

APPROVED AS TO FORM

GDW

Office of the City Attorney

Prepared By: GDW/rkd
Requested: Projects Comte Date: 02/18/20
Council Presentation: 02/25/2020
Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING MAYOR TO EXECUTE CONTRACT
AMENDMENT NO. 1 WITH THE CASSADY COMPANY, INC.
FOR THE JUANITA DRIVE PHASE 2
IMPROVEMENTS PROJECT
(A19-1151/OCE Project No. 2019.012.001)

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

That the Mayor be, and he is hereby, authorized to execute Amendment No. 1 to the contract with The Cassady Company, Inc. for additional engineering and related services associated with the Juanita Drive Phase 2 Improvements Project and increasing the total maximum compensation amount of the contract from \$311,056.70 to \$321,556.70; 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 *✓ CUBA*

CDBG-DR1 02817160-19012

CDBG-DR2 02817162-19012

By: *Susan S. Shindt*
Chief Financial Officer

COUNCIL ACTION

Resolution ✓
Ordinance _____
Introduced _____
Passed 2-25-20
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

**AMENDMENT NO. 1 TO THE ENGINEERING CONTRACT BETWEEN THE
CITY OF TUSCALOOSA AND THE CASSADY COMPANY, INC. FOR DESIGN AND
CONSTRUCTION OF A PUBLIC WORKS PROJECT:
THE JUANITA DRIVE PHASE 2 IMPROVEMENTS PROJECT
(City Law No. A19-1151 OCE Project No. 2019.012.001)**

THIS AMENDMENT to that certain agreement made and entered into by and between the parties on the 25th day of October, 2019, as amended, is made and entered into by and between THE CASSADY COMPANY, INC., 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 2nd day of March, 2020, as follows:

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

WHEREAS, heretofore, the City of Tuscaloosa and The Cassady Company, Inc., ("Engineer") entered into a contract for engineering and related services for the design and construction of a public works project known as the Juanita Drive Phase 2 Improvements Project; and,

WHEREAS, it is now necessary to amend said contract to increase the total maximum compensation amount by \$10,500.00 from \$311,056.70 to \$321,556.70 to provide additional engineering, design surveying and drainage investigation study services in order to complete the next phase of the project.

NOW, THEREFORE, the City of Tuscaloosa and the Engineer do hereby enter into this 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 3-Scope of Services" be and the same is hereby amended to revise the original scope as follows:

GENERALLY:

Juanita Drive Improvements Project-Phase 2 is located along the looped portion of Juanita Drive, north of 6th Street East and north of the initial Phase 1 project. Improvements include roadway widening, sidewalks, storm sewers, water system improvements and sanitary sewer improvements. This Phase 2 Project will be designed similar to and transition from the initial Phase 1 project. Phase 2 improvements will require City road right-of-way and utility easements. Upon preliminary design, drainage issues resulting in flooding of the rear yards of the residents along the east side of Juanita Drive were discovered and also reported by residents. This Additional Engineering Services Scope is for investigation of these drainage issues and recommended improvements.

A more detailed Scope of Work for these additional services shall include the following:

1. **Survey** of properties along the east side of Juanita Drive, including all of Phase 2 and two lots in Phase 1. In addition, minimal survey across the center Phase 2 lots will be provided as an option to direct all flow to the existing detention pond in lieu of discharging the east flow into the existing Phase 1 storm sewer system.

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2. Drainage Investigation of properties along the east side of Juanita Drive including all of Phase 2 and two lots in Phase 1 in order to reduce / prevent flooding during a 25-year recurring storm event.

3. Recommended Improvements and Associated Costs as determined by the drainage investigation to reduce / prevent flooding based on a 25-year recurring storm event. Include additional improvements required, including any improvements on private property with estimated easement requirements. Also, include storm sewer improvements as required to divert flow from the existing ditch at the western Juanita Drive property boundary crossing private property and discharging to the existing City of Tuscaloosa detention pond.

***The additional scope of services to be provided are set out in more detail in the attached letter from The Cassidy Company, Inc. to Michael Gardiner, P.E., Infrastructure and Public Services Department of the City dated February 3, 2020 which is attached hereto as "Exhibit A" and made a part of this Amendment.

SECTION TWO. That "Article 14 – COMPENSATION", Item "F. Design Surveying.", be, and the same is hereby amended to read as follows:

"F. Design Surveying: While a certain level of surveying is required for preliminary design and included within the compensation for those services, if the parties agree that the nature and extent of the project necessitate design surveying in excess of that normally required for design by indicating a compensation for those services, then the ENGINEER shall receive compensation for additional design surveying at an hourly rate as per Exhibit "B." However, the total cost to the OWNER shall not exceed \$16,475.00 without OWNER'S written consent.

The ENGINEER'S preliminary estimate of the cost of construction of the project is stated in "Preliminary Design," Article 3.A.10 of this agreement. The ENGINEER acknowledges that the OWNER'S agreement to the compensation amounts set forth herein was derived in part from ENGINEER'S estimate of construction cost. As a consequence, if the total bid award for construction of the project is more than 15% less than ENGINEER'S estimate, the OWNER may elect to adjust or receive a refund from ENGINEER in an amount equal to the percentage excess beyond 15% of the bid award of the ENGINEER'S maximum payment."

SECTION THREE. The services to be provided for in this amendment shall be completed within 45 days from execution of this Amendment.

SECTION FOUR. MISCELLANEOUS:

Capacity: Each party to this 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 amendment, 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 amendment 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 amendment on their respective behalf and the execution of this amendment by such representative fully and completely binds the party to the terms and conditions hereof.

5. That absent fraud, the execution of this amendment 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 amendment by any member thereof shall bind the party and to the extent that the execution of amendment is limited to a manager, managing partner or specific member then the person so executing this amendment 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 amendment.

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 amendment;

9. Each party represents and warrants that the execution and delivery of this amendment 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 amendment 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.

(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 amendment 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 amendment;

No Waiver of Rights: Neither the inspection, review or approval by the City or any of their officers, employees, agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the Engineer, nor any extension of time, nor any possession taken by the City or its employees, or non enforcement of any provision of this agreement by either party shall operate as a waiver of any provision of this agreement, or any power herein reserved to the City, or any right to damages, nor shall any waiver of any breach in this agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the City's rights under any warranty.

Subletting or Assigning of Contract: Limitations: The ENGINEER shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of the agreement, his obligations, right, or interest therein, or its power to execute such agreement, to any person, firm or corporation without written consent of the City and such written consent shall not be construed to relieve the ENGINEER of any duty or responsibility for the fulfillment of the agreement. A sale, conveyance or transfer of 50% or more of the stock or ownership of the ENGINEER shall be considered an assignment. Provided; however, in no event shall any portion of this agreement be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a responsible or responsive bidder.

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

Final Integration: This Amendment constitutes the entire amendment 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 Amendment or expressly referred to herein has been relied on by any party in entering into this Amendment.

Force Majeure: Neither party to this Amendment 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 Amendment 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 Amendment shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.

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

Construction: This Amendment 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 Amendment, 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 Amendment.

Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

Non Discrimination: The ENGINEER agrees that in performing the work and services as required herein under this amendment, 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 activities. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

Amendment Date/Counterparts: The date of this Amendment is intended as and for a date for the convenient identification of this Amendment and is not intended to indicate that this Amendment 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.

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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 Amendment 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 amendment 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 amendment shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

COMPLIANCE WITH IMMIGRATION LAW By signing this amendment, the contracting parties affirm, for the duration of the amendment, 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 amendment, the contracting parties affirm, for the duration of the amendment, 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 amendment, the contracting parties affirm, for the duration of the amendment, 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 each herewith subscribe the same on the date first written above.

CITY OF TUSCALOOSA, a Municipal Corporation

ATTEST:

Carly Handrick
City Clerk

BY: Walter Maddox
Walter Maddox, Mayor

ENGINEER: THE CASSADY COMPANY, INC.

ATTEST:

Kimberly Page

BY: Carol Cassidy
ITS: President

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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 27th day of February, 2020.

My Commission Expires: 2/17/21

Stacy Cooper
Notary Public

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

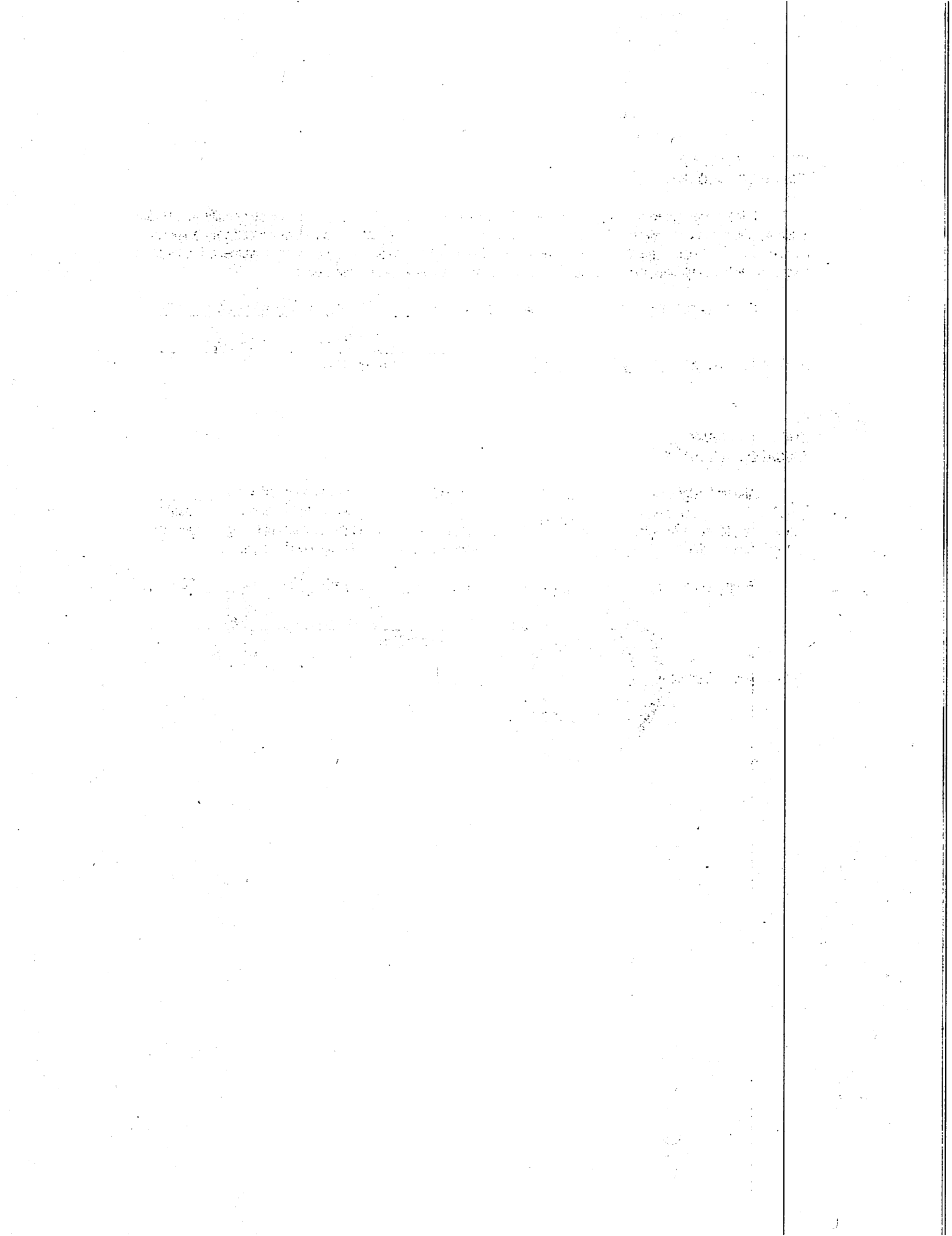
I the undersigned authority, a Notary Public in and for said State and County, hereby certify that Calvin Cassidy, who is named as President, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as an act of said corporation.

Given under my hand and official seal this the 2nd day of March, 2020.

My Commission Expires: _____



Kimberly Polifka
Notary Public





Providing Solutions for Water, Wastewater, and Storm Water Problems

4700 Highway 69 North • Northport AL 35473
Phone (205) 330-0098 • Fax (205) 330-0099

February 3, 2020

Mr. Michael Gardiner, Civil Engineer
Infrastructure and Public Services
City of Tuscaloosa
Post Office Box 2089
Tuscaloosa, Alabama 35403-2089

Re: **Additional Engineering Services – Drainage Study**
Juanita Drive Improvements Phase 2 (2019.012.001)
City of Tuscaloosa (Contract File #A19-1151)

Dear Michael:

For the referenced project, on-site observations during a rain event as well as complaints by residents have revealed flooding/drainage problems along the east side of Juanita Drive. Consideration of this area for improvements was not included in the original scope of work requiring additional topographic survey and a drainage study. The drainage study will evaluate the existing flooding/drainage problems and provide recommendations for improvements along with estimates of probable construction costs. Proposed amendment fees for this additional work are attached.

We appreciate your consideration of this request. Please contact me if you have any questions or need additional information.

Sincerely yours,

THE CASSADY COMPANY, INC.


Angela L. Hejline, P.E.

ALH/kap
Enclosure
cc: File 19-118

EXHIBIT "A"

City of Tuscaloosa

Juanita Drive Improvements - Phase 2

Project No. 2019.012.001



Amendment: Additional Engineering Services - Drainage Study

February 3, 2020

The Cassidy Company, Inc. Personnel:

- Principal Engineer – John Calvin Cassidy, P.E.
- Project Manager – Angela L. Henline, P.E.
- Project Engineer – Brian Green, P.E.

Proposed Subconsultants:

- Professional Land Surveyor – Kenny Herring, P.L.S. (SynTerra, formerly Herring Surveying)

Overview of Project

Juanita Drive Improvements Project-Phase 2 is located along the looped portion of Juanita Drive, north of 6th Street East and north of the initial Phase 1 project. Improvements include roadway widening, sidewalks, storm sewers, water system improvements, and sanitary sewer improvements. This Phase 2 project will be designed similar to and transition from the initial Phase 1 project. Phase 2 improvements will require City road right-of-way and utility easements. Upon preliminary design, drainage issues resulting in flooding of the rear yards of the residents along the east side of Juanita Drive were discovered and also reported by residents. This *Additional Engineering Services Scope* is for investigation of these drainage issues and recommended improvements.

Scope of Work

1. **Survey** of properties along the east side of Juanita Drive, including all of Phase 2 and two lots in Phase 1. In addition, minimal survey across the center Phase 2 lots will be provided as an option to direct all flow to the existing detention pond in lieu of discharging the east flow into the existing Phase 1 storm sewer system.
2. **Drainage Investigation** of properties along the east side of Juanita Drive including all of Phase 2 and two lots in Phase 1 in order to reduce / prevent flooding during a 25-year recurring storm event.
3. **Recommended Improvements and Associated Costs** as determined by the drainage investigation to reduce / prevent flooding based on a 25-year recurring storm event. Include additional improvements required, including any improvements on private property with estimated easement requirements. Also, include storm sewer improvements as required to divert flow from the existing ditch at the western Juanita Drive property boundary crossing private property and discharging to the existing City of Tuscaloosa detention pond.

Note: Evaluation of the existing detention pond capacity or any effects from the Juanita Drive storm sewer is not included in the scope of work for this project.



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| Compensation | Rate | Hours | Cost | |
|---|-------------|--------------|---------------------------------|------------------|
| Design Surveying | | | | |
| Survey per SynTerra (Kenny Herring) | | Lump Sum | \$ | 4,950.00 |
| Staff Engineer I | \$ 100.00 | 4.00 | \$ | 400.00 |
| Engineering Technician I | \$ 70.00 | 8.00 | \$ | 560.00 |
| | | | Subtotal \$ | 5,910.00 |
| Drainage Investigation | | | | |
| Project Manager | \$ 155.00 | 2.0 | \$ | 310.00 |
| Professional Engineer | \$ 135.00 | 16.0 | \$ | 2,160.00 |
| Staff Engineer I | \$ 100.00 | 8.0 | \$ | 800.00 |
| Engineering Technician I | \$ 85.00 | 2.0 | \$ | 170.00 |
| | | | Subtotal \$ | 3,440.00 |
| Summary Report of Recommended Improvements | | | | |
| Project Manager | \$ 155.00 | 2.0 | \$ | 310.00 |
| Professional Engineer | \$ 135.00 | 2.0 | \$ | 270.00 |
| Staff Engineer I | \$ 100.00 | 4.0 | \$ | 400.00 |
| Clerical / Notary | \$ 85.00 | 2.0 | \$ | 170.00 |
| | | | Subtotal \$ | 1,150.00 |
| | | | TOTAL ADDITIONAL FEES \$ | 10,500.00 |

Estimated Completion of Work Schedule

- Summary Report of Recommended Improvements = 45 Days after Notice to Proceed

Tuscaloosa
4720 University Boulevard East Suite D | Tuscaloosa, AL 35404 | 205-345-5057
synterracorp.com | info@synterracorp.com



January 28, 2020

Angela Henline, P.E.
The Cassady Company, Inc.
4700 Highway 69 North
Northport, Alabama 35473

RE: Juanita Drive Phase II Additional Survey Services

Angela,

We appreciate the opportunity to provide you with a quote for additional survey services related to the above referenced project. Please see attached exhibit A for survey limits. Our proposal and scope of services includes the minimum following items:

1. All structures such as fences, sheds, pools, A/C units, etc.
2. All paved or landscaped areas
3. Any drainage infrastructure
4. Topography
5. Any other items as typically shown on a survey.

We propose a lump-sum fee of \$ 4,950.00 to complete this survey task. The final submittal date would be 7 working days from the notice to proceed. If you have any questions, or need any additional information concerning this proposal, please feel free to contact me.

Thank you,

A handwritten signature in cursive script that reads 'Kenneth E. Herring'.

Kenneth Herring, P.L.S.
Herring Surveying and Mapping

Exhibit "A"

