



## MEMORANDUM

---

April 12, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator  
David Parker, City Engineer/CIP Executive  
Paul Holzen, Interim Director of Engineering  
Micky Dobson, Staff Engineer

SUBJECT: Consideration of Amendment No. 1 to the Professional Services Agreement (PSA) with CDM Smith (COF Contract No. 2011-0037) for the Jackson Lake Dredging Improvements Project in an Amount Not to Exceed \$15,500.00.

### **Purpose**

The purpose of this memorandum is to bring forward to the Board of Mayor and Aldermen (BOMA) a proposal from CDM Smith for additional operational review and on-going general services during construction of the Jackson Lake Dredging Improvements Project.

### **Background**

BOMA approved the PSA for the above referenced project with CDM Smith on March 22, 2011 in an amount of \$63,000 to perform construction administration services.

Dredging of Jackson Lake has taken longer than expected. The original date of completion was scheduled for December 2011. Based on the latest contractor estimate, construction is now scheduled to be completed by July 2012. Amendment No. 1 is to allow for additional general services by CDM Smith to assist the City of Franklin as needed due to the extended length of the construction project. The scope of services includes an operational review of the project to be performed by an independent dredging expert, progress meetings and periodic site visits by CDM Smith staff.

### **Financial Impact**

Amendment No. 1 to the Professional Services Agreement with CDM Smith (COF Contract No. 2011-0037) at a not-to-exceed cost of Fifteen Thousand Five Hundred and 00/100 dollars (\$15,500). New contract total becomes \$78,500 (\$63,000 + \$15,500).

### **Recommendation**

After review of the proposal from CDM Smith, staff recommends approval of Amendment No. 1 to the PSA with CDM Smith (COF Contract No. 2011-0037) in an amount not-to-exceed \$15,500.00.

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE JACKSON LAKE DREDGIN IMPROVEMENTS  
PROJECT  
COF Contract No 2011-0037**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **City of Franklin, Tennessee** ("City") and **CDM Smith** ("Consultant").

**WITNESSETH:**

**WHEREAS**, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Jackson Lake Dredging Improvements Project (COF Contract No. 2011-0037) ("Project"), approved by the Franklin Board of Mayor and Aldermen (BOMA) on the 22<sup>nd</sup> day of March, 2011; and

**WHEREAS**, said agreement stipulated that the Consultant would be paid a not to exceed fee of \$63,000 for CA services and assumed a 240 calendar days construction project; and

**WHEREAS**, The Construction Projects Notice to Proceed was issued on May 2<sup>nd</sup>, 2011 with a project completion date of December 28, 2011. The latest contractor estimate for construction is estimated to be July 2012 resulting in additional work; and

**WHEREAS**, The City has negotiated with the Consultant an additional fee for on-going general services during construction as described in Exhibit A - Proposal for Operational Review and On-Going General Services (GS) During Construction in the amount not to exceed **Fifteen Thousand Five Hundred and No/100 Dollars (\$15,500.00)**; and

**NOW, THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. Consultant's Responsibilities and Duties. Consultant agrees to perform Operational Review and On-Going General Services (GS) during construction of the Project in accordance with the Scope of Services as described in Exhibit A and agrees to be bound by the Terms and Conditions as found in this Amendment

and the Professional Services Agreement approved by BOMA dated March 22, 2011.

3. City's Responsibilities and Duties. City shall pay Consultant in an amount not to exceed **Fifteen Thousand Five Hundred and No/100 Dollars (\$15,500.00)** as described in Exhibit A under Compensation for the work covered under this Amendment.

4. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

5. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

6. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

7. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

8. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment;

and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

9. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement approved by BOMA dated March 22, 2011, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

CDM Smith

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator  
Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney



Six Corporate Centre  
830 Crescent Centre Drive, Suite 400  
Franklin, Tennessee 37067  
tel: 615 807-7800  
fax: 617 452-8000

March 21, 2012

Mr. Paul Holzen, P.E.  
City of Franklin  
Engineering Department  
City Hall  
109 3<sup>rd</sup> Avenue South  
Franklin, TN 37064

Subject: Jackson Lake Dredging Improvements  
Proposal for Operational Review and On-Going General Services (GS) During  
Construction

Dear Paul:

CDM Smith, Inc. (CDM Smith) is pleased to submit this proposal for an operational review and on-going general services during construction for the Jackson Lake Dredging Improvements project.

### **Background**

The City of Franklin authorized CDM Smith to provide engineering services and limited construction services relating to the design and execution of a dredging and dewatering operation at the Jackson Lake subdivision off Mallory Station Road. The project includes hydraulic dredging of sediments in Jackson Lake, dewatering of the sediments using an adjacent property, and disposal of dry sediment. In support of these activities, the City of Franklin has asked CDM Smith to provide an additional scope of services to coordinate a third-party Operational Review of the current contractor's work activities and on-going construction services through completion of the project. This following scope of services lists each task that will be provided on an as requested basis by the engineering staff during the construction project.

### **Scope of Services**

Each task below includes all work necessary to assist the City of Franklin with the remainder of the construction phase for the Jackson Lake Dredging Improvements project.

#### **Task 1: *Operational Review***

CDM Smith will identify and subcontract with a qualified, independent dredging expert (SUBCONTRACTOR) to perform a review of all project documents, including but not limited to, the request for bids, contractor bid package, design plans, specifications, contractor submittals, change order requests, and field inspection reports. The SUBCONTRACTOR will review relevant





Paul Holzen, P.E.

March 21, 2012

Page 2

project documents and provide a written summary of findings as it relates to general observations and language related to specific issues identified in the contractor's change order requests. The SUBCONTRACTOR will participate in one meeting with the City and CDM Smith to present and discuss the findings of the document review. A final, written summary will be provided to the City and CDM Smith following the meeting.

Following the document review, the SUBCONTRACTOR will spend up to three (3) working days at the project site observing the dredging and dewatering operation. SUBCONTRACTOR will be provided access to the Dredging Contractor's field logs as necessary to understand the scope and scale of the work completed to date. The investigation shall include an assessment of observed site conditions, set-up, the contractor's means and methods related to both dredging and dewatering, adequacy of equipment, observed experience/expertise of crews, anchoring, methods for dealing with clogs, trash and debris and any other items the SUBCONTRACTOR deems relevant to the work. SUBCONTRACTOR will document the observations from the field investigation in a draft report to be submitted to the City and CDM Smith. The draft report shall include recommendations to the City for addressing issues identified in the Dredging Contractor's change order requests (as reviewed under Task 1), such as weather delays, debris and trash handling, and drying time for sediment. The SUBCONTRACTOR will participate in one meeting with the City and CDM Smith to discuss the findings and recommendations from the field investigation. Following the meeting, the SUBCONTRACTOR will address any comments provided by the City and/or CDM Smith and provide a final written document of observations and recommendations.

***Task 2: Progress Meetings***

CDM Smith will coordinate and participate in up to two progress meetings associated with the Operational Review of the Jackson Lake project. In addition, CDM Smith will continue to conduct monthly progress meetings (up to 6 meetings) to include both the City of Franklin and the contractor's staff to review progress to date. CDM Smith will continue to review the contractor's updated monthly schedule, inspection reports provided by the City, payment/change order requests, and other relevant documents and endeavor to keep the appropriate City staff informed of any perceived problems with the work or schedule. CDM Smith will attend additional meetings at the request of the City staff as appropriate and will also participate in the final project walkthrough.

***Task 3: Periodic Site Visits***

This task includes the performance of periodic site visits at intervals appropriate to the various stages of construction to observe the progress and execution of the construction work and to



Paul Holzen, P.E.  
March 21, 2012

Page 3

determine if the work is proceeding in accordance with the contract documents. CDM Smith will provide updates to the City in written or verbal form as appropriate. CDM Smith will endeavor to guard the City of Franklin against defects and deficiencies in such work and may recommend disapproval or rejection of work as failing to conform to the contract documents. This proposed scope of work assumed periodic site visits once per every two weeks for the remainder of the project (approximately 10 visits @ 1 hour per visit).

### Schedule

The document review in Task 1 shall be completed within one-week of the notice to proceed. Upon completion of the document review, the SUBCONTRACTOR will contact CDM Smith to schedule the first progress meeting. Following the first progress meeting, the field investigation shall be completed within one-week from the date of the first progress meeting. Upon completion of the field investigation, the SUBCONTRACTOR shall contact CDM Smith to schedule the second progress meeting. Within three working days from the second progress meeting, the SUBCONTRACTOR will provide the final deliverable to CDM Smith and the City.

The remaining Tasks identified under this scope of work will proceed in a schedule consistent with the Project Construction Schedule. Based on the latest contractor estimate, the construction is scheduled to be completed by July 2012. All assumptions for time and effort in this scope of work are consistent with this schedule. If the actual construction schedule exceeds this time period, additional fees may be required as mutually agreeable between CDM Smith and the City.

### Compensation

The level of effort and associated costs for each task are summarized in the table below. A breakdown of cost per tasks is included as an attachment for additional information.

Tasks	Description	Cost
1	Operational Review	\$9,900
2	Progress Meetings (8 progress meetings estimated)	\$3,600
3	Periodic Site Visits (10 visits estimated)	\$2,000
<b>Not-To-Exceed Total Cost</b>		<b>\$15,500</b>

The project will be billed on a per hour basis for the tasks completed with a total not-to-exceed upper limit of \$15,500.




Paul Holzen, P.E.  
March 21, 2012

Page 4

On behalf of the entire CDM Smith team, I want to express our appreciation for the opportunity to continue working with the City of Franklin on this important construction project. If you have any questions about this proposal, or any aspect of the on-going project, please do not hesitate to contact Dave Mason (615) 807-7815 or myself at (615) 320-3161.

Sincerely,

  
Zack A. Daniel, P.E.      DAVID MASON  
Client Service Manager      FOR  
CDM Smith, Inc.      ZACK DANIEL

CC: Micky Dobson, E.I.