



**Date:** March 3, 2015  
**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Joel V. Reitzer, Jr., Director, General Services Department  
**Subject:** Third Amendment to Contract for Design Services for the West Ellerbee Creek Trail Phase with Stewart Engineering, Inc.

### **Executive Summary**

On December 8, 2009, the City executed a Professional Services Agreement for the West Ellerbee Creek Trail – Phase II Project (“Project”) with Stewart Engineering, Inc. (“Stewart”) in the amount of \$235,000.00 to provide survey and design services. The contract has been amended twice for a total compensation of \$248,539.50. This proposed contract amendment increases the fee to be paid to Stewart for the Project by \$32,445.00 for a total compensation of \$280,984.50.

Stewart requests additional compensation for work requested by the City which did not fall under the scope of its original contract including the following:

- Alternate trail route research, presentation preparation, and additional public meetings associated with the alternate route.
- Property acquisition support including recordable plats necessary for easement acquisition and Federal funding.
- Preparing and submitting construction drawings, specifications, cost estimates and an environmental investigation report for NCDOT certification for Federal funding.
- Lighting design for the pedestrian tunnel under Interstate 85.
- Bidding and negotiation assistance for the construction contract.

### **Recommendation**

The General Services Department recommends that City Council:

1. Authorize the City Manager to execute the Third Amendment to Contract for Design Services for the West Ellerbee Creek Trail Phase with Stewart Engineering, Inc. in the amount of \$32,445.00 for a total contract amount of \$280,984.50.
2. Establish a design contingency in the amount of \$20,000.00 and authorize the City Manager to negotiate and execute amendments to the Professional Services Agreement for the West Ellerbee Creek Trail – Phase II Project with Stewart Engineering, Inc. provided the total contract cost does not exceed \$300,984.50.

## **Background**

On December 8, 2009, the City executed a professional services contract with Stewart for the Project in the amount of \$235,000.00. The scope of work for this contract included site evaluation, design, permitting, and construction documents.

On March 28, 2012, the City executed amendment #1 to Stewart's contract for \$9,014.50 to 1) provide additional survey services necessary to relocate the trail out of the existing greenway easements which were determined to be unusable due to the location of the creek's path and associated bank erosion, and 2) develop and coordinate two additional site plans required by Durham City/County Planning Department to comply with Stormwater treatment requirements (as a work around, the Planning Department allowed the project to be divided into three sections).

On November 8, 2012, the City executed amendment #2 to Stewart's contract for \$4,525.00. This amendment covered fees for a revised flood study and a no-rise certification required due plan changes since the initial flood study was completed.

## **Issues/Analysis**

When Stewart's contract was executed in 2009, easements for a public-access stream buffer along either side of West Ellerbee Creek had already been dedicated. The existing easements were dedicated in 2001 when the North Pointe development was subdivided. However, initial investigations and surveying performed by Stewart and their consultants, concluded that the original easements were not located far enough away from the stream to comply with storm water regulations effective at the time. The contract was amended for design services to relocate the trail into an acceptable location further away from the creek.

In 2013, after some property owners indicated an unwillingness to provide the new easements, Stewart provided additional services and investigation into alternate routes for consideration. The alternate route, along with construction cost and schedule comparisons of the alternate route versus the approved route, were presented to City Council on February 6, 2014. The alternate route was deemed not acceptable and direction was provided to continue with appropriate negotiations and other steps to acquire the required easements along the approved route.

The City requires the proposed additional services by Stewart in order to provide the necessary documents to complete easement acquisitions. This includes preparing recordable plats that were not part of scope of services at the time the original contract was executed since easements already existed at the time of that contract negotiation.

It is anticipated that this project will receive \$1,081,600.00 in Federal Congestion Mitigation and Air Quality ("CMAQ") funding. NCDOT, acting as administrator for the Federal Highway Authority, is currently reviewing the application by the City and the City has received a Transportation Improvement Program ("TIP") number, which is the first step in the process to receive Federal funding. Once approved, Stewart's services are needed in order to provide the necessary documentation to NCDOT to comply with Federal regulations for the acquisition of the easements as well as receiving the CMAQ funding.

Additional contingency is recommended in the amount of \$20,000.00 to establish contract contingencies for potential additional services during Federal funding acquisition, easement acquisition and the bidding phase. Funding for the additional design services, as well as construction was identified and approved as part of the CIP funding request for FY 14-15.

## **Alternatives**

City Council could choose not to amend Stewart's professional services contract. This alternative is not recommended as additional services are necessary as part of the easement acquisition process, and certification process for compliance with Federal funding, as well as complete the bidding process for construction.

**Financial Impact**

**Total Project Budget**

Federal CMAQ Funding		\$ 1,081,600.00
CH505 – Combined CIP & LOBS (previously appropriated)		\$ 940,000.00

**Total revenue \$ 2,021,600.00**

**Professional Services**

Existing Design Contract (incl. Amendment 1 & 2)	3000H000-731002	\$ 248,539.50
Proposed Amendment #3 - Design Contract	3000H000-731002	\$ 32,455.00
Proposed Amendment #3 - Contingency	3000H000-731900	\$ 20,000.00
		\$ 300,994.50

**Owner's Expenses**

Property Acquisition, Permits, Surveys, and Reviews	3000H952-730300	\$ 105,000.00
		\$ 105,000.00

**Construction**

City Budget	3000H000-731000	\$ 485,505.50
City Contingency	3000H000-731900	\$ 48,500.00
CMAQ Construction & Contingency		\$ 1,081,600.00
		\$ 1,615,605.50

**Total expenditures \$ 2,021,600.00**

**SDBE Summary**

This is a contract amendment and was not reviewed by the Department of Equal Opportunity/Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.