

APPROVED AS TO FORM

GDW

Office of the City Attorney

Prepared By: GDW/rd
Requested: Projects Cmte
Presentation on: 05/16/2017
Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING MAYOR TO EXECUTE AMENDMENT NO. 2
TO AGREEMENT BETWEEN THE CITY OF TUSCALOOSA
AND HARRISON CONSTRUCTION CO., INC.
(A15-1319/A13-1010)

WHEREAS, the City of Tuscaloosa and entered into an agreement for Harrison Construction Co., Inc. to provide construction management and related services for THE EDGE BUSINESS RESOURCE CENTER on or about the 15th day of June 2015; and,

WHEREAS, this Second Amendment is for calculation of all allowed services including reimbursable expenses to the Construction Manager in the amount of \$257,070.00; and,

WHEREAS, this proposed Second Amendment was approved on May 9, 2017 by the City Council Public Projects Committee.

NOW, THEREFORE, BE IT RESOLVED BY THE TUSCALOOSA CITY COUNCIL that the Mayor be, and he is hereby, authorized to execute this Second Amendment to the agreement between the City of Tuscaloosa and Harrison Construction Co., Inc., which establishes the total maximum compensation in an amount not to exceed \$541,714.31; and the City Clerk is hereby authorized to attest the same.

FUNDING REQUIRED: Yes No

By: _____
Finance Director

COUNCIL ACTION

Resolution ✓
Ordinance _____
Introduced _____
Passed 5-16-17
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

**AMENDMENT NO. 2 TO THE AGREEMENT TO FURNISH CONSTRUCTION
MANAGEMENT AND RELATED SERVICES TO THE CITY OF TUSCALOOSA,
ALABAMA FOR THE EDGE BUSINESS RESOURCE CENTER PROJECT
Project No. A15-1319 / A13-1010**

THIS SECOND AMENDMENT to that certain agreement made and entered into by and between the parties on the 15th day of June 2015, is made and entered into by and between Harrison Construction Co., Inc. hereinafter referred to as the "Consultant" and the CITY OF TUSCALOOSA, a Municipal Corporation, hereinafter referred to as the "City." On this the 24th day of August, 2017, as follows:

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

WHEREAS, the City and the Consultant 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; and,

SECTION ONE. That Article 7 entitled "Construction Manager's Fee", Item A. of the original contract be, and the same is hereby amended to read as follows:

"ARTICLE 7. CONSTRUCTION MANAGER'S FEE

A. In consideration of the provision of services pursuant to the terms and conditions of this agreement by the Construction Manager, the Owner agrees to pay the Construction Manager in current funds as compensation for services hereunder a fee as follows:

1. Design and Bid Phase Services: For performance of services during design and bid phases, the Construction Manager shall receive a fee equal to 1% percent of the Construction Costs; **in an amount not to exceed \$71,161.08.**
2. Construction Phase Services: For performance of services during construction phase, the Construction Manager shall receive a fee equal to 3% percent of Construction Costs; **in an amount not to exceed \$213,483.23.**

Construction costs are defined as the total of all trade contracts for the Project at the time of initial award thereof by the Owner. Construction costs shall exclude the compensation of the Architect and the compensation of the Construction Manager, as well as their costs and expenses, the cost of the land, right-of-way, financing or any other costs which are the responsibilities of the Owner. In the event a single change order materially alters the scope of the Project or increases or decreases the total construction cost by more than 10%, the Construction Manager's fee will be increased or decreased by adding or subtracting that amount from the "Construction Cost." If any portion or part of the Project is deleted or otherwise not constructed, compensation for such parts or portions of the Project shall be payable to the extent services are performed on such parts or portions, in accordance with the schedule of compensation set forth herein, based on (1) the lowest bona fide bid or negotiated proposal or, (2) if no such bid or proposal is received, the most recent statement of probable construction costs or detailed estimate of construction costs prepared by the Architect for such portions of the Project."

SECTION TWO. That Article 7. entitled "Construction Manager's Fee", Item D. of the original contract be, and the same is hereby amended to read as follows:

"ARTICLE 7. CONSTRUCTION MANAGER'S FEE

D. Reimbursable Expenses. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Construction Manager in the interest of the Project for the expenses listed in the schedule which, shall be attached hereto and adopted herein by reference. Reimbursable expenses for this Project shall not exceed the amount as stated in the attached reimbursable schedule. Any other reimbursable expenses must

be with the prior written consent and approval of the Owner or the Owner's designated representative. Construction Manager shall provide a reimbursable expenses schedule to the City prior to execution of this contract.

In no event will the Owner pay reimbursable expenses to the Construction Manager in excess of \$257,070.000 as set forth in the attached schedule. All requests for payment of reimbursable expenses must be satisfactorily documented. Construction Manager shall endeavor to keep reimbursable expenses as low as possible.”

SECTION THREE. MISCELLANEOUS CLAUSES

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

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 this 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.

(6) 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.

(7) 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.

(8) Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

(9) Each party represents and warrants that the execution and delivery of this agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time, or both) a default under the laws of the State of Alabama, any resolution, agreement, or other contract agreement, or instrument to which a party is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the party.

(10) This agreement constitutes the legal, valid and binding obligation of each party and is enforceable against each party in accordance with its terms, except in so far as the enforceability thereof may be limited by:

(a) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights; and

(b) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.

(11) Neither party will enter into any agreement to do anything prohibited in this agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.

(12) Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

Ownership of Contract Documents: This Contract Document, and copies of parts thereof, are furnished and owned either by the City or design professional. All portions of the Contract Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

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.

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.

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 constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. 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.

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.

Non Discrimination: The CONSULTANT agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The CONSULTANT shall fully comply with the Americans with Disabilities Act, the Fair Labor Standards Act and all other applicable laws and regulations).

Fines and Penalties: The CONSULTANT shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the OWNER and/or CONSULTANT which are related to the CONSULTANT's operations. The OWNER shall deduct the amount of the levied fine or penalty from the Contract amount.

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.

Severability. Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, but this agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

COMPLIANCE WITH IMMIGRATION LAW: By signing this contract amendment, 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.

COMPLIANCE WITH AFFORDABLE HEALTH CARE ACT: By signing this contract amendment, 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.

COMPLIANCE WITH ACT 2016-312: By signing this contract amendment, the contracting parties affirm, for the duration of the agreement, that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Agreement on the day and year first set forth above.

CITY OF TUSCALOOSA, A Municipal Corporation

ATTEST:

Deborah K. Clement
City Clerk

BY: Walter Maddox
Mayor Walter Maddox

**CONSULTANT:
HARRISON CONSTRUCTION CO., INC.**

BY: [Signature]

ATTEST:

Wade S. Lavelle

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 19 day of May, 2017.

Darrend Sullivan
Notary Public

My Commission Expires: 5-9-18

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Leah Crowe, a Notary Public in and for said State at Large, hereby certify that Tim Harrison, who is named as President, 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 24 day of August, 2017.

Leah Crowe

LEAH CROWE
Notary Public, Alabama State At Large
My Commission Expires Jan. 19, 2020

My Commission Expires: _____



P. O. Box 21300
 Tuscaloosa, AL 35402
 Phone: 205-333-1120
 Fax: 205-333-2542
 E-mail: info@harrison-const.com

HARRISON CONSTRUCTION CO., INC.

May 4, 2017

Chris Casey
 City of Tuscaloosa
 2201 University Boulevard
 Tuscaloosa, Al. 35401

Re: The Edge
 Construction Manager Fees

Dear Chris,

Please see the Breakdown below of our Construction Management and Reimbursable Fees per our contract.

Total Construction Contract for The Edge	\$ 7,116,107.73
1% of Construction Contract for Bid Phase Services	\$ 71,161.08
3% of Construction Cost for Construction Phase Services	\$ 213,483.23
Total Base Contract	\$ 284,644.31
Reimbursable Fees Total (per attached schedule)	\$ 257,070.00
Harrison Construction Total "Not to Exceed" Contract Amount	\$ 541,714.31
<i>Unless Total Construction Contract for The Edge is modified or TBD reimbursable line items are to be paid by Construction Manager.</i>	

Please contact our office if you should have any questions.

Sincerely,

HARRISON CONSTRUCTION CO., INC.

Josh Johnson
 Vice President

GENERAL CONTRACTING • DESIGN-BUILD • CONSTRUCTION MANAGEMENT

EXHIBIT "A"



HARRISON CONSTRUCTION CO., INC.

P.O. Box 21300
Tuscaloosa, Alabama 35402
Phone: (205) 333-1120
Fax: (205) 333-2542
Email: info@harrison-const.com

January 26, 2015
EDGE
Reimbursable Schedule

Items	Duration	Unit	Unit Price	Cost
Supervision	64	Week	\$ 2,300.00	\$ 147,200.00
Office Trailer	14	Month	\$ 450.00	\$ 6,300.00
Office Trailer Mobilization & Demobilization	1	Lump Sum	\$ 3,000.00	\$ 3,000.00
Temporary Power	10	Month	\$ 650.00	\$ 6,500.00
Temporary / Permanent Power (As Required)	6	Month	\$ 3,500.00	\$ 21,000.00
Natural Gas (As Required)	14	Month	\$ 800.00	\$ 11,200.00
Temporary Toilet / Hold Tank	14	Month	\$ 350.00	\$ 4,900.00
Temporary Water	14	Month	\$ 150.00	\$ 2,100.00
Pickup Truck	14	Month	\$ 850.00	\$ 11,900.00
Fuel	14	Month	\$ 275.00	\$ 3,850.00
Dumpster Rental / Haul / Tipping	14	Month	\$ 1,000.00	\$ 14,000.00
First Aid / Safety	14	Month	\$ 125.00	\$ 1,750.00
Office Supplies	14	Month	\$ 75.00	\$ 1,050.00
Communication Package (Cell Phone / Radio / Computer)	14	Month	\$ 565.00	\$ 7,910.00
Postage & Handling	14	Month	\$ 65.00	\$ 910.00
Jobsite Signage	1	Lump Sum	\$ 2,500.00	\$ 2,500.00
Miscellaneous / Other	14	Month	\$ 500.00	\$ 7,000.00
Warranty Reserve (As Required)	1	Lump Sum	\$ 4,000.00	\$ 4,000.00
Permit Fees as Required	TBD	Lump Sum		TBD
APCO Fees as Required	TBD	Lump Sum		TBD
Tap Fees as Required	TBD	Lump Sum		TBD
Bond Fees as Required	TBD	Lump Sum		TBD
Total Reimbursables				\$ 257,070.00