



2814 Stillman Boulevard • P. O. Box 20559  
Tuscaloosa, AL 35402-0559  
Telephone 205.759.1521 Fax 205.759.1524

## LETTER OF TRANSMITTAL

To: Mrs. Glenda Webb  
City of Tuscaloosa  
Office of the City Attorney

Date: Tuesday, March 03, 2015

Subject: City Walk at University Place and Forest Lake  
City Project No. A12-1413 / A12-0993

Please find enclosed the following:  
Executed Amendment No. 3 on the referenced project.

Thanks

- File
- Recording
- As Requested
- Your Use
- Signature

McGiffert and Associates, LLC

By: \_\_\_\_\_  
Jason L. Coker, PE

APPROVED AS TO FORM

GDW  
Office of the City Attorney

Prepared By: GDW  
Requested: Projects Comte  
Presentation on: 02/24/2015  
Suspension of Rules: YES

RESOLUTION

RESOLUTION AUTHORIZING AMENDMENT NO. 3 TO THE CONTRACT  
FOR ENGINEERING AND RELATED SERVICES WITH MCGIFFERT  
AND ASSOCIATES, LLC FOR CITY WALK AT FOREST LAKE—UNIVERSITY PLACE  
ELEMENTARY SCHOOL TO 15<sup>TH</sup> STREET PROJECT  
(A12-0993)

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

That the Mayor be, and he is hereby, authorized to execute Amendment No. 3 to the contract between the City of Tuscaloosa and the professional engineering firm of McGiffert and Associates, LLC for engineering and related services in regard to the City Walk at Forest Lake—University Place Elementary School to 15<sup>th</sup> Street Project with additional compensation of \$2,670 to McGiffert and Associates, LLC for additional fees associated with the Lake Avenue Sanitary Sewer Relocation Plan by and as an act for and on behalf of the City of Tuscaloosa, and the City Clerk is authorized to attest the same.

FUNDING REQUIRED:  Yes  No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Finance Director

COUNCIL ACTION

Resolution ✓  
Ordinance \_\_\_\_\_  
Introduced \_\_\_\_\_  
Passed 2-24-15  
2<sup>nd</sup> Reading \_\_\_\_\_  
Unanimous \_\_\_\_\_  
Failed \_\_\_\_\_  
Tabled \_\_\_\_\_  
Amended \_\_\_\_\_  
Comments: \_\_\_\_\_

STATE OF ALABAMA     )  
TUSCALOOSA COUNTY    )  
CITY OF TUSCALOOSA    )

**AMENDMENT NO. 3 TO CONTRACT FOR ENGINEERING AND RELATED  
SERVICES TO THE CITY OF TUSCALOOSA FOR THE CITY WALK  
AT FOREST LAKE—UNIVERSITY PLACE  
ELEMENTARY TO 15<sup>TH</sup> STREET PROJECT  
(A12-0993)**

THIS AMENDMENT to that certain agreement made and entered into by and between the parties on the 11<sup>th</sup> day of September, 2012, as amended, 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 2<sup>nd</sup> day of March, 2015, 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 City Walk at Forest Lake—University Place Elementary to 15<sup>th</sup> Street Project; and,

**WHEREAS**, the City of Tuscaloosa and the Engineer now desire to enter into a Third Amendment to the contract increasing the compensation for Permit, License and Studies associated with the Lake Avenue Sanitary Sewer Relocation Plan.

**NOW, THEREFORE**, the City of Tuscaloosa and the Engineer do hereby enter into this Third 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. Permit, License and 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 \$ 42,335, 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.

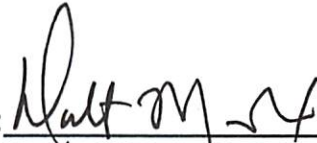
**Agreement Date/Counterparts:** The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, 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.

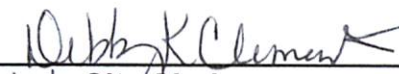
The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural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

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

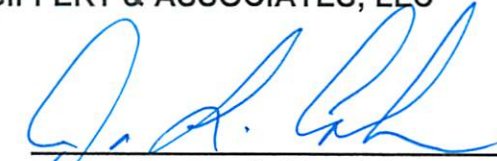
CITY OF TUSCALOOSA, A Municipal Corporation

BY:   
\_\_\_\_\_  
Mayor Walter Maddox

ATTEST:

  
\_\_\_\_\_  
Asst. City Clerk

ENGINEER:  
MCGIFFERT & ASSOCIATES, LLC

BY:   
\_\_\_\_\_  
Member of the Firm

ATTEST:

  
\_\_\_\_\_



STATE OF ALABAMA )  
TUSCALOOSA COUNTY )

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 26th day of February, 2015.

Victorie Hilliard  
Notary Public.

My Commission Expires: 2-3-19

STATE OF ALABAMA )  
COUNTY OF TUSCALOOSA )

I, Dawn Marcum, a Notary Public in and for said State at Large, hereby certify that Jason Coker, who is named as member of the Firm, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of \_\_\_\_\_, or
- Whose identity I proved on the oath/affirmation of \_\_\_\_\_, a creditable witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 2nd day of March, 2015.

Dawn Marcum  
Notary Public.

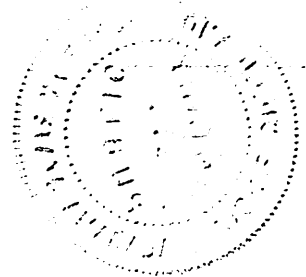
My Commission Expires: 02/06/2017



1950

THE STATE OF TEXAS  
COUNTY OF DALLAS

Know all men by these presents that \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ do hereby certify that \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ is the true and correct owner of the \_\_\_\_\_ described in the \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ and that the same is subject to the lien of a mortgage in favor of \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ and that the same is being sold by \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ under the terms of the \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ and that the proceeds of the sale of the same shall be applied to the payment of the said mortgage and the balance thereof shall be paid to the said \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_



*[Handwritten signature]*  
Notary Public

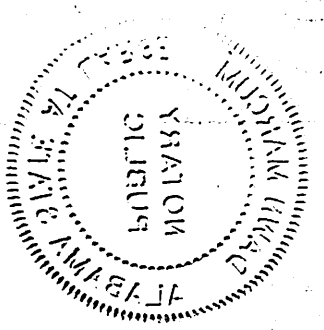
FILED

NOTARY PUBLIC  
STATE OF TEXAS

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 1950.

Notary Public

My commission expires \_\_\_\_\_



*[Handwritten signature]*  
Notary Public

FILED

NOTARY PUBLIC  
STATE OF TEXAS

My commission expires \_\_\_\_\_





**CITY OF TUSCALOOSA**  
**CITY WALK at FOREST LAKE**  
**UNIVERSITY PLACE ELEMENTARY SCHOOL TO 15TH STREET**

**Proposed Amendment No. 3 to Professional Services Agreement**  
**City Project No. A12-0993**

2/17/15

During the construction of the City Walk along Lake Avenue between 16<sup>th</sup> and 17<sup>th</sup> Street, an unknown sanitary sewer main was discovered. The sanitary sewer main was determined to be providing service to the houses along the west side of Lake Avenue in this area. The shallow depth and horizontal location of the sanitary sewer main is in conflict with various items of work associated with the City Walk, in particular the location of the proposed City Walk / Street lighting along Lake Avenue. Furthermore, the sanitary main consists of clay terra cotta pipe material which is very susceptible to failures, especially at shallow depths. After investigations by OCE and McGiffert and Associates, LLC (MALLC) it was determined that it would be in the best interest of the City to relocate the sanitary sewer line and reroute in a different direction than it currently flows.

The following is our requested addition of Item L.7, Lake Avenue Sanitary Sewer Relocation Plan, for the investigations, coordination with OCE and the general contractor, preparation of the construction plan associated with the relocation / reroute of the sanitary sewer main:

<b>L.7 - Lake Avenue Sanitary Sewer Relocation Plan</b>	
Senior Project Manager/Principal, 6 hours x \$165.00	= \$990.00
Computer CADD Technician, 24 hours x \$70.00	= <u>\$1680.00</u>
	\$2670.00

**SUMMARY OF ADJUSTED FEES:**

	<b>Current Contract and Amendments No. 1 &amp; 2</b>	<b>Proposed Fees Per Amendment No. 3</b>	<b>Proposed Increase Per Amendment No. 3</b>
A. Preliminary Design	\$ 50,540	N/C	N/C
B. Final Design	\$ 66,330	N/C	N/C
C. Bid Phase Services	\$ 2,200	N/C	N/C
D. Basic Engineering Services During Construction	\$ 7,280	N/C	N/C
E. Maximum Payments (A through D)	\$ 126,350	N/C	N/C
F. Design Surveying	\$ 23,310	N/C	N/C
G. Easements / Rights-of-Way	\$ 42,000	N/C	N/C
H. Advanced Engineering Services During Construction			
H.1. Construction Staking	\$ 28,225	N/C	N/C
H.2. Record Drawing	\$ 11,100	N/C	N/C
H.3. Resident Observation	\$ 105,960	N/C	N/C
I. Design Testing	\$ 5,560	N/C	N/C
J. Construction Testing	\$ 18,390	N/C	N/C
K. Administration; Reimbursable Expenses	\$ 5,000	N/C	N/C
L. Permit, License and Studies	\$ 39,665	\$ 42,335	\$ 2,670
M. Prequalification of Bidders	N.I.C.	N/C	N/C
N. Traffic Control Plan	\$ 5,000	N/C	N/C
O. L.O.M.R.	N.I.C.	N/C	N/C
P. Sales and Use Tax Savings	N.I.C.	N/C	N/C

N/C = No Charge

N.I.C. = Not in Contract