CONTINGENCY	1	LS	\$25,000.00	\$25,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
TOTAL BID AMOUNT (calculated)					\$429,999.00		\$84,445.00		\$141,984.85		\$122,538.95		\$61,541.10		\$3,720.00		\$414,229.90
							\$84,445.00		\$226,429.85		\$348,968.80		\$410,509.90		\$465,304.90		
	BID ALTERNATE "A"																
411-01.11	ASPHALT SURFACE (PG 64-22, 1.5" DEPTH)	330	TON	\$100.00	\$33,000.00									384	\$38,400.00		\$38,400.00
415-01.02	COLD PLANING	3900	SY	\$3.25	\$12,675.00									3900	\$12,675.00		\$12,675.00
TOTAL ALTERNATE "A" (calculated)					\$45,675.00										\$54,795.00		\$465,304.90

**UTILITY RELOCATION AGREEMENT WITH ATMOS ENERGY CORPORATION
FOR THE HILLSBORO ROAD IMPROVEMENTS PROJECT PHASE 2,
INDEPENDENCE SQUARE TO MACK HATCHER PARKWAY
COF Contract No. 2015-0043**

THIS AGREEMENT is by and between the **City of Franklin, Tennessee** ("City") and **Atmos Energy Corporation** ("Utility").

WITNESSETH:

WHEREAS, the City plans to construct the Hillsboro Road Improvements Project Phase 2, Independence Square to Mack Hatcher Parkway, TDOT PIN 108409.00, (the "Project"), as shown on construction plans and specifications as part of COF Contract No. 2015-0002; and

WHEREAS, for said Project to be constructed it will be necessary for the Utility to relocate certain parts of its facilities, one hundred percent (100%) of which are located on public highway right-of-way and zero percent (0%) of which are located on private utility rights-of-way or easements; and

WHEREAS, the City is liable for the relocation of the Utility's facilities located on private Utility rights-of-way but is not liable for adjustment of the Utility's facilities located on publicly owned rights-of-way or for any Utility betterment costs; and

WHEREAS, the Utility has furnished the City with final Utility relocation construction plans and a construction cost estimate showing the manner of relocating their facilities and the estimated total cost is in the amount of One Hundred Ninety-Three Thousand and NO/100 Dollars (\$193,000.00) ("Utility's Cost"); and

WHEREAS, the parties desire to enter into an Agreement to provide for the relocation of the Utility's facilities in conjunction with the City's Project, and the Utility has requested the City to undertake the hereinafter described Utility relocation work in its Project construction contract (COF Contract No. 2015-0002); and

WHEREAS, it is in the mutual interest of the parties that this Utility relocation work be performed together with the construction of the Project.

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. The City will show the proposed relocation of the Utility's facilities in the Project construction plans as Project cost items and will receive bids for same by its highway contractor as a part of the construction contract (COF Contract No. 2015-0002) for construction of the above mentioned Project. The City will be responsible for having its

contractor perform the aforesaid Utility relocation work in accordance with the City's construction contract, including the Project plans, standard specifications, special provisions, and the Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference.

3. The Utility agrees to reimburse the City for the Utility's Cost. Reimbursement shall be based on the actual cost of the Utility's Cost items as shown on the approved Project plans incorporated herein by reference. It is further agreed that the Utility will make payment to the City in the amount of the estimated cost of the Utility's Cost items prior to advertisement for bids. In the event said payment exceeds the aggregate amount of the Utility's Cost charges, the difference will be refunded to the Utility. In the event said Utility's Cost charges exceed the deposit, the Utility agrees to reimburse the City for such additional amount.
4. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable or the City cancels the Project for any reason prior to awarding the Project construction contract, the City reserves the right to terminate this Agreement upon written notice to the Utility. Said termination shall not be deemed a breach of contract by the City.
5. The Utility agrees that the City may advertise for and receive bids for the construction of the Project, including the proposed relocation of the Utility's facilities, and award and enter into contract with the lowest responsible bidder. The City shall include the following provision in winning contract: "All parties agree that Atmos Energy Corporation ("Atmos Energy") shall be, and is hereby, named as an express third-party beneficiary of this contract with respect to Atmos Energy's facilities and contractor's work related to the same (the "Gas Utility Work"). Atmos Energy shall be named as an additional insured on contractor's liability insurance, and all warranties relating to the Gas Utility Work shall be for the benefit of, and enforceable by, Atmos Energy."
6. It is also understood and agreed that the City, in its sole discretion, may reject any and all bids submitted for the construction of said Project without any liability whatsoever to the Utility.
7. It is further agreed that in letting the construction contract with respect to the proposed relocation of the Utility's facilities, the City is acting solely in accommodation of the Utility and shall have no liability to the Utility for any damages or claims arising out of acts or omissions on the part of the City's contractor. The Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's highway construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.
8. The Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference are provided by the Utility, signed and sealed in accordance with State regulations by a licensed engineer

employed by the Utility, and the Utility is solely responsible for said relocation plans and specifications. The Utility shall be responsible for all direct or indirect costs resulting from errors and omissions of said relocations plans and specifications included in the City construction contract. The Utility shall be responsible to provide the City any and all necessary plans, electronic files, documentation, or anything else that is deemed necessary by the City to include the Utility work in the City construction contract.

9. The Utility has acquired or shall acquire all Utility rights-of-way outside of the available public highway right-of-way and/or easements as may be needed to relocate its Utility facilities, including any betterment, and the Utility shall provide the City and its contractor with the rights to use these Utility rights-of-way and/or easements for construction purposes. The Utility further agrees that it has acquired or will acquire these rights-of-way at no cost to the City except insofar as City may be liable to reimburse the Utility for the replacement of previously owned private Utility right-of-way and/or easements.
10. The Utility shall have the right and responsibility to inspect and approve, prior to the City's release of its Project contractor's bond, all items of Utility relocation work to be performed under the proposed highway construction contract to ensure that the relocation is completed in accordance with this Agreement and all applicable plans, specifications, and safety codes. The inspection of the Utility's facilities shall be performed at no cost to the City.
11. The Utility agrees to perform the Utility engineering work and inspection work provided for in this Agreement by its own forces and/or consultant engineering services approved by the City.
12. The City may submit periodic invoices to the Utility during the course of the Project (not more frequently than every thirty (30) days), which invoices shall be payable within thirty (30) days after receipt of same by the City. Within sixty (60) days of completion of the Utility's relocated facilities, the City and Utility shall settle on a final billing. The City and Utility will provide reasonable documentation to reconcile all such costs.
13. The Utility agrees, to the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility or its employees in the performance of the Utility's engineering and inspection work relating to this Agreement. The Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's Project construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.
14. In the event that the City is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in the City's defense. The City shall give the Utility written notice of any such claim or suit, and the Utility shall have

full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent the City in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-1 06.

15. The City shall have no liability except as specifically provided in this Agreement.
16. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment specifically citing the paragraph within the Agreement to be amended and signed by the parties hereto.
17. The Utility shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Agreement. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Agreement and subject the Utility to the repayment of all City funds expended, or expenses incurred, under this Agreement.
18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
19. TIME IS OF THE ESSENCE OF THIS AGREEMENT.
20. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. The Utility acknowledges and agrees that any rights or claims against the City of Franklin or its officials, contractors, agents or employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available to the City under law.
21. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
22. The City and the Utility agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective

party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

To City:
William Banks
Staff Engineer
109 3rd Avenue South
Franklin, TN 37064
Fax: (615) 791-3293
William.banks@franklintn.gov

To Atmos Energy Corporation
Name: _____
Title: _____
Address: _____
Franklin, TN 37064
Fax: (615) _____
Email: _____

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____, 2015.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated below.

CITY OF FRANKLIN, TENNESSEE

Atmos Energy Corporation

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

**UTILITY RELOCATION AGREEMENT WITH AT&T TENNESSEE
FOR THE HILLSBORO ROAD IMPROVEMENTS PROJECT PHASE 2,
INDEPENDENCE SQUARE TO MACK HATCHER PARKWAY
COF Contract No. 2015-0044**

THIS AGREEMENT is by and between the **City of Franklin, Tennessee** ("City") and **AT&T Tennessee** ("Utility").

WITNESSETH:

WHEREAS, the City plans to construct the Hillsboro Road Improvements Project Phase 2, Independence Square to Mack Hatcher Parkway, TDOT PIN 108409.00, (the "Project"), as shown on construction plans and specifications as part of COF Contract No. 2015-0002; and

WHEREAS, for said Project to be constructed it will be necessary for the Utility to relocate certain parts of its facilities, one hundred percent (100%) of which are located on public highway right-of-way and zero percent (0%) of which are located on private utility rights-of-way or easements; and

WHEREAS, the City is liable for the relocation of the Utility's facilities located on private Utility rights-of-way but is not liable for adjustment of the Utility's facilities located on publicly owned rights-of-way or for any Utility betterment costs; and

WHEREAS, the Utility has furnished the City with final Utility relocation construction plans and a construction cost estimate showing the manner of relocating their facilities and the estimated total cost is in the amount of One Hundred Forty Thousand One Hundred Thirty and 60/100 Dollars (\$140,130.60) ("Utility's Cost"); and

WHEREAS, the parties desire to enter into an Agreement to provide for the relocation of the Utility's facilities in conjunction with the City's Project, and the Utility has requested the City to undertake the hereinafter described Utility relocation work in its Project construction contract (COF Contract No. 2015-0002); and

WHEREAS, it is in the mutual interest of the parties that this Utility relocation work be performed together with the construction of the Project.

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. The City will show the proposed relocation of the Utility's facilities in the Project construction plans as Project cost items and will receive bids for same by its highway contractor as a part of the construction contract (COF Contract No. 2015-0002) for construction of the above mentioned Project. The City will be responsible for having its

contractor perform the aforesaid Utility relocation work in accordance with the City's construction contract, including the Project plans, standard specifications, special provisions, and the Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference.

3. The Utility agrees to reimburse the City for the Utility's Cost. Reimbursement shall be based on the reasonable and customary actual cost of the Utility's Cost items as shown on the approved Project plans incorporated herein by reference, which shall only include relocation of Utility cables and manholes with conduit runs. It is further agreed that the Utility will make payment to the City in the amount of the estimated cost of the Utility's Cost items prior to advertisement for bids. In the event said payment exceeds the aggregate amount of the Utility's Cost charges, the difference will be refunded to the Utility. In the event said Utility's Cost charges exceed the deposit, the Utility agrees to reimburse the City for such additional amount.
4. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable or the City cancels the Project for any reason prior to awarding the Project construction contract, the City reserves the right to terminate this Agreement upon written notice to the Utility. Said termination shall not be deemed a breach of contract by the City.
5. The Utility agrees that the City may advertise for and receive bids for the construction of the Project, including the proposed relocation of the Utility's facilities, and award and enter into contract with the lowest responsible bidder.
6. If the apparent low bidder's bid for the Utility's Cost items exceeds the estimate by more than twenty percent (20%), the City shall notify the Utility of the bid amount and the Utility can agree to the bid or may request the withdrawal of the utility relocation work from the City's Project contract, provided that the Utility agrees to perform the utility relocation work with its own forces or by separate contract. Should the utility choose to withdraw its required relocation work from the City's Project contract and do the utility relocation work with its own forces or by separate contract, the utility shall be liable for any and all costs associated with any delay it may cause to the City's Project. It is also understood and agreed that the City, in its sole discretion, may reject any and all bids submitted for the construction of said Project without any liability whatsoever to the Utility.
7. It is further agreed that in letting the construction contract with respect to the proposed relocation of the Utility's facilities, the City is acting solely in accommodation of the Utility and shall have no liability to the Utility for any damages or claims arising out of acts or omissions on the part of the City's contractor. The Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's highway construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.

8. The Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference are provided by the Utility, signed and sealed in accordance with State regulations by a licensed engineer employed by the Utility, and the Utility is solely responsible for said relocation plans and specifications. The Utility shall be responsible for all direct or indirect costs resulting from errors and omissions of said relocations plans and specifications included in the City construction contract. The Utility shall be responsible to provide the City any and all necessary plans, electronic files, documentation, or anything else that is deemed necessary by the City to include the Utility work in the City construction contract.
9. The Utility has acquired or shall acquire all Utility rights-of-way outside of the available public highway right-of-way and/or easements as may be needed to relocate its Utility facilities, including any betterment, and the Utility shall provide the City and its contractor with the rights to use these Utility rights-of-way and/or easements for construction purposes. The Utility further agrees that it has acquired or will acquire these rights-of-way at no cost to the City except insofar as City may be liable to reimburse the Utility for the replacement of previously owned private Utility right-of-way and/or easements.
10. The Utility shall have the right and responsibility to inspect and approve, prior to the City's release of its Project contractor's bond, all items of Utility relocation work to be performed under the proposed highway construction contract to ensure that the relocation is completed in accordance with this Agreement and all applicable plans, specifications, and safety codes. The inspection of the Utility's facilities shall be performed at no cost to the City.
11. The Utility agrees to perform the Utility engineering work and inspection work provided for in this Agreement by its own forces and/or consultant engineering services approved by the City.
12. The City may submit periodic invoices to the Utility during the course of the Project (not more frequently than every thirty (30) days), which invoices shall be payable within thirty (30) days after receipt of same by the City. Within sixty (60) days of completion of the Utility's relocated facilities, the City and Utility shall settle on a final billing. The City and Utility will provide reasonable documentation to reconcile all such costs.
13. The Utility agrees, to the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility or its employees in the performance of the Utility's engineering and inspection work relating to this Agreement. Except to the extent caused by the City's negligence or willful misconduct, the Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's Project construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.

14. In the event that the City is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in the City's defense. The City shall give the Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent the City in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-1 06.
15. The City shall have no liability except as specifically provided in this Agreement.
16. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment specifically citing the paragraph within the Agreement to be amended and signed by the parties hereto.
17. The Utility shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Agreement. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Agreement and subject the Utility to the repayment of all City funds expended, or expenses incurred, under this Agreement.
18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
19. TIME IS OF THE ESSENCE OF THIS AGREEMENT.
20. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. The Utility acknowledges and agrees that any rights or claims against the City or its officials, contractors, agents or employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available to the City under law.
21. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

To City:
William Banks
Staff Engineer
109 3rd Avenue South
Franklin, TN 37064
Fax: (615) 791-3293
William.banks@franklin.tn.gov

To AT&T Tennessee
Name: LEE KORNEGAY
Title: MGR - OSP ENGR.
Address: 116 S. CANNON AVE
MURFREESBORO, TN 37129
Fax: (615) 848-2082
Email: KK4096@ATT.COM

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____, 2015.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated below.

CITY OF FRANKLIN, TENNESSEE

AT&T Tennessee

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: [Signature]
Print: DAMIE LUCAS, JR
Title: DIRECTOR - TN/KY ENGINEERING
Date: 7/8/15

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Kristen L. Corn, Staff Attorney



SULLIVAN ENGINEERING, INC.

317 MAIN STREET, SUITE 201
FRANKLIN, TN. 37064
(615) 642-5822

June 3, 2015

Mr. William Banks,
City of Franklin Engineering
109 3rd Avenue South
Franklin, TN 37064

RE: Limited Construction Administration & Design Services
Hillsboro Rd. – Phase 2 Improvements, (SR-106, US 431)
From Independence Square to Mack Hatcher Bypass
City of Franklin project # 2015-0150
City of Franklin, Tennessee
Williamson County
T.D.O.T.-PIN 108409.00
SEI Project #12-013

Dear William,

Sullivan Engineering, Inc. (SEI) is pleased to submit the following proposal for Supplemental Construction Engineering Administration and Design Services for the subject project. The proposed services are to incorporate plans revisions requested by the TN Department of Transportation, Local Program Office. These services shall also allow SEI to extend services past the contract award and be available in the early construction phase to provide input on plan interpretation and Supplemental Instructions.

Project History

The original scope of services was to have the project designed, property acquired, approved by TDOT and ready for advertisement March 2014, at which point additional compensation as noted in the original contract was an option if necessary. As you are aware, delay's beyond March 2014, are from varied sources, most notable the process required by TDOT for acquisition of property and required coordination with TDOT Local Programs. As a result of these delays SEI's team inclusive of our sub-contractors during the design and approval process have expended additional time and resources beyond the March 2014 date. Since the design process started ten years ago the project has undergone a variety of changes some of which have been accounted for but others could not be predicted, such as the connection with Mack Hatcher Parkway.

The original scope of services was from Independence Square and extending to Rebel Circle on the West and Claude Yates Drive. The exception to this would be the CCTV system which included elements to provide a pole and camera east of Mack Hatcher Parkway. What was not included was any revisions required to the original documents for transitions associated with TDOT's Mack Hatcher Project.

The TDOT Section of Hillsboro Road, north of Rebel Circle on west and north of Claude Yates Drive

on the east, was excluded from SEI's June 2013 approved Scope of Services, which had an estimated design fee of \$7,350. Although this task was excluded from SEI's original Scope of Services as approved June 2013, design of this section was required to complete the project. Therefore, to keep the project moving and on schedule, SEI, provided proceeded with the additional services. Although SEI did not have a specific line item to invoice for these additional services, SEI is requesting reimbursement at this time. These additional Hillsboro Road design services, north of Rebel Circle on the west and north of Claude Yates Drive on the east, included items such as review and design of storm drainage system, special ditches, horizontal/vertical alignments, curbs, sidewalk, cross sections, slope limits and property acquisition documents.

Scope of Engineering Services/Fee

Following is a description of supplemental services to assist the City during the final TDOT Approval process and initial Construction Administration start-up. These services are in supplement and addition to the original scope of services (Approved June 2013). The scope is divided into various Phases, which are described as follows:

SUMMARY OF ENGINEERING DESIGN SERVICES

HILLSBORO ROAD (TDOT-PIN 106997.00) From: Independence Square To: Mack Hatcher Bypass			
(1)	<u>(Supplemental Engineering Services)</u>		
Notes	Task	Sullivan Engineering, Inc	Budget
	1	SEI project facilitator - Information of a general nature shall be sent to SEI for distribution and coordination purposes to assist in obtaining TDOT approval for Advertisement and Award of Construction.	\$1,661.28
(2)	2	Design Revisions Per City property negotiations and proprietary item acceptance. (1)	\$759.44
(3)	3	Compile final Project Manual and update all date sensitive items, upon review by TDOT Local Programs. (2)	\$550.03
	4	Design modifications per TDOT Local Programs review and comment.	\$5,085.49
(5)	5	Issue Addendum, Attend Bid Opening, Prepare Bid Tabulation and issue letter of recommendation/contract award. (4)	\$3,430.55
	6	Attend Pre-Construction Meeting and prepare supplemental instructions requested.	\$1,025.17
	7	Attend construction project meetings for the first three months (2-meetings per month) and prepare any supplemental instructions requested.	\$3,053.43
	8	All major printing for reviews and construction bidding shall be by the City of Franklin.	\$0.00
(4)	9	Design services on Hillsboro Road, from Rebel Circle on the West and Claude Yates Drive on the east, was excluded from the original scope of services, which was required but excluded from the original Scope of Services approved June 2013.	\$7,700.77

		RPM Transportation Consultants, LLC	
	10	It is RPM's understanding that the design team has submitted the Phase 2 design packet including the signal and ITS design to TDOT for review. RPM will address all comments received from TDOT pertaining to the signal and ITS design. Once all comments have been addressed RPM will prepare sheets to be included in the final submittal of the project plans.	\$2,860.00
	11	RPM will assist with answering questions posed by bidders for traffic signal and ITS related work and will attend and participate in one pre-bid meeting in conjunction with the bidding phase for the project.	\$1,738.00
	12	RPM will attend and participate in one pre-construction meeting, provide shop drawing review for traffic signal, school flasher and ITS components throughout construction and perform up to four (4) field review visits during construction.	\$5,720.00
		HFR - Survey	
	13	Locate, verify and document original field control data.	\$3,300.00
		Total Estimated Project Budget	\$36,884.15

NOTES

(1) Additional task required to complete Design and Construction Documents in accordance with TDOT Local Program modifications. This Contract Amendment will also provide for the Design Team to be in attendance at the pre-construction meeting and attend the first few months of project meetings to assist the CEI Team in providing interpretation and clarification of various design features.

(2) Current/Pending Revisions

- o Executive House driveway revisions which will impact Driveway Tabulation, Present, Proposed and Profile sheets, no change in quantity calculations.
- o Remove reference of retainer in project manual and clarification of bid form completion per your emails of May 6 & 11.
- o Revise estimated quantity items and related notes for approved proprietary items.

(3) Current/Pending Revisions

- o Revision date changes to referenced Standard Drawings and Supplemental Instructions.
- o Assemble Project Manual for printing and distribution at completion of all modification request.

(4) Design Services not included in Original Scope of Services

- o The design documents north of Rebel Circle on the west and Claude Yates on the east with exception of the CCTV system are not included within this scope of services. At the time of this proposal it was still unclear as to what if any actions would be taken with regards to the Mack Hatcher Parkway Extension project. Therefore, design of this section shall be negotiated once a clear understanding of the scope can be determined.

(5) Addendum

- o For designs not included in SEI's original Scope of Services, SEI will prepare the cover documents but all design related modifications shall be the responsibility to prepare and provide the necessary PDF's.

EXCLUSIONS:

Aerial survey
Topographic Survey
Update original 2002 field topographic survey.
Utility Relocation Design
Environmental and Erosion Control mitigation design plans
Historical or Archeological mitigation plan
Construction Testing and observation
Roadway lighting
Electrical design
Storm Water mitigation, retention or detention requirements
Geotechnical and Testing Services
Structural (bridge, retaining walls and foundations)
Environmental Updates

ADDITIONAL SERVICES

Any work, other than the scope of services outlined herein, shall be designated additional services. At such time that it is determined that these additional services are required; our design team reserves the right to amend this proposal or execute a separate agreement that will provide such services. Services desired by the client, but not specifically outlined herein, can be provided on an hourly basis in accordance with the design teams standard hourly rates.

I hope this proposal meets with your approval. Please contact me at your convenience after you have had a chance to review this proposal so we can discuss and answer in questions.

Sincerely,

Sullivan Engineering, Inc.

Paul V. Collins, Jr.

Paul V. Collins, Jr.
Vice President

cc: Mr. Richard Sullivan, PE, Sullivan Engineering, Inc.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2015-0150**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **Sullivan Engineering, Inc. (SEI)**, hereinafter referenced as Consultant, who mutually agree as follows:

DECLARATIONS. City desires to retain Consultant to provide limited construction administration, final design services, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**HILLSBORO ROAD IMPROVEMENTS PROJECT PHASE 2,
INDEPENDENCE SQUARE TO MACK HATCHER PARKWAY**

1. **SCOPE OF SERVICES.** Consultant shall provide limited construction administration, final design services, and related technical services for the Project in accordance with the Scope of Work. The Scope of Work as found in **Attachment A** shall be considered as an integral part hereof.
2. Consultant shall be paid on an hourly basis for work performed based on the fee schedule as contained in **Attachment A** in the Amount Not To Exceed **THIRTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-FOUR AND 15/100 DOLLARS (\$36,884.15)**.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____ 2015.

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to form by:

Shauna R. Billingsley, City Attorney

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

ARTICLE 2. CITY'S RESPONSIBILITIES. City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from engaging

independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, **SCOPE OF SERVICES**; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, **SCOPE OF SERVICES**.

ARTICLE 4. TERMINATION BY THE CITY. The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The

Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
 - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 5. SCOPE OF SERVICES. Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

5.2 ENVIRONMENTAL RESPONSIBILITY.

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

ARTICLE 6. SCHEDULE.

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the fee and the time of performance of Consultant's services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 7. USE OF DOCUMENTS, DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 **USE OF DATA SYSTEMS:** Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 **DISCLOSURE OF DOCUMENTS/DATA.** City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for

- convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.

- d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

ARTICLE 9. PAYMENT.

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 **TRAVEL; EXPENSES**
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because

of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

- 10.3 NO THIRD PARTY RIGHTS CREATED. City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

ARTICLE 11. EXTENT OF AGREEMENT:

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

- 11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

- 12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract with 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.

ARTICLE 13. SURVIVAL.

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.



SULLIVAN ENGINEERING, INC.

317 MAIN STREET, SUITE 201
FRANKLIN, TN. 37064
(615) 642-5822

June 3, 2015

Mr. William Banks,
City of Franklin Engineering
109 3rd Avenue South
Franklin, TN 37064

RE: Limited Construction Administration & Design Services
Hillsboro Rd. – Phase 2 Improvements, (SR-106, US 431)
From Independence Square to Mack Hatcher Bypass
City of Franklin project # 2015-0150
City of Franklin, Tennessee
Williamson County
T.D.O.T.-PIN 108409.00
SEI Project #12-013

Dear William,

Sullivan Engineering, Inc. (SEI) is pleased to submit the following proposal for Supplemental Construction Engineering Administration and Design Services for the subject project. The proposed services are to incorporate plans revisions requested by the TN Department of Transportation, Local Program Office. These services shall also allow SEI to extend services past the contract award and be available in the early construction phase to provide input on plan interpretation and Supplemental Instructions.

Project History

The original scope of services was to have the project designed, property acquired, approved by TDOT and ready for advertisement March 2014, at which point additional compensation as noted in the original contract was an option if necessary. As you are aware, delay's beyond March 2014, are from varied sources, most notable the process required by TDOT for acquisition of property and required coordination with TDOT Local Programs. As a result of these delays SEI's team inclusive of our sub-contractors during the design and approval process have expended additional time and resources beyond the March 2014 date. Since the design process started ten years ago the project has undergone a variety of changes some of which have been accounted for but others could not be predicted, such as the connection with Mack Hatcher Parkway.

The original scope of services was from Independence Square and extending to Rebel Circle on the West and Claude Yates Drive. The exception to this would be the CCTV system which included elements to provide a pole and camera east of Mack Hatcher Parkway. What was not included was any revisions required to the original documents for transitions associated with TDOT's Mack Hatcher Project.

The TDOT Section of Hillsboro Road, north of Rebel Circle on west and north of Claude Yates Drive

on the east, was excluded from SEI's June 2013 approved Scope of Services, which had an estimated design fee of \$7,350. Although this task was excluded from SEI's original Scope of Services as approved June 2013, design of this section was required to complete the project. Therefore, to keep the project moving and on schedule, SEI, provided proceeded with the additional services. Although SEI did not have a specific line item to invoice for these additional services, SEI is requesting reimbursement at this time. These additional Hillsboro Road design services, north of Rebel Circle on the west and north of Claude Yates Drive on the east, included items such as review and design of storm drainage system, special ditches, horizontal/vertical alignments, curbs, sidewalk, cross sections, slope limits and property acquisition documents.

Scope of Engineering Services/Fee

Following is a description of supplemental services to assist the City during the final TDOT Approval process and initial Construction Administration start-up. These services are in supplement and addition to the original scope of services (Approved June 2013). The scope is divided into various Phases, which are described as follows:

SUMMARY OF ENGINEERING DESIGN SERVICES

HILLSBORO ROAD (TDOT-PIN 106997.00) From: Independence Square To: Mack Hatcher Bypass			
(1)	<u>(Supplemental Engineering Services)</u>		
Notes	Task	Sullivan Engineering, Inc	Budget
	1	SEI project facilitator - Information of a general nature shall be sent to SEI for distribution and coordination purposes to assist in obtaining TDOT approval for Advertisement and Award of Construction.	\$1,661.28
(2)	2	Design Revisions Per City property negotiations and proprietary item acceptance. (1)	\$759.44
(3)	3	Compile final Project Manual and update all date sensitive items, upon review by TDOT Local Programs. (2)	\$550.03
	4	Design modifications per TDOT Local Programs review and comment.	\$5,085.49
(5)	5	Issue Addendum, Attend Bid Opening, Prepare Bid Tabulation and issue letter of recommendation/contract award. (4)	\$3,430.55
	6	Attend Pre-Construction Meeting and prepare supplemental instructions requested.	\$1,025.17
	7	Attend construction project meetings for the first three months (2-meetings per month) and prepare any supplemental instructions requested.	\$3,053.43
	8	All major printing for reviews and construction bidding shall be by the City of Franklin.	\$0.00
(4)	9	Design services on Hillsboro Road, from Rebel Circle on the West and Claude Yates Drive on the east, was excluded from the original scope of services, which was required but excluded from the original Scope of Services approved June 2013.	\$7,700.77

		RPM Transportation Consultants, LLC	
	10	It is RPM's understanding that the design team has submitted the Phase 2 design packet including the signal and ITS design to TDOT for review. RPM will address all comments received from TDOT pertaining to the signal and ITS design. Once all comments have been addressed RPM will prepare sheets to be included in the final submittal of the project plans.	\$2,860.00
	11	RPM will assist with answering questions posed by bidders for traffic signal and ITS related work and will attend and participate in one pre-bid meeting in conjunction with the bidding phase for the project.	\$1,738.00
	12	RPM will attend and participate in one pre-construction meeting, provide shop drawing review for traffic signal, school flasher and ITS components throughout construction and perform up to four (4) field review visits during construction.	\$5,720.00
		HFR - Survey	
	13	Locate, verify and document original field control data.	\$3,300.00
		Total Estimated Project Budget	\$36,884.15

NOTES

(1) Additional task required to complete Design and Construction Documents in accordance with TDOT Local Program modifications. This Contract Amendment will also provide for the Design Team to be in attendance at the pre-construction meeting and attend the first few months of project meetings to assist the CEI Team in providing interpretation and clarification of various design features.

(2) Current/Pending Revisions

- o Executive House driveway revisions which will impact Driveway Tabulation, Present, Proposed and Profile sheets, no change in quantity calculations.
- o Remove reference of retainer in project manual and clarification of bid form completion per your emails of May 6 & 11.
- o Revise estimated quantity items and related notes for approved proprietary items.

(3) Current/Pending Revisions

- o Revision date changes to referenced Standard Drawings and Supplemental Instructions.
- o Assemble Project Manual for printing and distribution at completion of all modification request.

(4) Design Services not included in Original Scope of Services

- o The design documents north of Rebel Circle on the west and Claude Yates on the east with exception of the CCTV system are not included within this scope of services. At the time of this proposal it was still unclear as to what if any actions would be taken with regards to the Mack Hatcher Parkway Extension project. Therefore, design of this section shall be negotiated once a clear understanding of the scope can be determined.

(5) Addendum

- o For designs not included in SEI's original Scope of Services, SEI will prepare the cover documents but all design related modifications shall be the responsibility to prepare and provide the necessary PDF's.

EXCLUSIONS:

Aerial survey
Topographic Survey
Update original 2002 field topographic survey.
Utility Relocation Design
Environmental and Erosion Control mitigation design plans
Historical or Archeological mitigation plan
Construction Testing and observation
Roadway lighting
Electrical design
Storm Water mitigation, retention or detention requirements
Geotechnical and Testing Services
Structural (bridge, retaining walls and foundations)
Environmental Updates

ADDITIONAL SERVICES

Any work, other than the scope of services outlined herein, shall be designated additional services. At such time that it is determined that these additional services are required; our design team reserves the right to amend this proposal or execute a separate agreement that will provide such services. Services desired by the client, but not specifically outlined herein, can be provided on an hourly basis in accordance with the design teams standard hourly rates.

I hope this proposal meets with your approval. Please contact me at your convenience after you have had a chance to review this proposal so we can discuss and answer in questions.

Sincerely,

Sullivan Engineering, Inc.

Paul V. Collins, Jr.

Paul V. Collins, Jr.
Vice President

cc: Mr. Richard Sullivan, PE, Sullivan Engineering, Inc.

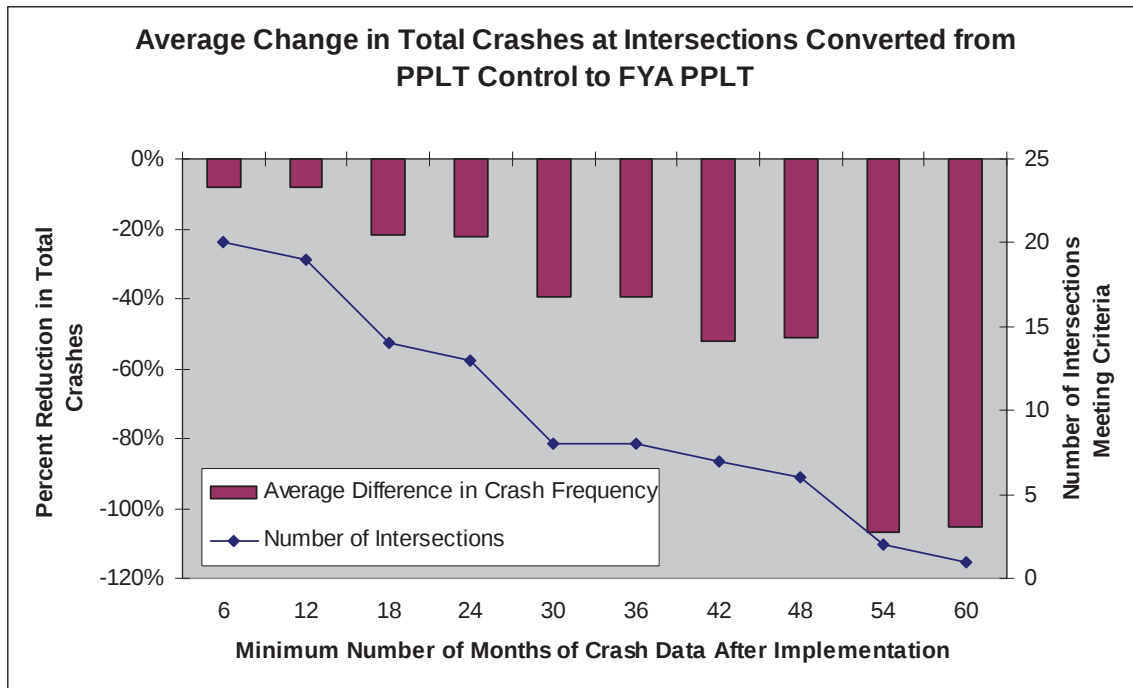


FIGURE 23 Changes in total Crashes in PPLT to FYA PPLT Conversions

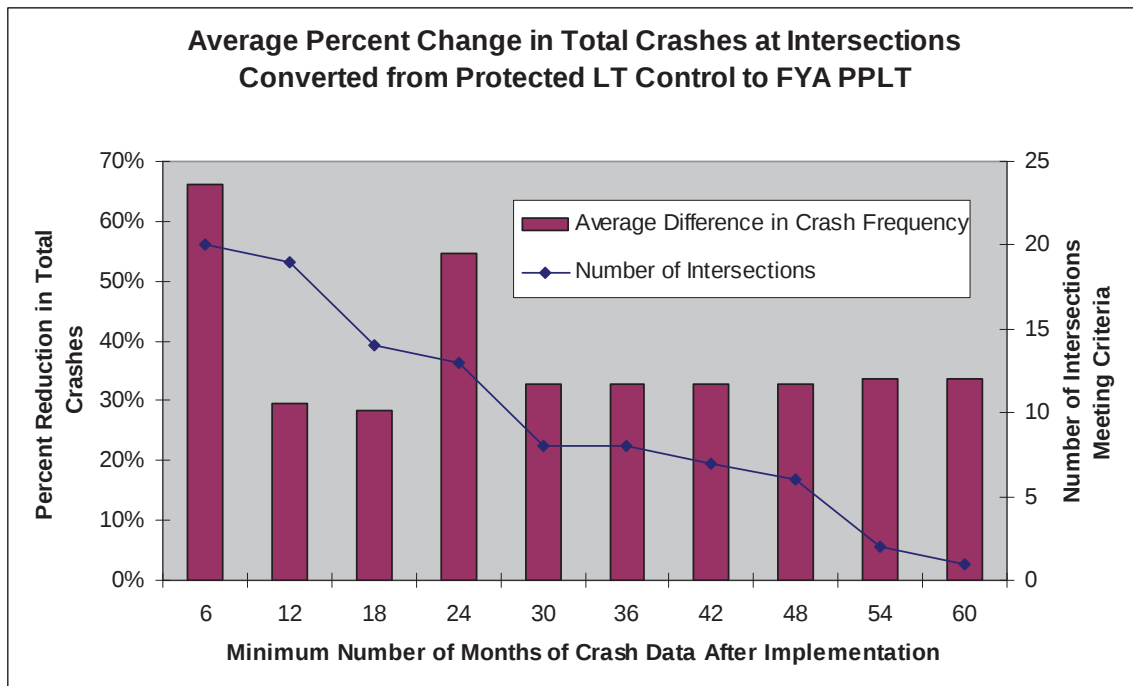


FIGURE 24 Changes in total Crashes in Protect LT to FYA PPLT Conversions