

APPROVED AS TO FORM

GDW

Office of the City Attorney

Prepared By: GDW/rd

Requested: Projects Comte

Presentation on: 05/13/2014

Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
AN AMENDMENT TO THE CONTRACT FOR ENGINEERING SERVICES
WITH ALMON ASSOCIATES, INC. FOR 10TH AVENUE CITY WALK
IMPROVEMENTS PROJECT
(A13-0229)

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

That the Mayor be, and he is hereby authorized to execute an amendment to the contract between the City of Tuscaloosa and the professional engineering firm of Almon Associates, Inc. for and on behalf of the City of Tuscaloosa for engineering and related services in regard to the 10th Avenue City Walk Improvements Project whereby the total contract amount, including the cost of the amendment shall not exceed \$184,074.50 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

DR-1

10th Ave. Revitalization

By:

[Signature]
Finance Director

COUNCIL ACTION

Resolution ✓

Ordinance _____

Introduced _____

Passed 5-13-14

2nd Reading _____

Unanimous _____

Failed _____

Tabled _____

Amended _____

Comments: _____

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

**AMENDMENT TO THE AGREEMENT TO FURNISH
ENGINEERING AND RELATED SERVICES TO THE CITY OF
TUSCALOOSA, ALABAMA, FOR 10TH AVENUE CITY WALK
AND ROADWAY IMPROVEMENTS
WITH ALMON ASSOCIATES
(A13-0229)**

THIS AMENDMENT to that certain agreement made and entered into by and between the parties on the 26th day of April, 2013, as amended, is made and entered into by and between the firm of Almon Associates, Inc., 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 21st day of MAY, 2014, as follows:

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

WHEREAS, the heretofore, the City of Tuscaloosa and Almon Associates, Inc. entered into an Agreement for the purpose of developing the Conceptual Design to more succinctly define total project costs, additional right-of-way needs, and other projects parameters to include, but are not limited to, preparation of an Environmental Assessment of the proposed improvements and coordination of such with the other disaster recovery projects currently underway within the City; and,

WHEREAS, the City of Tuscaloosa and the Engineer now desire to enter into an Amendment to the Contract in order to increase the Conceptual Design in the amount of \$21,485.00 from \$82,000.00 to \$103,485.00; however due to a reduction in the Design Survey, Environmental Coordination/Documentation and Design Testing the total contract compensation is hereby reduced from \$193,000.00 to \$184,074.50 with a net reduction change of \$8,925.50.

WHEREAS, the City of Tuscaloosa and the Engineer do hereby desire to enter into this Amendment 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 2, BASIS OF COMPENSATION" Subsection "A. COMPENSATION" be, and the same is hereby amended to read as follows:

"ARTICLE 2. BASIS OF COMPENSATION"

As consideration for providing the services enumerated and referenced in Article 1, the OWNER shall pay the ENGINEER in the following manner:

A. COMPENSATION

Compensation to ENGINEER shall be at an hourly rate in accordance with the ENGINEER's Per Diem Hourly Rate Schedule (Hourly Rate) attached hereto as Exhibit B, subject to the maximum stated herein. Hourly rates are to be billed at fifteen (15) minute increments. (For example, if a task were to consume 25 minutes, it will be billed as 30 minutes). For Engineers with offices more than 30 miles from the corporate limits of the City of Tuscaloosa, travel time will be billed as part of compensation but at no more than eighty percent (80%) of actual travel time from ENGINEER's offices to OWNER's designated sites.

The total compensation to ENGINEER for all the services as stated in Article 1 shall not exceed \$ 184,074.50.

The amount invoiced each month will be in accordance with the Hourly Rate Schedule reflected in Exhibit B plus direct expenses incurred for the Project. Upon OWNER's request, when billing for services to be compensated on an hourly rate basis, ENGINEER shall submit timesheets or other documentation satisfactory to OWNER to support said fee. The full hourly rate shall only be charged while the ENGINEER is actively providing services.

Hourly Rates are defined as those rates charged for work directly performed on the Project by ENGINEER at the indicated labor classifications of ENGINEER as set forth on Exhibit B. These rates encompass all elements of compensation and indirect expense including but not limited to profit, salary cost, general overhead, general overhead cost, payroll burden, indirect expenses, computing systems, special health and safety requirements of the Occupational Safety and Health Administration (OSHA), and telecommunications services, but not direct expenses and are subject to annual calendar year adjustments not to exceed the Consumer Price Index.

That, for the purpose of defining general overhead, general overhead costs are defined as a percentage of all firmwide direct salaries on all client projects necessary to cover salary overhead, defined as all firmwide taxes, payments, benefits, and premiums such as, but not limited to, workmen's compensation insurance, social security, state and federal unemployment insurance, medical-hospital insurance, salary continuation insurance, pension plan costs, and pro rata allowances for vacation, sick leave, and holiday pay applied as an average percentage of the direct salary, all indirect salaries, incentive and retirement pay, buildings and equipment, taxes, licenses, insurance, professional education, cost of acquiring and maintaining computers, developing software and training staff, recruiting costs, business development expenses, general printing and reproduction costs, library and periodical expenses, business development expenses, executive, administrative accounting, clerical salaries and expenses, and all other generally accepted overhead expenses. General overhead also includes labor burden, indirect expenses and profit.

The ENGINEER shall obtain a business license from the City as otherwise required by law of all business activity within the city or its police jurisdiction. The cost of such license shall be part of the ENGINEERS general overhead.”

SECTION TWO. MISCELLANEOUS CLAUSES

Capacity: Each Party to this Agreement 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 ENGINEER 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 ENGINEER 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 ENGINEER shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the OWNER and/or ENGINEER which are related to the ENGINEER'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.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate on this the 21st day of May, 2014.

CITY OF TUSCALOOSA, A Municipal Corporation

BY: Walter Maddox
Walter Maddox, Mayor

ATTEST:

Heidi K. Clement
Asst. City Clerk

ENGINEER:

ALMON ASSOCIATES, INC.

BY: JAMES R. DUNN
ITS: VICE PRESIDENT

ATTEST:

Jerry D. Jones

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 15th day of May, 2014.

Vickie Milliland
Notary Public.

My Commission Expires: 3/17/15

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Whitnee Sandlin, a Notary Public in and for said State at Large, hereby certify that Phillip R. Guin, who is named as Engineer, 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.

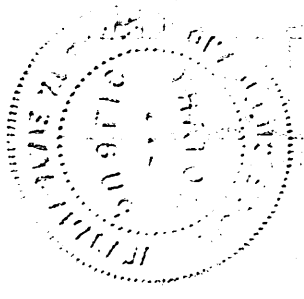
Given under my hand and official seal this the 20 day of May, 2014.

Whitnee Sandlin
Notary Public.

My Commission Expires: 10/3/17

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When you are not in the office, you will be notified by the
mailing of a letter to your home address. You will be notified
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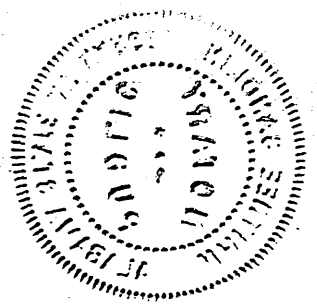
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Almon Associates, Inc.
P.O. Drawer 2729
Tuscaloosa, AL 35403

2008 12th Street
Tuscaloosa, AL 35401

phone: 205.349.2100
fax: 205.349.2107

web: www.almonassociates.com

February 5, 2014

Mr. Selvin Greene, Traffic Engineer
Office of the City Engineer
City of Tuscaloosa
P.O. Box 2089
Tuscaloosa, AL 35403

RE: 10th Avenue City Walk Improvements, Conceptual Design Contract Amendment

A13-0029

Dear Mr. Greene:

It appears we now have a definitive path to move forward with final design of this project. We are compiling information for a scope and engineering fee for this final design and will forward this information to you at a later date. At this time, we are asking for a contract amendment to re-allocate funds in our existing contract to cover overages to certain tasks.

Our current contract amounts and the requested changes for the various phases are outlined below:

	<u>Current Contract</u>	<u>Requested Amount</u>	<u>Net Change</u>
Conceptual Design	\$82,000.00	\$103,485.00	\$21,485.00
Design Survey	\$56,750.00	\$56,718.50	(\$31.50)
Environmental Coordination	\$10,920.00	\$6,765.00	(\$4,155.00)
Environmental Documentation	\$30,310.00	\$14,366.00	(\$15,944.00)
Design Testing	<u>\$13,020.00</u>	<u>\$2,740.00</u>	<u>(\$10,280.00)</u>
Totals	\$193,000.00	\$184,074.50	(\$8,925.50)

Please review this information and place this amendment on the next Projects Committee agenda for approval. If you have any questions, or need additional information, please give me a call.

Sincerely:

Almon Associates, Inc.

Phillip R. Guin, P.E.
Vice President

CC: Mr. David Griffin, P.E., City Engineer
Mr. Jeremy Jones, P.E., Almon Associates, Inc.

CIVIL ENGINEERING