

MEMORANDUM

June 4, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
David Parker, City Engineer/CIP Executive
Paul Holzen, Director of Engineering
Ben Worley, Right of Way Agent/Project Manager

SUBJECT: Consideration of Amendment No. 3 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 \$12,000.00.

Purpose

The purpose of this memorandum is to bring forward to the Board of Mayor and Aldermen (BOMA) a proposal from CDM Smith for a Bathymetric Survey and construction closeout 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, Amendment Number 1 in the amount of \$15,500 was approved on April 24, 2012, and Amendment Number 2 in the amount of \$5,000 that was approved on September 11, 2012.

Dredging of Jackson Lake has taken much longer than expected. The original date of completion was scheduled for December 2011. Staff has giving the contractor until July 30th to complete the construction. Amendment No. 3 is to allow for a bathymetric survey to be performed as well as the close out of construction. The scope of services includes performing final bathymetric survey to ensure accuracy of contractor survey, and contract closeout.

Financial Impact

Amendment No. 3 to the Professional Services Agreement with CDM Smith (COF Contract No. 2011-0037) at a not-to-exceed cost of Twelve Thousand Five Hundred and 00/100 dollars (\$12,500). New contract total becomes \$96,000 (\$83,500 + \$12,500).

Recommendation

After review of the proposal from CDM Smith, staff recommends approval of Amendment No. 3 to the PSA with CDM Smith (COF Contract No. 2011-0037) in an amount not-to-exceed \$12,500.00.

**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR JACKSON LAKE DREDGING IMPROVEMENTS
COF Contract No. 2011-0037**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2013, 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 (COF Contract No 2011-0037) ("Project"), dated the 22nd 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 BOMA approved Amendment No 1 on April 24, 2012, in the not to exceed total amount of Fifteen Thousand and Five Hundred and No/100 Dollars (\$15,500.00) due to the extended length of the construction project; and

WHEREAS, the BOMA approved Amendment No 2 on September 11, 2012, in the not to exceed total amount of Five Thousand and No/100 Dollars (\$5,000.00) due to the extended length of the construction project; and

WHEREAS, A final bathymetric survey of Jackson Lake is necessary for City staff to validate the contractor's final invoice and the remaining amount of sediment in the lake; and

WHEREAS, the City has negotiated with the Consultant an additional fee for on-going general services during construction as described in Exhibit A in an amount not to exceed Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00).

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 as provided for in Exhibit A, and the Professional Services Agreement Approved by BOMA dates March 22, 2011.

3. City's Responsibilities and Duties. City shall pay Consultant in an amount not to exceed **Twelve Thousand Five Hundred and No/100 Dollars (12,500.00)** as described in Exhibit A under Compensation for the work under this agreement.

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 dated March 22, 2011, Amendment No 1 dated April 24, 2012 and Amendment No 2 dated September 11, 2012 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

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