



# MEMORANDUM

March 23, 2013

**TO:** Board of Mayor and Aldermen

**FROM:** Eric Stuckey, City Administrator  
David Parker, P.E, City Engineer/CIP Executive  
Paul P. Holzen, P.E., Director of Engineering

**SUBJECT:** Consideration of a Professional Services Agreement (COF Contract 2013-0034) with CDM Smith, Inc for the Mack Hatcher Extension Project [SR-397 Mack Hatcher Parkway West, From South of SR-96, West of Franklin to East of SR-106 (US-431) North of Franklin Williamson County] For a Not-to-Exceed amount of \$277,500.

### Purpose

The purpose of this memorandum is to bring forward a new Professional Services Agreement with CDM Smith, Inc for the re-design of the Mack Hatcher Parkway Extension Project.

### Background

Final roadway and construction plans were submitted to TDOT on May 6, 2011 to finalize the design of the Mack Hatcher Parkway Extension project. Since that time TDOT has requested numerous meetings to discuss the intersection designs at SR96 and Del Rio Pike, landscaping design, haul road and temporary bridge access, pavement re-design and the requirement to update our erosion prevention and sediment control plans per TDEC's new General Permit (issued May 23, 2011). On March 19, 2013 the City of Franklin received a letter from Paul Degges, TDOT Deputy Commissioner and Chief Engineer requesting the City to revise and resubmit plans to reflect re-design of the roundabouts at SR96 and Del Rio Pike to signalized intersections. As a result of additional reviews and changes requested by TDOT it will be necessary for plan revisions to the final construction plans that were not anticipated in the current agreement. This additional cost is proposed as a new Professional Services Agreement to tract the redesign cost associated with the project in an amount not to exceed \$277,500

### **Below is a summary of the historical contract cost and amendments associated with the design:**

- 6/14/2007 BOMA approved an agreement with CDM Smith, Inc (Formally known as WilburSmith Associates) for preliminary design of the extension of Mack Hatcher Parkway from Hillsboro Road to S.R. 96 West. The contract amount was for an amount not to exceed \$1,471,034.
- 1/15/2008 BOMA approved **Amendment Number 1** for a lump sum amount of \$179,907.
- 3/24/2008 BOMA Approved **Amendment Number 2** for additional services to include archaeological and wetlands delineation study in the amount of \$13,000.
- 5/27/2008 BOMA approved **Amendment Number 3** for additional services to include a structures design alternate as required by TDOT for a Lump Sum Amount of \$39,000.



- 7/8/2008 BOMA approved **Amendment Number 4** for additional services to include a hydraulic analysis for the southern extension of the Mack Hatcher Parkway for a lump sum amount of \$62,540.
- 12/9/2008 BOMA approved **Amendment Number 5** for additional services to explore the formation of a sinkhole located at 925 Rebel Circle in the alignment of Mack Hatcher Parkway. The amendment was for an amount not to exceed \$7,000.
- 3/24/2009 BOMA approved a commitment to TDOT of \$5,000,000 for Right-of-Way, Legal descriptions, Exhibits and Acquisitions and the Final Design for the Mack Hatcher Pkwy Extension Project.
- 3/24/2009 BOMA Approved **Amendment Number 6** for additional services for the production of legal descriptions and standard exhibits for the Rights-of-way Acquisition process for a lump sum amount of \$30,100.00.
- 3/24/2009 BOMA Approved **Amendment number 7** for the Final Design of the Mack Hatcher Pkwy Extension Project in an amount not to exceed \$1,690,000.
- 8/25/2009 BOMA approved **Amendment Number 8** for additional service to add signalization design at the intersection of Hillsboro Road and Mack Hatcher Parkway for a lump sum amount of \$9,920.00.
- 11/24/2009 BOMA Approved **Amendment Number 9** for additional services related to the design of Mack Hatcher Parkway and coordination with Hillsboro Road Project in an amount of \$5,000.

**Financial Impact**

On March 24, 2009 the BOMA approved a commitment to TDOT of \$5,000,000 for Right-of-Way, Legal descriptions, Exhibits, Acquisitions and the Final Design for the Mack Hatcher Pkwy Extension Project. The additional cost of this Professional Services Agreement will stay within the Cities \$5,000,000 commitment.

**Summary of Historical Project Cost**

\$3,511,901	Total Design
\$7,151,587.45	Total ROW Acquisition
\$244,796.87	Total Relocation Expenses
\$81,647.20	Total Demolition Expenses
<u>\$5,985,532.52</u>	<u>Total TDOT Reimbursement Received</u>
<b>\$5,004,400.00</b>	<b>Total</b>

**Recommendation**

Staff recommends approval of the Professional Services Agreement with CDM Smith, Inc for the Mack Hatcher Extension Project for a Not-to-Exceed amount of \$277,500.



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**BUREAU OF ENGINEERING  
SUITE 700, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-0791**

**JOHN C. SCHROER**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

March 19, 2013

Mr. Paul Holzen  
Director of Engineering  
City of Franklin  
109 3<sup>rd</sup> Ave. South  
Franklin, TN 37064

**SUBJECT: Project No. STP/HPP-397(10);PIN 101454.01  
SR-397, Mack Hatcher Parkway West, From South of SR-96,  
West of Franklin to East of SR-106 (US-431) North of Franklin  
Williamson County**

Dear Mr. Holzen:

As you know, the conceptual design and preliminary plans for the subject segment of State Route 397 (Mack Hatcher Bypass) included roundabout intersections at State Route 96 and Del Rio Pike. Due to concerns about the performance, capacity and service life of the roundabouts, the Department of Transportation initiated an independent peer review/analysis of the State Route 96 and Del Rio Pike intersections.

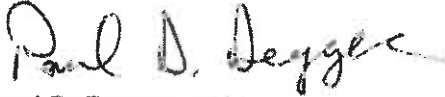
Based on updated traffic projections, the proposed two lane roundabout at State Route 96 will experience excessive congestion within five years of operation and additional lanes or capacity will be needed by 2018. The proposed two lane roundabout at Del Rio Pike will perform adequately for 10 years before additional capacity would be required. The independent analysis also looked into the performance of traffic signals at each location. With some minor modifications of the existing plans details, signalized intersections will operate satisfactorily for State Route 397 users for 20 years with reserve capacity remaining in 2033.

While the Department encourages development of non-traditional designs such as roundabouts, there is concern about the performance of multiple lane roundabouts, both from a capacity standpoint and from a safety perspective. With traffic projections indicating that the number of vehicles will double from 14,000 to 28,000 within twenty years (2033), a traditional intersection design is preferred. For these reasons, the Department recommends the final construction plans for the State Route 397 (Mack Hatcher Bypass) to include signalized intersections at State Route 96 and Del Rio Pike.

Mr. Paul Holzen  
March 19, 2013  
Page 2

If you have any questions or need additional information related to this matter, please let me know. You may contact Frederick Miller at [Frederick.Miller@tn.gov](mailto:Frederick.Miller@tn.gov) or (615) 741-0835.

Sincerely,



Paul D. Degges, P.E.  
Deputy Commissioner and Chief Engineer

PDD/JJ/jc

cc: Mr. Scott Black  
Mr. Toks Omishakin  
Mr. Jeff Jones  
Ms. B.J. Doughty  
Mr. Jim Ozment  
Ms. Carolyn Stonecipher  
Ms. Lori Lange  
Mr. Frederick Miller  
Mr. Jerry Hughes  
Mr. Darrell Moore



Six Corporate Centre  
830 Crescent Centre Drive, Suite 400  
Franklin, Tennessee 37067  
tel: +1 615 771-2466  
fax: +1 615 778-9733  
cdmsmith.com

Exhibit A  
PG 1 of 16

March 23, 2013

Mr. Paul Holzen, PE  
Director of Engineering  
City of Franklin  
109 3<sup>rd</sup> Avenue South  
Franklin, TN 37064

RE: ~~Amendment No. 6~~ Revisions To Final Construction Plans  
SR397 (Mack Hatcher Parkway Northwest Extension)  
TDOT PIN 101454.01  
TDOT Project No. 94092-3226-04

Dear Paul:

As background, we have previously provided you with project status reports via memorandums dated March 22, 2012 and January 7, 2013 which have outlined issues that have arisen since our completion of final design services on this project (via our submission to TDOT of Final Roadway Construction Plans on May 6, 2011). Further, we now have clarification from TDOT based on receipt of a letter dated March 19, 2013 from Paul Degges, TDOT Deputy Commissioner and Chief Engineer recommending that the City revise and resubmit the plans to reflect re-design of the roundabouts at SR96 and Del Rio Pike to signalized intersections.

The purpose of this letter is provide you with our scope of services and fee proposal (see attached) for additional services required to effect revisions to the final construction plans based on feedback received from TDOT. We understand that these additional services would be provided under an amendment to our original agreement dated August 14, 2007 and that the services outlined herein will be performed on an hourly rate cost basis with a not-to-exceed upper limit fee budget of \$277,500.

Should you have questions or need additional information please contact me at 615.807.7808 or via email at polkrf@cdmsmith.com.

Sincerely,  
CDM Smith Inc.

Robert F. Polk, P.E.  
Associate

## **SR397 (Mack Hatcher Parkway Northwest Extension)**

### **SCOPE OF SERVICES**

#### **Revisions To Final Roadway Construction Plans**

**March 23, 2013**

#### **BACKGROUND:**

As background, the Construction Plans Field Review was held on December 14, 2010 and included representatives from the City of Franklin, TDOT, and CDM Smith. A Field Review Report was issued immediately thereafter by TDOT, which included a list of items to be addressed on the construction plans prior to final submittal. The Final Roadway Construction Plans were completed by CDM Smith and submitted to the City of Franklin and to TDOT on May 6, 2011.

With the submittal of Final Roadway Construction Plans on May 6, 2011, the basic services under the contract between the CDM Smith and the City of Franklin were complete and a final invoice was issued for 100% of the contract value. Final payment was received from the City of Franklin on June 23, 2011.

From May 2011 through January 2013, numerous meetings and discussions with TDOT occurred to determine actions required to address TDOT comments specifically related to the intersection designs for MHP SR397/SR96 and MHP SR397/Del Rio Pike (currently shown as roundabouts), landscaping design i.e. gateways/monuments, requirements for a haul road and temporary bridge to provide access by the contractor during construction and other revisions requested due to a change in the design manager by TDOT. During this period TDOT retained RPM Transportation Consultants, LLC to prepare an Intersection Analysis Report to determine the operational capacities of roundabouts versus signalized intersections at MHP SR397/SR96 and MHP SR397/Del Rio Pike. RPM issued their report to TDOT in September 2012 and TDOT issued a letter to the City of Franklin dated March 19, 2013 recommending that plans be revised to reflect re-design of the roundabouts at SR96 and Del Rio Pike to signalized intersections.

As a result of additional reviews and changes requested by TDOT, it will be necessary that revisions be made to the Final Roadway Construction Plans that were not anticipated in the current agreement as previously amended between the City of Franklin and CDM Smith.

#### **SCOPE OF SERVICES (INCLUDED):**

1. MHP SR397/SR96 and MHP SR397/Del Rio Pike Intersection Layouts
  - a. Re-design intersection layouts and make plan revisions to reflect signalized intersections in lieu of roundabouts, as currently designed, in conformance with *Intersection Analysis Report* dated September 2012 prepared by RPM Transportation Consultants, LLC for TDOT Design Division.

2. Landscape design revisions
  - a. Re-design and revise landscape plans for intersections noted in Item 1 above including the deletion of gateway features i.e. monuments, etc.
3. Temporary bridge and haul road for contractor access
  - a. Preliminary design/cost analysis for temporary bridge
  - b. Final Design/plans revisions for temporary bridge and haul road
  - c. Coordination with TDOT/TDEC/COE
  - d. Permit Sketches
4. Erosion prevention and sediment control plans revisions
  - a. Revise plans to incorporate TDOT general comments
  - b. Revise plans to add *Phase III* erosion control per TDEC- CGP (Issued May 23, 2011)
5. TDOT pavement design approval received after final construction plans submitted
  - a. Incorporate into plans and revised typical sections and quantities

**SERVICES (NOT INCLUDED)/ASSUMPTIONS:**

- A. Based on meetings with TDOT on August 21, 2012 and on January 3, 2013 it is understood that no other changes to the landscape plans will be required other than that outlined in item 2.a above.
- B. In the current Mack Hatcher Parkway Plans, the utilities associated with the Hillsboro Road Widening Project, are shown as existing. Future coordination/revisions may be required depending on sequencing of project construction.
- C. Assumes no change to ROW plans since it is anticipated that the signalized intersections and the temporary bridge and haul road layouts will be within ROW limits already purchased.
- D. Project Briefings/Meetings – It is assumed that one meeting will be held with City of Franklin BOMA to brief them on changes associated with intersections (from roundabouts to signalized intersections) and that TDOT will require one field review meeting. No public meetings i.e. Context Sensitive Citizen Design Team, Stakeholders, etc. are anticipated at this time.
- E. It is assumed that future TDOT reviews will only pertain to the plans revisions noted in Items 1 through 5 above. Should other TDOT design review comments be received on other project related elements, additional design revisions may be required beyond the scope of the services outlined herein.

**SCHEDULE/DELIVERABLES:**

The services outlined in Items 1 through 5 above shall be completed and Final Roadway Construction Plans shall be submitted to the City of Franklin and to TDOT by September 25, 2013. This schedule is based on the TDOT project schedule dated February 11, 2013 and is subject to change pending the publication of the next TDOT 3-yr program (due in April or May of 2013). This submission date is also based on the assumption that TDOT, as well as, TDEC and COE will provide timely reviews of all submittals. It is anticipated that reviews will occur at the 30%, 60% and 90% stage of completion of design with one formal field review meeting will be held.





~~EXHIBIT C~~

TENNESSEE DEPARTMENT OF TRANSPORTATION  
MANDAY ESTIMATE AND FEE PROPOSAL

*For Design Only*

**S.R. 397 (Mack Hatcher Parkway)**

Re-design Intersections at SR96 and Del Rio Pike from Roundabouts to Signalized

**Williamson County**

Project Identification Number (PIN): 101454.01

General Comments:

Assumptions: "Design Mandays A" based on measured re-design lengths of MHP along route at SR96 and Del Rio Pike Intersections including measured re-design length of SR96 to calculate "mainline" re-design length. "Design Mandays B, Sideroads" based on measured re-design length along Del Rio Pike. Also assumes no change to ROW plans since it is anticipated that signalized intersection layout will be within the ROW limits already purchased.

**CDM Smith**

**Bob Polk, PE**

830 Crescent Centre Dr., Ste. 400, Frankin, TN

615.807.7808

615.778.9733

[polkrf@cdmsmith.com](mailto:polkrf@cdmsmith.com)

Prepared By:

Jeff Mize, PE

Date prepared:

3/1/2013

Project No.:

94092-3226-14



Version 2.24

DESIGN MANDAY ESTIMATE

PAGE A



Exhibit A  
PG 6 of 16

ROUTE: S.R. 397 (Mack Hatcher Parkway)  
 DESCRIPTION: Re-design Intersections at SR96 and Del Rio Pike from Roundabouts to  
 COUNTY: Williamson  
 CONSULTANT: CDM Smith  
 Prepared By: Jeff Mize, PE  
 Date Prepared: 3/1/2013  
 Project No.: 94092-3226-14

Version 2.24

<b>I. PROJECT LENGTH</b>		(enter project length in miles) <input type="text" value="0.80"/> MILES	
<b>II. TYPICAL SECTIONS</b>		(enter length of appropriate section or sections)	
<b>A. NEW ALIGNMENT</b>			
1. Freeway - Controlled Access	140 M.D./Mile		0.0 MANDAYS
2. Non - CA (w/shoulders)	140 M.D./Mile		0.0 MANDAYS
3. Street (curb & gutter)	150 M.D./Mile	0.80	120.4 MANDAYS
<b>B. WIDENING</b>			
1. Freeway - Controlled Access	150 M.D./Mile		0.0 MANDAYS
2. Rural Roadway (w/shoulders)	140 M.D./Mile		0.0 MANDAYS
3. Street (curb & gutter)	155 M.D./Mile		0.0 MANDAYS
<b>C. MISCELLANEOUS</b>			
1. Bridge replacement - rural	110 M.D./Mile (min. 75)		0.0 MANDAYS
2. Bridge replacement - urban	130 M.D./Mile (w/c&g)		0.0 MANDAYS
<b>TOTAL SECTION II</b>			<b>120.4 MANDAYS</b>
<b>III. OTHER FACTORS</b>		Place X in applicable sections. If over 20 properties/mile, enter actual number of properties/mile in row III-A-5. (Do not mark more than one block per section.)	
<b>A. PROPERTIES/MILE</b>			
1. < 8 Tracts/mile	NO CHANGE	<input checked="" type="checkbox"/>	0.0 MANDAYS
2. 8-12 Tracts/mile	ADD 5%	<input type="checkbox"/>	0.0 MANDAYS
3. 13-16 Tracts/mile	ADD 10%	<input type="checkbox"/>	0.0 MANDAYS
4. 17-20 Tracts/mile	ADD 15%	<input type="checkbox"/>	0.0 MANDAYS
5. > 20 Tracts/mile	ADD 15% + (1/2%/Tracts >20)	<input type="checkbox"/>	0.0 MANDAYS
<b>B. TERRAIN</b>			
1. Mountainous or Rolling with high cuts/fills	ADD 15%	<input type="checkbox"/>	0.0 MANDAYS
<b>C. PLAN SCALE</b>			
1. 100 Scale	DEDUCT 10%	<input type="checkbox"/>	0.0 MANDAYS
2. 50 Scale	NO CHANGE	<input checked="" type="checkbox"/>	0.0 MANDAYS
3. 20 Scale	ADD 10%	<input type="checkbox"/>	0.0 MANDAYS
<b>Subtotal Mandays (page A)</b>			<b>120.4 MANDAYS</b>

(Place X in adjacent block to remove instructions prior to printing.)

User Notice: It is the user's responsibility to verify information in this program is correct.

DESIGN MANDAY ESTIMATE

PAGE B



ROUTE: S.R. 397 (Mack Hatcher Parkway)  
 DESCRIPTION: Re-design Intersections at SR96 and Del Rio Pike from Roundabouts to  
 COUNTY: Williamson  
 CONSULTANT: CDM Smith  
 Prepared By: Jeff Mize, PE  
 Date Prepared: 3/1/2013  
 Project No.: 94092-3226-14 Version 2.24

IV. ADDITIONAL FACTORS		
Note: Consultant to provide supplemental information for items listed below as deemed necessary.		
A. SIDEROADS (Measure from end of radius return)	110 M.D./ Mile	0.133 14.6 MANDAYS
E. RIGHT-OF-WAY		
1. Prop. ROW calls on Pres. Layout	NO CHANGE	0.0 MANDAYS
2. ROW Detail Sheets Required	2 M.D./ Sheet	0.0 MANDAYS
F. PUBLIC INVOLVEMENT		
1. Public Meeting (3 people at 1 day ea)	(enter no. of mandays)	0.0 MANDAYS
2. Special displays & renderings	(enter no. of mandays)	0.0 MANDAYS
3. Newsletters	(enter no. of mandays)	0.0 MANDAYS
G. DRAINAGE		
1. Retention/Detention Ponds	(enter no. of mandays)	0.0 MANDAYS
2. Special details	(enter no. of mandays)	0.0 MANDAYS
H. EROSION CONTROL PLANS		
1. Additional EC phases	(enter no. of mandays)	0.0 MANDAYS
2. Contour Sheets	5 M.D./Mile	0.933 4.7 MANDAYS
3. Detention basin design	(enter no. of mandays)	0.0 MANDAYS
4. Special details	(enter no. of mandays)	0.0 MANDAYS
I. PERMITS		
1. Permit drawings	(enter no. of mandays)	0.0 MANDAYS
2. Mitigation plans	(enter no. of mandays)	0.0 MANDAYS
3. Revisions to plans	(enter no. of mandays)	0.0 MANDAYS
J. GEOLOGY		
1. Retaining Wall Concept sheets	(enter no. of mandays)	0.0 MANDAYS
2. Soils and Geology sheets	(enter no. of mandays)	0.0 MANDAYS
K. TRAFFIC CONTROL PLANS		
1. Complex traffic control design	(enter no. of mandays)	0.0 MANDAYS
2. Special details - TMP	(enter no. of mandays)	0.0 MANDAYS
L. INTERCHANGES		
1. Length of ramps (Length being start of separate profile)	100 M.D./ Mile	0.0 MANDAYS
2. Urban interchange design	(enter no. of mandays)	0.0 MANDAYS
M. NO. OF CONSTRUCTION PROJECTS		
1. One construction project	NO CHANGE	0.0 MANDAYS
2. Additional construction projects	20 M.D./ Project	0.0 MANDAYS
N. MISCELLANEOUS FACTORS		
1. Traffic analysis for no. & lengths of turn lanes	(enter no. of mandays)	4 4.0 MANDAYS
2. Signal Design (2)	(enter no. of mandays)	20 20.0 MANDAYS
3. Revise Quantities	(enter no. of mandays)	6 6.0 MANDAYS
4. Revise Traffic Control Sheets with new layout	(enter no. of mandays)	2 2.0 MANDAYS
5. Presentation to City of Franklin BOMA	(enter no. of mandays)	2 2.0 MANDAYS
	(enter no. of mandays)	0.0 MANDAYS
	(enter no. of mandays)	0.0 MANDAYS
Subtotal Mandays (page B)		53.3 MANDAYS
Subtotal Mandays (page A)		120.4 MANDAYS
VI. TOTAL MANDAYS		173.7 MANDAYS

(Place X in adjacent block to remove instructions prior to printing.)

User Notice: It is the user's responsibility to verify information in this program is correct.

LABOR RATES

ROUTE: S.R. 397 (Mack Hatcher) Project No.: 94092-3226-14  
 DESCRIPTION: Re-design Intersections & PIN No.: 101454.01  
 COUNTY: Williamson  
 CONSULTANT: Jeff Mize, PE  
 Prepared By: Jeff Mize, PE  
 Date Prepared: 3/1/2013



This sheet calculates the average mandays, labor cost, and average manday rate for each phase of a project.  
 In the shaded blocks, enter the manday rate for each classification of personnel and the estimated percentage  
 for both the total project and the individual phases.  
 Boxes that are not applicable should be left blank.

Version 2.24

PERSONNEL	MANDAY RATE
PROJECT DIRECTOR	\$ 564.00
PROJECT MANAGER	\$ 448.00
PROJECT ENGINEER	\$ 393.00
ENGINEER	\$ 315.00
CADD TECHNICIAN	\$ 249.00
CAD DRAFTER	\$ 197.00

<b>TOTAL MANDAYS</b>	<b>173.70 M.D.</b>
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PERCENTAGE OF TOTAL PROJECT	
PRELIMINARY PLANS	0.0 %
RIGHT-OF-WAY PLANS	0.0 %
CONSTRUCTION PLANS	100.0 %
<b>TOTAL PROJECT</b>	<b>100.0 %</b>

PRELIMINARY PLANS 0.0 % OF TOTAL PROJECT			
		MANDAYS	LABOR COSTS
PROJECT DIRECTOR	0.0 % PREL. PLANS	0.0 M.D.	\$ -
PROJECT MANAGER	0.0 % PREL. PLANS	0.0 M.D.	\$ -
PROJECT ENGINEER	0.0 % PREL. PLANS	0.0 M.D.	\$ -
ENGINEER	0.0 % PREL. PLANS	0.0 M.D.	\$ -
CADD TECHNICIAN	0.0 % PREL. PLANS	0.0 M.D.	\$ -
CAD DRAFTER	0.0 % PREL. PLANS	0.0 M.D.	\$ -
0.0 %			
TOTALS PRELIMINARY PLANS		0.0 M.D.	\$ -
PRELIMINARY PLANS AVERAGE RATE PER MANDAY			#DIV/0!
RIGHT-OF-WAY PLANS 0.0 % OF TOTAL PROJECT			
		MANDAYS	LABOR COSTS
PROJECT DIRECTOR	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
PROJECT MANAGER	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
PROJECT ENGINEER	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
ENGINEER	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
CADD TECHNICIAN	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
CAD DRAFTER	0.0 % R.O.W. PLANS	0.0 M.D.	\$ -
0.0 %			
TOTALS RIGHT-OF-WAY PLANS		0.0 M.D.	\$ -
RIGHT-OF-WAY PLANS AVERAGE RATE PER MANDAY			#DIV/0!
CONSTRUCTION PLANS 100.0 % OF TOTAL PROJECT			
		MANDAYS	LABOR COSTS
PROJECT DIRECTOR	3.0 % CONST. PLANS	5.2 M.D.	\$ 2,932.80
PROJECT MANAGER	9.0 % CONST. PLANS	15.6 M.D.	\$ 6,957.60
PROJECT ENGINEER	18.0 % CONST. PLANS	31.3 M.D.	\$ 12,300.90
ENGINEER	28.0 % CONST. PLANS	45.2 M.D.	\$ 14,238.00
CADD TECHNICIAN	22.0 % CONST. PLANS	38.2 M.D.	\$ 9,511.80
CAD DRAFTER	22.0 % CONST. PLANS	38.2 M.D.	\$ 7,525.40
100.0 %			
TOTAL MANDAYS CONSTRUCTION PLANS		173.7 M.D.	\$ 53,466.50
CONSTRUCTION PLANS AVG. RATE PER MANDAY			\$ 307.81
TOTAL LABOR COSTS			\$ 53,466.50
AVERAGE RATE PER MANDAY			\$ 307.81

DESIGN DIRECT EXPENSES

Exhibit A  
PG 9 of 16

DESIGN DIRECT EXPENSES				Version 2.24	
ROUTE:	S.R. 397 (Mack Hatcher Pa	Project No.:	94092-3226-14		
DESCRIPTION:	Re-design Intersections at	PIN No.:	101454.01		
COUNTY:	Williamson				
CONSULTANT:	CDM Smith				
Prepared By:	Jeff Mize, PE				
Date Prepared:	3/1/2013				
				<b>Item Subtotal</b>	<b>Item Total Cost</b>
<b>Reproduction Costs:</b>					
(Enter quantity and unit price)					
	Item Description	Number / Unit	Unit Price		
	Photo-copies		\$ 0.15	\$ -	
	Full size bond		\$ 0.50	\$ -	
	Half size bond		\$ 0.40	\$ -	
	Full size vellum		\$ -	\$ -	
	Half size vellum		\$ -	\$ -	
	Full size mylar		\$ -	\$ -	\$ -
<b>Travel:</b>					
(Enter number of trips, people or mileage, and rate)					
	Number of Trips	No. of Miles/No. of People	RATE		
Per Diem (75%)			\$ 0.00 Per Day	\$ -	
Per Diem	2.00 Man-Days		\$ 30.00 Per Day	\$ -	
Transportation	2.00 Round Trips		\$ 0.47 Per Day	\$ -	
Lodging			\$ 0.00 Per Person	\$ -	\$ -
* Rate must agree with most current State of Tennessee travel regulations. First and last day of travel must be at the 75% Per Diem Rate					
<b>Other Expenses:</b>					
(Enter description, number and unit price.)					
	Item Description	Number / Unit	Unit Price		
	Landscape Re-design by Sub (HPI)	1	\$ 13,374.36	\$ 13,374.36	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	\$ 13,374.36
<b>TOTAL DIRECT EXPENSES</b>				\$	<b>13,374.36</b>
(Place X in adjacent box if allocation of direct expenses is to be different than total project allocation percentage.)					
DIRECT EXPENSES PRELIMINARY PLANS				0.0 %	\$ -
DIRECT EXPENSES RIGHT-OF-WAY PLAN				0.0 %	\$ -
DIRECT EXPENSES CONSTRUCTION PLANS				100.0 %	\$ 13,374.36
				100.0 %	
( Place X in box to remove instructions prior to printing					
(Do not edit or place date in these cells )					

<b>FEE PROPOSAL</b>			
ROUTE:	S.R. 397 (Mack Hatcher Parkway)	Project No.:	94092-3226-14
DESCRIPTION:	Re-design Intersections at SR96 and Del Rio Pike	PIN No.:	101454.01
COUNTY:	Williamson		
CONSULTANT:	CDM Smith		
Prepared By:	Jeff Mize, PE		
Date Prepared:	3/1/2013		
<b>COMPLETE SURVEY SHEETS FIRST IF SURVEY IS INCLUDED IN THE CONTRACT. PROCEED WITH FEE PROPOSAL IF SURVEY IS NOT INCLUDED.</b>			
This sheet computes percent net fee and performs fee proposal calculations for each phase of the project and total project			
Enter the appropriate overhead rate & fill in shaded boxes that apply for each phase			
			Version 2.24
<b>Data For Fee Calculations</b>			
Overhead Rate =	1.7586 **		
** (State Project Maximum overhead rate = 1.45)			
** (Federal Project Maximum overhead rate per External Audit Report)			
Design Direct Labor =	\$	53,466.50	
Survey Direct Labor =	\$	-	
Total Direct Labor =	\$	53,466.50	
Cost for net fee basis =	\$	147,492.69 *	
Net Fee = (Rounded to Nearest Tenth)		12.6% **	
NOTE: Net Fee for Supplements shall be the same as the original contract. It may be necessary to modify net fee calculated on supplement requests			
* Net fee is based on cost of contract not including direct cost and net fee as follows:			
Survey & Design / Design Only Rates		Survey Only Rates	
\$ 0 - \$ 100,000 =	13.0%	\$ 0 - \$ 50,000 =	13.0%
\$ 100,000 - \$ 500,000 =	12.5%	\$ 50,000 - \$ 200,000 =	12.5%
> \$ 500,000 =	12.0%	> \$ 200,000 =	12.0%
(Place X in adjacent box to remove instructions prior to printing)			
<b>SURVEYS</b>			
1	Direct Labor	=	\$ -
2	Overhead (Overhead Rate = 1.7586 )	=	\$ -
(Overhead rate X direct labor)			
3	Subtotal 1 + 2	=	\$ -
4	Net Fee = 12.5% (Rounded to nearest \$10)	=	\$ -
(Direct labor X 2.35 X 0.NF)			
5	Subtotal 3 + 4	=	\$ -
6	Direct Expense	=	\$ -
7	Premium Labor (Premium Labor is only eligible if the survey crew works greater than a 40 hour work week.)	=	\$ -
8	Total Survey (Total 5 + 6 + 7)	=	\$ -

FEE PROPOSAL

Exhibit A  
PG 11 of 16

						Version 2-24
<b>Preliminary Design</b>						
1	Direct Labor			=	\$	-
2	Overhead	(Overhead Rate = 1.7586 )		=	\$	-
	(Overhead rate X direct labor)					
3	Subtotal 1 + 2			=	\$	-
4	Net Fee =	12.5%	(Rounded to nearest \$10.)	=	\$	-
	(Direct labor X 2.35 X 0.NF)					
5	Subtotal 3 + 4			=	\$	-
6	Direct Expense			=	\$	-
7	Premium Labor			=	\$	-
8	Total Preliminary Plans			=	\$	-
	(Total 5 + 6 + 7)					
<b>Right-of-Way Design</b>						
1	Direct Labor			=	\$	-
2	Overhead	(Overhead Rate = 1.7586 )		=	\$	-
	(Overhead rate X direct labor)					
3	Subtotal 1 + 2			=	\$	-
4	Net Fee =	12.5%	(Rounded to nearest \$10.)	=	\$	-
	(Direct labor X 2.35 X 0.NF)					
5	Subtotal 3 + 4			=	\$	-
6	Direct Expense			=	\$	-
7	Premium Labor			=	\$	-
8	Total Right-of-Way Plans			=	\$	-
	(Total 5 + 6 + 7)					

FEE PROPOSAL

Exhibit A  
PG 12 of 16

						Version 2.24
<b>Construction Design</b>						
1	Direct Labor			=	\$	53,486.50
2	Overhead	(Overhead Rate = 1.7586 )		=	\$	94,026.19
	(Overhead rate X direct labor)					
3	Subtotal 1 + 2			=	\$	147,482.69
4	Net Fee =	12.5%	(Rounded to nearest \$10.)	=	\$	15,710.00
	(Direct labor X 2.35 X 0.9F)					
5	Subtotal 3 + 4			=	\$	163,202.69
6	Direct Expense			=	\$	13,374.36
7	Premium Labor			=	\$	-
8	<b>Total Construction Plans</b>			=	\$	<b>176,577.05</b>
	(Total 5 + 6 + 7)					
<b>Total Project</b>						
1	Direct Labor			=	\$	53,486.50
	(Sum of Survey, Prel., R.O.W., & Const. Direct Labor)					
2	Overhead	(Overhead Rate = 1.7586 )		=	\$	94,026.19
	(Overhead rate X direct labor)					
3	Subtotal 1 + 2			=	\$	147,482.69
4	Net Fee =	12.5%	(Rounded to nearest \$10.)	=	\$	15,710.00
	(Sum of Survey, Prel., R.O.W., & Const. Net Fee)					
5	Subtotal 3 + 4			=	\$	163,202.69
6	Direct Expense	(Itemize and attach)		=	\$	13,374.36
	(Sum of Survey, Prel., R.O.W., & Const. Direct Expenses)					
7	Premium Labor			=	\$	-
	(Sum of Survey, Prel., R.O.W., & Const. Premium Labor)					
8	<b>Total Project</b>			=	\$	<b>176,577.05</b>
	(Total 5 + 6 + 7)					
					<b>Total Contract</b>	<b>\$ 176,577.05</b>
					<b>DESIGN COST PER MILE</b>	<b>\$ 203,281.48</b>
					<b>SURVEY COST PER MILE</b>	<b>#DIV/0!</b>
					<b>TOTAL COST PER MILE</b>	<b>\$ 203,281.48</b>



**FEE PROPOSAL SUMMARY**

ROUTE: S.R. 397 (Mack Hatcher Parkway)  
 DESCRIPTION: Re-design Intersections at SR96 and Del PIN No.:  
 COUNTY: Williamson  
 CONSULTANT: CDM Smith  
 Prepared By: Jeff Mize, PE

Project No.: 94092-3226-14  
 101454.01

Date Prepared: 3/1/2013

mark the appropriate box below an values for the initial ceiling will be calculated.

**Exhibit A**  
**PG 13 of 16**



Version 2.24

Survey Fee Proposal Summary						
	Direct Labor	Overhead	Subtotal Direct Labor & Overhead	Net Fee	Subtotal Direct Labor, Overhead, & Net Fee	Total Phase
<b>SURVEY</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Design Fee Proposal Summary						
	Direct Labor	Overhead	Subtotal Direct Labor & Overhead	Net Fee	Subtotal Direct Labor, Overhead, & Net Fee	Total Phase
PRELIMINARY PLANS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RIGHT-OF-WAY PLANS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Preliminary & Right-of-Way Plans	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CONSTRUCTION PLANS	\$ 53,466.50	\$ 94,026.19	\$ 147,492.69	\$ 15,710.00	\$ 163,202.69	\$ 176,577.05
Subtotal Preliminary, R.O.W., & Construction Plans	\$ 53,466.50	\$ 94,026.19	\$ 147,492.69	\$ 15,710.00	\$ 163,202.69	\$ 176,577.05
<b>Total Survey &amp; Design</b>	\$ 53,466.50	\$ 94,026.19	\$ 147,492.69	\$ 15,710.00	\$ 163,202.69	\$ 176,577.05

(Place a X in appropriate box indicating the point of the initial contract ceiling. Only one (1) block should have an X placed.)  
 (Note: (Survey thru Const. Plans) can be checked if no initial contract ceiling is to be set.)

<input type="checkbox"/>	Survey
<input type="checkbox"/>	Survey thru Prel. Plans
<input type="checkbox"/>	Survey thru R.O.W. Plans
<input type="checkbox"/>	Survey thru Const. Plans
<input type="checkbox"/>	Prel. Plans
<input type="checkbox"/>	Prel. & R.O.W. Plans
<input type="checkbox"/>	Prel. Thru Const. Plans

INITIAL CONTRACT CEILING						
	Direct Labor	Overhead	Subtotal Direct Labor & Overhead	Net Fee	Subtotal Direct Labor, Overhead, & Net Fee	Total Ceiling
Contract will initially be authorized for:						

(Place X in adjacent box to remove instructions prior to printing.)

February 11, 2013



Mr. Antonio Montiel  
CDM Smith  
830 Crescent Centre Drive, Suite 400  
Franklin, TN 37067

**Re: MACK HATCHER NW CORRIDOR SUPPLEMENTAL AGREEMENT  
FEE PROPOSAL FOR LANDSCAPE ARCHITECTURAL SERVICES**

Dear Tony:

It has been a long process to get to where we are today. We are excited to be working with you on bringing this segment to reality. Based on your email, it is our understanding that the roundabouts are being converted to a 4-way intersection design and that Highway 96's will not longer be designated as a gateway and therefore will not be reflected in the landscape design or require any additional features similar to the previous design (i.e. specialty pavements, monuments, walls, irrigation). Per your request we have prepared the following proposal to update the drawings to reflect these changes and provide continuity with the rest of the landscape along this roadway segment. We look forward to working with you and CDM Smith on this vitally important project for the City of Franklin.

**SCOPE OF WORK**

- Conversion of Highway 96 and Del Rio Roundabout to 4-way intersection design

**SCOPE OF SERVICES**

**1. UPDATE CONSTRUCTION DOCUMENTS TO INCLUDE:**

- 1.1 Import new digital base provided by Civil Engineer.
- 1.2 Update Construction Documents to provide technical specifications and construction details to include the following:
  - 1.) Landscape plan for converted intersections.
  - 2.) Coordination of multi-use path alignment and crossings
  - 3.) Deletion of previous work and coordination of final construction documents (i.e. reordering of pages and call outs).
- 1.3 Update technical specifications to reflect changes for inclusion into project manual and release of documents in coordination with the Engineer. Project Manual documents to be prepared by the Engineer with no portions of this scope of work to be bid separately.
- 1.4 Coordination and collaboration with other consultants on items which affect this scope of work, including but not limited to electrical and pedestrian or accent lighting, structural review of foundations or footings, water connections and grading. For these items, HPI will provide collaboration although other consultants have primary responsibility for these items.
- 1.5 Development of set of review plans at 90% completion for coordination with all other consultants, and review by Client, City of Franklin, TDOT and other consultants. Documents would be adjusted based on Client's review.

- 1.6 Update construction documents and specifications based comments received.
- 1.7 Attendance to regularly scheduled progress meetings with Client, City of Franklin, TDOT and other consultants to coordinate project efforts and telephone coordination as required. Estimated 2 progress meetings during the construction documents phase.
- 1.8 Associated internal project management

2. **ADDITIONAL SERVICES (OPTIONAL)**

The following items can be provided as add services upon request.

2.1 Prepare for and participate in one public meeting

2.2 Prepare plan renderings for the following:

- 1) Overall extent of project
- 2) Del Rio Intersection
- 3) Highway 96 Intersection

**COMPENSATION FOR SERVICES**

The fees for this work shall be computed as follows. These fees will be billed monthly as hourly not to exceed in proportion to the services provided.

**Construction Documents Phase:**

Update Construction Documents	\$ 13,374.36
<b>Total Supplemental Fee</b>	<b>\$ 13,374.36</b>
<i>Current Agreement Fee</i>	<i>\$ 205,869.00</i>

**Total Fee for Landscape Architectural Services:** \$ 219,243.36

**OPTIONAL ADD SERVICES**

Accepted

Add Services 2.1: Public Meeting	\$1,326.89	_____
Add Services 2.2: Renderings	\$1,584.90	_____

Please review this scope to assure that it is in keeping with your needs. If this supplemental agreement meets with your approval, please sign in the space provided below and forward an executed agreement to our office for our records. Please indicate if any add services are accepted by initialing above. We appreciate the opportunity to work with you and your team to keep this project moving forward!

Best regards,  
HAWKINS PARTNERS, INC.



Brian Phelps, ASLA  
Sr Associate

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No 2013-0034**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and CDM SMITH, INC. hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** City desires to retain Consultant to provide Engineering Services, related technical services, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**Mack Hatcher Extension Project  
[SR-397 Mack Hatcher Parkway West, From South of SR-96, West Franklin  
to East of SR-106 (US431) North of Franklin Williamson County]**

1. **SCOPE OF SERVICES.** Consultant shall provide Engineering Services, related technical services and other services for the Project in accordance with the SCOPE OF SERVICES. The SCOPE OF SERVICES as found in **Exhibit A** shall be considered as an integral part hereof.
2. Consultant shall be paid on an hourly basis for work performed based on the FEE SCHEDULE as contained in Exhibit A in the Amount Not To Exceed **TWO HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$277,500.00)**. The FEE SCHEDULE shall be considered as an integral part hereof.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

**The Board of Mayor and Aldermen Approved this Agreement on the  
\_\_\_\_\_ Day of \_\_\_\_\_ 2013.**

BY: \_\_\_\_\_  
Consultant's Signature  
TITLE: \_\_\_\_\_  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Dr. Ken Moore  
Mayor  
Date: \_\_\_\_\_

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from

engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this paragraph.

3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, **SCOPE OF SERVICES**; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, **SCOPE OF SERVICES**.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate

outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
  - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;



The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the time of performance of Consultant's services as indicated in Exhibit A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS: Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or

- of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 **TRAVEL; EXPENSES**  
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at [www.gsa.gov](http://www.gsa.gov) [click on 'per diem rates' under the 'etools' category].

**ARTICLE 10. MISCELLANEOUS PROVISIONS**

10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts

relating to this Project.

10.3 **NO THIRD PARTY RIGHTS CREATED.** City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

**ARTICLE 11. EXTENT OF AGREEMENT:**

11.1 **APPLICABLE LAW/CHOICE OF FORUM AND VENUE.** This Agreement is made under and will be construed in accordance with the

laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

- 11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.

- 12.2 **BREACH.** Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract with 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.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.