

THE STATE OF TEXAS §  
COUNTY OF COLLIN §

**First Amendment to the  
Professional Services Contract  
with Gresham, Smith & Partners**

THIS First Amendment to the Professional Services Contract with Gresham, Smith & Partners, ("Amendment") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY OF MCKINNEY, TEXAS**, a municipal corporation located in Collin County, Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and **GRESHAM, SMITH & PARTNERS** ("hereinafter referred to as "CONSULTANT") whose address is 2811 McKinney Ave, Suite 300, Dallas, Texas 75204.

WITNESSETH:

WHEREAS, The CITY and CONSULTANT previously entered into that certain Professional Services Contract for the completion of a Sustainability Plan (the "Project") on or about the 21st day of September, 2010 (the "Contract"); and

WHEREAS, The CITY and CONSULTANT now desire to amend the Contract to increase the scope of services to be provided and incorporate the fee to be paid for said additional services as set forth in this Amendment;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree to amend the Contract as follows:

1. Paragraph II of the Contract, entitled "Scope of Services," is hereby amended and revised to increase the services to be provided under the Contract by the replacement of said Paragraph II in its entirety with the following Paragraph II to read as follows:

**"II.  
Scope of Services**

CONSULTANT shall perform such services as are necessary to complete the Sustainability Plan specifically including, but not necessarily limited to, the tasks enumerated more fully in Exhibit "A," being a letter dated September 8, 2010, entitled Scope of Work, from Gresham, Smith & Partners detailing the original scope of work and fees therefore, and a letter dated January 3, 2011, entitled Scope of Work, from Gresham, Smith & Partners detailing the amended scope of work and fees therefore which is attached hereto as Exhibit "A-1" (collectively the "Project"). Exhibits

“A” and “A-1” are hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Exhibit “A” and/or “A-1” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto. Further, in the event of conflict in the language of Exhibit “A” and Exhibit “A-1,” the terms and conditions of Exhibit “A-1” shall control.”

2. Paragraph III of the Contract, entitled “Payment for Services,” is hereby amended and revised to increase the total amount of compensation to be paid under the Contract by the replacement of said Paragraph III in its entirety with the following Paragraph III to read as follows:

**“III.  
Payment for Services”**

This Amendment hereby increases the payment for services under the Contract by the amount of Forty Thousand and 00/100 Dollars (\$40,000.00). Total payment for services described herein, including the Contract and the Amendment, shall be a sum not to exceed One Hundred Sixty Thousand and 00/100 Dollars (\$160,000.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses, which are extraordinary in nature, shall be approved in advance by CITY in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the CITY pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the CITY shall remain the sole responsibility of the CONSULTANT.

CONSULTANT will bill CITY on a percent complete basis in accordance with Attachment “A”; provided however that this Contract shall control in the event of any conflict between the language in Attachment “A” and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by CITY in writing to proceed. The scope of services shall be strictly limited. CITY shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless CITY shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to CITY an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice CITY shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default."

3. Exhibit "A," entitled "Scope of Services," to the Contract is hereby amended by the addition of the letter from Gresham, Smith & Partners dated January 3, 2011, detailing the additional scope of work and fees therefore which is labeled as Exhibit "A-1" and which new exhibit is attached to this Amendment and incorporated herein by reference and made a part hereof and of the Contract by reference as if written word for word and originally attached to the Contract. In case of any conflict between the language of Exhibit "A" and Exhibit "A-1," the terms and provisions of Exhibit "A-1" shall control.

4. All other provisions, terms and sections of the Contract shall remain in full force and effect, and this Amendment to the Contract shall in no way release, affect or impair any other provision or responsibility contained in the Contract.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

THE CITY OF MCKINNEY, TEXAS

By: \_\_\_\_\_

Name: RICK CHAFFIN

Title: Interim City Manager

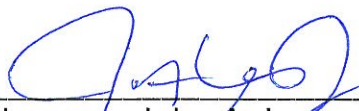
State of Texas §  
§  
County of Collin §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by Rick Chaffin, Interim City Manager of the City of McKinney, Texas, on behalf of the City of McKinney, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
  
\_\_\_\_\_

**CONSULTANT:**  
GRESHAM, SMITH & PARTNERS

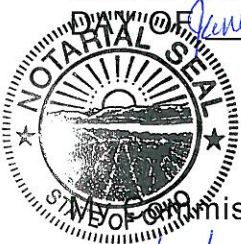
By:   
Name: John A. Lengel Jr.  
Title: Executive Vice President

Date Signed: 1/13/11

State of Ohio §  
§  
County of Franklin §

This instrument was acknowledged before me on the 13<sup>th</sup> day of January, 20 11, by John Lengel in his capacity as Executive Vice President of Gresham, Smith & Partners, a Tennessee partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of the partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 13<sup>th</sup> \_\_\_\_\_  
January, 2011.



REGAN A PACKOWSKI  
Notary Public  
In and for the State of Ohio  
My Commission Expires

  
Notary Public, State of Ohio

My Commission Expires:  
6/6/12

**EXHIBIT "A-1"**

