

APPROVED AS TO FORM

GDW  
Office of the City Attorney

Prepared By: GDW  
Requested: Projects Cmte  
Presentation on: 12/09/2014  
Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE  
AMENDMENT NO. 2 TO CONTRACT WITH MCGIFFERT AND  
ASSOCIATES FOR THE HARGROVE ROAD & HACKBERRY LANE  
IMPROVEMENTS PROJECT  
(A12-0949)

BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA as follows:

That the Mayor be, and he is hereby, authorized to execute Amendment No. 2 to the Contract between the City of Tuscaloosa and McGiffert and Associates, LLC in regards to the Hargrove Road and Hackberry Lane Improvements Project to increase the maximum compensation to Consultant from \$405,839 to \$489,362 reflecting an increase of \$83,523 for additional environmental studies within the project area; and the City Clerk is authorized to attest the same.

FUNDING REQUIRED:  Yes  No

CPBT DR 1  
CPBT DR 2  
\* AS ASSE DR-86821  
WS ASSE

By: [Signature]  
Finance Director

COUNCIL ACTION

Resolution ✓  
Ordinance \_\_\_\_\_  
Introduced \_\_\_\_\_  
Passed 12-9-14  
2nd Reading \_\_\_\_\_  
Unanimous \_\_\_\_\_  
Failed \_\_\_\_\_  
Tabled \_\_\_\_\_  
Amended \_\_\_\_\_  
Comments: \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )  
CITY OF TUSCALOOSA )

**AMENDMENT NO. 2 TO CONTRACT FOR ENGINEERING AND RELATED SERVICES TO THE CITY OF TUSCALOOSA FOR THE HARGROVE ROAD AND HACKBERRY LANE IMPROVEMENTS PROJECT**  
**(A12-0949)**

THIS AMENDMENT to that certain agreement made and entered into by and between the parties on the 17<sup>th</sup> day of October, 2012, is made and entered into by and between the firm of McGiffert and Associates, LLC, a professional engineering corporation, hereinafter referred to as the "ENGINEER," and the CITY OF TUSCALOOSA, a Municipal Corporation, hereinafter sometimes referred to as the "OWNER" or "CITY," on this the 17 day of December, 2014, as follows:

**W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, heretofore, the City of Tuscaloosa and McGiffert and Associates, LLC ("Engineer") entered into a contract to provide engineering and related services to the City of Tuscaloosa for design and construction of a public works project known as the Hargrove Road and Hackberry Lane Improvement Project; and,

**WHEREAS**, it is necessary to amend the Engineer's contract to increase compensation to Engineer by \$83,523 for additional environmental studies necessitated by the funding source.

**NOW, THEREFORE**, the City of Tuscaloosa and the Engineer do hereby enter into this Second Amendment to the contract between the parties on the above date, for and in consideration of the mutual benefits moving each to the other as more particularly set forth herein as follows:

**SECTION ONE.** That Article 14 "Compensation", Item "L. Permitting, Licensing and/or Studies:" be, and the same is hereby, amended to read as follows:

"L. **Permitting, Licensing and/or Studies:** The ENGINEER shall be reimbursed at an hourly rate as per Exhibit "B," as services are rendered, by OWNER for the specialized services as indicated in Article 6 for permitting, licensing or studies in an amount not to exceed \$ 199,217, without OWNER's consent. This amount represents the total compensation to the ENGINEER for these services on all phases of the project."

**SECTION TWO. Miscellaneous.**

**Capacity:** Each Party to this Agreement represents and warrants to the other as follows:

- A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- B. That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- C. That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
- D. That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
- E. That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act in such capacity for the Party.
- F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.
- G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

**Final Integration:** This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

**Force Majeure:** Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

**Construction:** This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** "Shall", "will", and "agrees" are mandatory; "may" is permissive.

**Governing Laws:** The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

**Prohibition on Assignment and Delegation:** No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

**Agreement Date/Counterparts:** The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**Use of Words and Phrases:** The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

#### **ARTICLE 20. COMPLIANCE WITH IMMIGRATION LAW:**

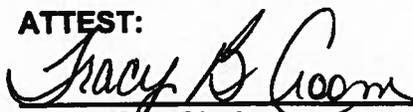
By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

#### **ARTICLE 21. COMPLIANCE WITH AFFORDABLE HEALTH CARE ACT:**

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal compliance laws pertaining to the Affordable Health Care Act. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

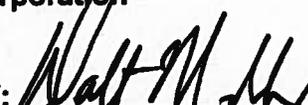
**IN WITNESS WHEREOF,** the parties hereto each herewith subscribe the same on the date first above written.

**ATTEST:**

  
\_\_\_\_\_  
City Clerk

**CITY OF TUSCALOOSA, A Municipal Corporation**

**BY:**

  
\_\_\_\_\_  
Mayor Walter Maddox



STATE OF ARIZONA  
COUNTY OF MARICOPA

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

STATE OF ARIZONA  
COUNTY OF MARICOPA

Notarizing and attesting to the fact that the above named person is the person who has executed the foregoing instrument and that he is duly qualified to perform the duties of a Notary Public in and for the County of Maricopa, State of Arizona.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

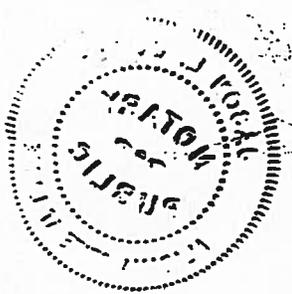


\_\_\_\_\_  
[Signature]

STATE OF ARIZONA  
COUNTY OF MARICOPA

Notarizing and attesting to the fact that the above named person is the person who has executed the foregoing instrument and that he is duly qualified to perform the duties of a Notary Public in and for the County of Maricopa, State of Arizona.

\_\_\_\_\_  
[Signature]



\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

# CITY OF TUSCALOOSA

## Hargrove Road & Hackberry Lane Improvements Project

### Estimated Professional Services Fees

#### Amendment No. 2

#### City Project No. A12-0949

October 27, 2014

#### Amendment Description:

This proposed contract amendment is associated with the additional environmental studies associated with the previous underground storage tanks that were potentially located within the project area.

Based upon the anticipated construction cost the following Engineer Design Services, in accordance with the City's "Standard Engineering Agreement", Article 14, are proposed:

<b>A. Preliminary Design</b> (Previously Contracted)	N.I.C.
<b>B. Final Design</b> (Previously Contracted)	N.I.C.
<b>C. Bid Phase Services</b> • These services are not included in contract at this time	N.I.C.
<b>D. Basic Engineering Services During Construction</b> • These services are not included in contract at this time	<u>N.I.C.</u>
<b>E. Maximum Payment (for Services A-D)</b>	N.I.C.
<b>F. Design Surveying</b> (Previously Completed)	N.I.C.
<b>G. Easements/Right of Way</b>	N.I.C.
<b>H. Advanced Engineering Services During Construction</b> • These services are not included in contract at this time	N.I.C.
<b>I. Design Testing</b> (Previously Contracted)	N.I.C.
<b>J. Construction Testing</b> • These services are not included in contract at this time	N.I.C.
<b>K. Administrative/Reimbursable Expenses</b> (Previously Contracted)	N.I.C.
<b>L. Permits, Licenses and Studies</b>	
<b>L.1.a. Environmental Assessment: Addenda (for CityWalk)</b> (Previously Contracted)	N.I.C.
<b>L.1.b. Limited Phase II Environmental Site Assessment</b> (Previously Contracted)	N.I.C.
<b>L.1.c. Additional On-Site Environmental Assessment Services</b> Fees for this task will include our 15% subconsultant markup. Actual billing will be based on TTL's attached detail of unit rates.	\$ 40,716

# CITY OF TUSCALOOSA

## Hargrove Road & Hackberry Lane Improvements Project

### Estimated Professional Services Fees

#### Amendment No. 2

#### City Project No. A12-0949

October 27, 2014

<b>L.1.d. Additional Off-Site Environmental Assessment Services</b>		
Fees for this task will include our 15% subconsultant markup. Actual billing will be based on TTL's attached detail of unit rates.	\$	18,537
<b>L.1.e. Additional Off-Site Environmental Assessment Services</b> (South of Hargrove Road- Residential Properties)		
Fees for this task will include our 15% subconsultant markup. Actual billing will be based on TTL's attached detail of unit rates.	\$	24,270
<b>L.2. ADEM stormwater permitting and inspections are not included in design contract</b>		N.I.C.
<b>L.3.a. Traffic Counts</b> (Previously Contracted)		N.I.C.
<b>L.3.b. Traffic Analyses/Signal Warrant</b> (Previously Contracted)		N.I.C.
<b>L.3.c. Signal Design</b> (Previously Contracted)		N.I.C.
<b>M. Prequalification of Bidders</b>		Not Req'd
<b>N. Traffic Control Plan</b> (Previously Contracted)		N.I.C.
<b>O. L.O.M.R.</b>		N.I.C.
<b>P. Sales and Use Tax Savings Administration</b>		N.I.C.

McGiffert and Associates, LLC Designated Contact is Jimmy Duncan, PE/PLS

**CITY OF TUSCALOOSA**  
**Hargrove Road & Hackberry Lane Improvements Project**  
**Estimated Professional Services Fees**  
**Amendment No. 2**  
**City Project No. A12-0949**  
**October 27, 2014**

**SUMMARY OF PROPOSED FEES:**

A. Preliminary Design		N.I.C.
B. Final Design		N.I.C.
C. Bid Phase Services		N.I.C.
D. Basic Engineering Services During Construction		<u>N.I.C.</u>
E. Maximum Payments (A through D)		N.I.C.
F. Design Surveying		N.I.C.
G. Easements / Rights-of-Way		N.I.C.
H. Advanced Engineering Services During Construction		N.I.C.
I. Design Testing		N.I.C.
J. Construction Testing		N.I.C.
K. Administration; Reimbursable Expenses		N.I.C.
L. Permit, License and Studies		
L.1. a. Environmental Assessment		N.I.C.
L.1. b. Limited Phase II Environmental Assessment		N.I.C.
L.1. c. Additional On-Site Environmental Assessment Services	\$	40,716
L.1. d. Additional Off-Site Environmental Assessment Services	\$	18,537
L.1. e. Additional Off-Site Environmental Assessment Services (South of Hargrove Road-Residential Properties)	\$	24,270
L.2. Stormwater Inspections		N.I.C.
L.3.a: Traffic Counts		N.I.C.
L.3.b. Traffic Analyses/Signal Warrant		N.I.C.
L.3.c. Signal Design		N.I.C.
M. Prequalification of Bidders		
N. Traffic Control Plan		N.I.C.
O. L.O.M.R.		N.I.C.
P. Sales and Use Tax Savings Administration		<u>N.I.C.</u>
<b>TOTAL PROPOSED FEES</b>		<b>\$ 83,523</b>