



February 14, 2014

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
Brad Wilson, Project and Facilities Manager

SUBJECT: City of Franklin Data Center Expansion Change Order Number 2 (two) Total Cost \$ 4,858.00. (COF Contract # 2012-0195)

Purpose

This memorandum is to inform the Board of Mayor and Aldermen (BOMA) that approval was given on behalf of the Board for Change Order Number 2 for additions and deletions to the contract with Southeast Contractors for the City of Franklin Data Center Expansion. (Approximate cost of changes is an additional \$4,858.00).

Background

On April 26th a notice to proceed was given to Southeast Contractors to begin the build out of a space located in the current City of Franklin Police Department to serve as the COF main server site. The Police Department was designed with a facility for the 911 Emergency center that included phones, data and equipment that services the 911 center only. It was decided at that time to build a wall down the middle that would seal off the space that was in use. The space that was created was a mirror image of what was being used within the 911 center.

Approximately 4 years after the opening of the facility, discussion started about a future City Hall project. Thought was given to determine where the current City Hall server room would be located. The server room at the City Hall has many different functions for the city. It is currently the main hub for all data and services needed at city hall, as well as outlying areas. After engineering and architectural studies were completed, it was decided to finish out the space at the Police Department and move the COF Server to the remodeled space. The space is not only a more secure facility, it also has updated mechanical systems that can keep all of the heat generating equipment cool. This space is large enough to become the main hub for the city equipment, radios and other communication sources that are currently in use. During the beginning of the project it was determined that one of the original suppliers of equipment had gone out of business and specifications had not been changed regarding the CRAC (computer room air conditioning units) that are currently used. Two additional units, supply lines, and electric lines were required.

The following is a list of items that are additional for the project:

- **ADDITIONAL:** Additional electrical outlet rework after wall was torn down for new space and it was determined that the line was a main feeder for multiple electric plugs in the area. \$ 1,540.00



- **ADDITIONAL:** For the additional CRAC units. Disconnect switches were required since prior units were equipped with disconnects already installed but the ones delivered no longer came that way. \$ 1,604.00
 - **ADDITIONAL:** For adding an additional access card reader. \$ 322.00
 - **ADDITIONAL:** Additional piping was required for the CRAC units that were installed on the roof where the original plan was to be able to use existing lines. Once units were delivered it was determined that additional sets were needed to cool the equipment installed. \$ 1,392.00
- Total ADDITIONAL \$ 4,858.00**

Financial Impact

The project budget includes \$ 5,000.00 in owner's contingency that will be used to fund this change order for the project. As of this current change order the project is within budget.

Recommendation

Approval and funding of Change Order #2 with funds that are set aside within the project budget is recommended.



SOUTHEAST CONTRACTORS, INC.
GENERAL CONTRACTORS

COMMERCIAL • RESIDENTIAL • INDUSTRIAL



Licensed, Bonded, & Insured

August 28, 2013
revised 9/25/2013

Envision Advantage, LLC
320 Seven Springs Way, Ste 203
Brentwood, Tennessee 37027
ATTN: Mr. Curtiss Sherwood

Re: Change Order Log and Request for Pricing proposal dated 8-21-13 (Project No. 12048.00):
City of Franklin Data Center Expansion Project
900 Columbia Ave.
Franklin, Tennessee 37067

Mr. Sherwood-

Please find below a description of the change orders to date on the City of Franklin Data Center Expansion project (Project No. 12048.00). I have also included a section for the additional change order pricing that has been requested by the Owner. Once reviewed, please advise as to what direction you would like Southeast Contractors to proceed on the additional change orders. If you have any questions or comments, please feel free to contact me at the numbers provided below.

- **CHANGE ORDERS TO DATE (as of 8/28/13):**
- A. **Description:** Electrical demolition & relocation of receptacles that were not shown on plans in demolished wall. Request made by Owner once wall was demolished:

TOTAL COST: \$1,540.00
Materials: \$315.00
Labor: \$1,085.00
10% OH&P: \$140

- B. **Description:** Plans showed to reconnect disconnect switches on the new rooftop units to existing circuits per Sheet E300, Note #2. No disconnects were located on the new condensers, therefore Wolfe & Travis had to install two (2) 30-amp disconnects for each new unit and we had to wire each unit for an additional receiver (original condensers only had 1 receiver per unit; new condensers had 2 receivers per unit):

TOTAL COST: \$1,604.00

Materials: \$758.00

Labor: \$700.00

10% OH&P: \$146

- C. **Description:** Run Cat6e cable from stub out for new door access reader at new door leading into new data room per request by Owner. Cable ran to IT/electrical room per Mr. Mike Proctor:

TOTAL COST: \$322.00

Materials: \$68.00

Labor: \$225.00

10% OH&P: \$29.00

- D. **Description:** Additional motion sensor for storage room not shown on plans per Owner's request:

TOTAL COST: \$0

- E. **Description:** Material & Installation of a Multi-voltage power pack for a lighting circuit in the main hallway per the Owner:

TOTAL COST: \$0

- F. **Description:** Additional piping and installation for 2 extra rooftop receivers. Existing units only consisted of 1 receiver per unit; new units consisted of 2 receivers per unit:

TOTAL COST: \$1,392.00

Materials: \$1,265.00

Labor: \$0.00

10% OH&P: \$127.00

Respectfully,

William T. Milburn 8/28/2013 (revised 9/23/2013)

William T. Milburn
Project Manager
Southeast Contractors, Inc.
(C) 615-405-8940



MEMORANDUM

February 10, 2014

TO: Board of Mayor and Aldermen
FROM: Eric S. Stuckey, City Administrator
Brad Wilson, Project and Facilities Manager
SUBJECT: City of Franklin Public Works Change Order Number seven: \$11,603.00. (COF Contract # 2012-0185)

Purpose

This memorandum is to inform the Board of Mayor and Aldermen (BOMA) that approval was given on behalf of the Board for Change Order Number 6 for additions and deletions to the contract with RG. Anderson Inc. for the City of Franklin Public Works Facility. (Approximate cost of changes is an additional \$11,603.00)

Background

On June 24th a notice to proceed was given to RG Anderson Inc. to begin the extensive remodel of the Old 84 Lumber facility so that it would be transformed into a New COF Public Works Facility. Items on the existing property were not installed as stated per the original plans and specifications. Also, there were buried site materials and underground utilities that were not disclosed or the correct size. The following is a list of items that are additional or deleted from the project:

- **ADDITIONAL:** For miscellaneous drywall changes regarding additions that were not shown on the prints prior to construction and or needed field changes \$ 2,712.00
 - **ADDITIONAL:** For miscellaneous electrical changes regarding equipment moves not shown on the plan or due to existing conditions that would not allow shown equipment to be installed per the plans and specifications. \$ 2,180.00
 - **ADDITIONAL:** The cost to add additional monitoring modules to the wet and dry fire protection system risers located in building 1 along with the dry riser system in building two, also elevator tamper switch and control modules for the elevator solenoid vale in building one. \$ 5,500.00
 - **ADDITIONAL:** Relocate four inch fire line due to height restraints as you reach the top of the stairs at the mezzanine. \$ 1,211.00
 - **CREDIT:** For two hose reels that were budgeted for but are not needed under the current program. \$ (1,090.00)
- Total ADDITIONAL \$ 10,513.00**

Financial Impact

The project budget includes \$ 75,000.00 in owner's contingency that will be used to fund this and other change orders for the project. As of this current change order the project is within budget.

Recommendation

Approval and funding of Change Order #7 with funds that are set aside within the project budget is recommended.

RG ANDERSON COMPANY, INC.
CONTRACTORS **ENGINEERS**

January 30, 2014

Tim Lambe
Lambe + Associates
106 Mission Court
Franklin, TN 37067

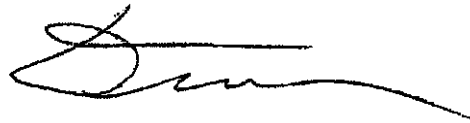
**RE: Public Works Facility
Franklin, TN**

The credit available for deleting the two hose reels from the compressed air piping system in the sign shop is \$1,090.00.

Please advise if this change is to be made to the project.

Sincerely,
R.G. Anderson Company, Inc.


Lin Dunn, P.E.
Vice President





1801 WEST END AVENUE • SUITE 1800 • NASHVILLE, TENNESSEE 37203
(615) 329-1789 • FAX (615) 321-4555



RG ANDERSON COMPANY, INC.
CONTRACTORS **ENGINEERS**

January 30, 2014

Tim Lambe
Lambe + Associates
106 Mission Court
Franklin, TN 37067

RE: **Public Works Facility**
Franklin, TN

The costs to add monitor modules for the wet and dry fire protection risers in Building 1, the dry system riser in Building 2, elevator tamper switches in Building 1, and control modules for the elevator solenoid valves in Building 1 are as follows:

Electrical Work	\$4,668.00
GC Overhead	\$467.00
GC Fee	\$257.00
Bond	\$108.00
TOTAL	\$5,500.00

We request that this amount be added to our contract for this project.

Sincerely,
R.G. Anderson Company, Inc.


Lin Dunn, P.E.
Vice President





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RGA ANDERSON COMPANY, INC.
CONTRACTORS **ENGINEERS**

January 29, 2014

Tim Lambe
Lambe + Associates
106 Mission Court
Franklin, TN 37067

RE: **Public Works Facility**
Franklin, TN

The following electrical changes have been made to the project:

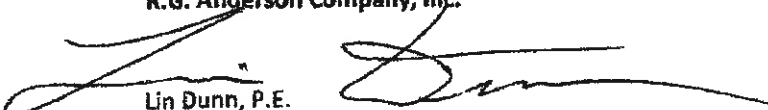
1. Relocate A/C units 14 & 15	\$300.00
2. Relocate water heater number 2	\$150.00
3. Relocate receptacles at wall furouts	\$150.00
4. Not used	\$0.00
5. Rewire three Wallpacks	\$700.00
6. Change cord drops in Building 2	\$100.00
7. Add circuit for Air Dryer	<u>\$450.00</u>
TOTAL	\$1,850.00

Electrical Work	\$1,850.00
GC Overhead	\$185.00
GC Fee	\$102.00
Bond	<u>\$43.00</u>
TOTAL	\$2,180.00

For greater detail, please see the attached invoice from Thomas Electric.

We request that the cost of this work be added to our contract for this project.

Sincerely,
R.G. Anderson Company, Inc.


Lin Dunn, P.E.
Vice President



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RG ANDERSON COMPANY, INC.
CONTRACTORS **ENGINEERS**

January 29, 2014

Tim Lambe
Lambe + Associates
106 Mission Court
Franklin, TN 37067

RE: **Public Works Facility**
Franklin, TN

The following invoices have been received from Wall Constructors, Inc. for drywall changes to the project:

1859	Fur endwall in Room 121	\$97.65
1870	Change doorframe at elevator machine room	\$83.60
1872	Fur wall at Room 107	\$181.29
1877	Move wall at Room 114	\$237.02
1878	Fur wall at men's handicap shower	\$120.32
1879	Add space under stair at Room 2-113	\$544.28
1880	Fur wall at Room 2-103	\$391.28
1882	Modifications to Room 2-113	\$396.73
1994	Infill wall at Room 1-216	\$150.00
1995	Modifications to Room 1-218	\$100.00
	TOTAL	\$2,302.00
	GC Overhead	\$230.00
	GC Fee	\$127.00
	Bond	<u>\$53.00</u>
	TOTAL	\$2,712.00

For greater detail, please see the attached invoices from Wall Constructors, Inc.

We request that the cost of this work be added to the contract for the project.

Sincerely,
R.G. Anderson Company, Inc.


Lin Dunn, P.E.
Vice President



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(615) 329-1789 • FAX (615) 321-4555





MEMORANDUM

February 6, 2014

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
Brad Wilson, Project and Facilities Manager

SUBJECT: City of Franklin Public Works Change Order Number 6 (six) \$ 20,696.00. (COF Contract # 2012-0185)

Purpose

This memorandum is to inform the Board of Mayor and Aldermen (BOMA) that approval was given on behalf of the Board for Change Order Number 6 that included additions and deletions to the contract with RG. Anderson Inc. concerning The City of Franklin Public Works Facility. Approximate cost of changes (Additional) [\$ 20,696.00]

Background

On June 24th a notice to proceed was given to RG Anderson Inc. to begin the extensive remodel of the Old 84 Lumber facility so that it would be transformed into a new COF Public Works Facility. Items on the existing property were not installed as stated per the original plans and specifications. Also, there were buried site materials and underground utilities that were not disclosed or the correct size. The following is a list of items that are additional or deleted from the project:

- **ADDITIONAL:** The lavatory space located within building Number 2 for the men had an additional unit added per the request of the department which required a lavatory partition. \$ 1,226.00
- **ADDITIONAL:** Compressed air piping that was installed was relocated from another location due to the move of the air compressor that is used for the sign shop tables. The compressor was moved from an exterior wall to an interior location which required additional air lines and electrical changes. The change will allow for longer life of the current equipment. Some hose reels are a part of this change but a credit will be forth coming since there is no need for that equipment. \$ 6,103.00
- **ADDITIONAL:** A request was made by staff that a kitchen type range and hood be installed in the break room for the cooking of some meals and holiday functions. With that request, certain guidelines needed to be met including a fire rated exhaust hood that includes an "Ansul Fire Suppression System" and additional electrical wiring. \$ 9,059.00



- **ADDITIONAL:** A change to the base of the lockers in both men’s and women’s rooms was made so that materials, belongings or trash could not fall under the lockers and be lost. This change will allow for a better looking, more manageable way to keep the area clean. \$ 600.00

- **ADDITIONAL:** The relocation of two mechanical systems. Concrete in the existing wall and two steel beams required the units to be placed in another area of the facility. This required longer feed and return lines to the units, which also affected three exhaust fans and duct work. \$ 3708.00

- Total ADDITIONAL \$ 20,696.00**

Financial Impact

The project budget includes \$ 75,000.00 in owner’s contingency that will be used to fund this and other change orders for the project. As of this current change order the project is within budget.

Recommendation

Approval and funding of Change Order #6 with funds that are set aside within the project budget is recommended.

**Request for Construction Change
Change Order No. 6**

City of Franklin	Contract No.	<u>2012-0185</u>
Engineering Office	Project	<u>Construction of the</u>
109 Third Avenue South		<u>City of Franklin</u>
Franklin, TN 37064		<u>Consolidated Public Works Facility</u>

Whereas, we R.G. Anderson Company, Inc. entered into an contract with the CITY OF FRANKLIN, on June 17, 2013, for the construction by said Contractor of the above designated contract; and Whereas, certain items of construction encountered are not covered by the original contract, we desire to submit the following additional items of construction to be performed by the Contractor and paid by the City at the prices scheduled therefore below:

Reason for Change Order:

Additions and deletions to project

Attachments (List documents supporting change):

1. Letter of 12/12/13 Noted (21)
2. Letter of 1/16/14 Noted (22)
3. Letter of 1/16/14 Noted (23)
4. Letter of 1/16/14 Noted (24)
5. Letter of 1/16/14 Noted (25)

Item No.	Description of Work	Unit	Estimate Quantity	Unit Price	Amount
1	Add toilet partition 2-111	LS	1	1,226.00	1,226.00
2	Add compressed air piping	LS	1	6,103.00	6,103.00
3	Add hood and fire suppression	LS	1	9,059.00	9,029.00
4	Add build out of base	LS	1	600.00	600.00
5	Add HVAC modifications	LS	1	3,708.00	3,708.00
TOTAL					20,696.00

CHANGE IN CONTRACT PRICE:
Original Contract Price 3,828,500
Net Increase (Decrease) from previous Change Orders No. 0 to <u>5</u> : 36,404
Contract Price prior to this Change Order: 3,864,904
Net increase (decrease) of this Change Order: 20,696.00
Contract Price with all approved Change Orders: 3,885,600

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: <u>February 17, 2014</u> Ready for final payment: _____
Net change from previous Change Orders No. 0 to <u>5</u> to: Substantial Completion: <u>February 27, 2014</u> Ready for final payment: _____
Contract Times prior to this Change Order: Substantial Completion: <u>February 27, 2014</u> Ready for final payment: _____
Net increase (decrease) this Change Order: Substantial Completion: <u>10 Days</u> Ready for final payment: _____
Contract Times with all approved Change Orders: Substantial Completion: <u>March 9, 2014</u> Ready for final payment: _____

Now, Therefore, We, _____ Contractors, hereby agree to this Supplemental Agreement consisting of the above mentioned items and prices, and agree that this Supplemental Agreement is hereby made a part of the original contract and will be performed by this Contractor in accordance with specifications thereof, and that the original contract remain in full force and effect, except in so far as specifically modified by this supplemental Agreement.

RECOMMENDED FOR APPROVAL BY:

By: [Signature] By: _____ By: _____
 Architect CITY Administrator Project/Facilities
 Date: 01.21.14 Date: _____ Date: _____

ACCEPTED

By: [Signature]
 CONTRACTOR (Authorized Signature)

Date: 1-29-14

APPROVED:

By: _____
 OWNER (Authorized Signature)

Date: _____

2014-0018

TUSA CONSULTING SERVICES AGREEMENT

ARTICLE I – SERVICES OF CONSULTANT

1.01 Scope

A. CONSULTANT shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, CONSULTANT is authorized to begin Basic Services as set forth in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 General

A. CONSULTANT’S services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, CONSULTANT’S obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specified dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of CONSULTANT, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of CONSULTANT’S services shall be adjusted equitably.

C. For purposes of this Agreement, the term “day” means a calendar day of 8 working hours (8am-5pm).

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if CONSULTANT’S services are delayed through no fault of CONSULTANT, CONSULTANT may, after giving seven days

written notice to OWNER, suspend services under this Agreement.

B. If CONSULTANT’S services are delayed or suspended in whole or in part by OWNER, or if CONSULTANT’S services are ended by Contractor’s actions or inactions for more than 90 days through no fault of CONSULTANT, CONSULTANT shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by CONSULTANT in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 – PAYMENTS TO CONSULTANT

4.01 Methods of Payment for Services of CONSULTANT

A. *For Basic Services.* OWNER shall pay CONSULTANT for Additional Services performed or furnished under Exhibit A.

B. *For Additional Services.* OWNER shall pay CONSULTANT for Additional Services performed or furnished under Exhibit A.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with CONSULTANT’S standard invoices practices and will be submitted to OWNER by CONSULTANT, unless otherwise agreed.

B. *Payments of Invoice.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due CONSULTANT for services within 30 days after receipt of CONSULTANT’S invoice therefore, the amounts due CONSULTANT will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, CONSULTANT may, after giving seven days written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. Payments upon Termination.

1. In the event of any termination under paragraph 6.06, CONSULTANT will be entitled to invoice OWNER and will be paid all services performed or furnished incurred through the effective date of termination.

E. Records of CONSULTANT'S Costs. Records of CONSULTANT'S costs pertinent to CONSULTANT'S compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to vary CONSULTANT'S charges and upon OWNER'S timely request, copies of such records will be made available to OWNER at cost.

F. Legislative Actions. In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on CONSULTANT'S services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs be imposed, they shall be in addition to CONSULTANT'S estimated total compensation.

ARTICLE 5 – OPTIONS OF COSTS

This Article is Deleted

ARTICLE 6 – GENERAL CONDITIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT'S profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT'S services.

B. CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER – furnished information.

C. CONSULTANT shall perform or furnish professional and related services in all phases of the Project to which this Agreement applies. CONSULTANT shall serve as OWNER'S prime professional for the Project. CONSULTANT may employ such outside consultants as CONSULTANT deems necessary to assist in the performance or furnishing of the

services. CONSULTANT shall not be required to employ any outside consultant unacceptable to CONSULTANT.

D. CONSULTANT and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER'S responsibilities or to CONSULTANT'S scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, reports, data and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities pursuant to this Agreement in a timely manner and shall bear all costs incident thereto so as not to delay the services of CONSULTANT.

G. CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in the CONSULTANT'S having to certify, guarantee or warrant the existence of conditions whose existence the CONSULTANT cannot ascertain. OWNER agrees not to make resolution of any dispute with the CONSULTANT or payment of any amount due to the CONSULTANT in any way contingent upon the CONSULTANT'S signing any such certification.

H. During the Construction Phase, CONSULTANT shall not supervise direct or have control over Contractor's work, nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. CONTRACTOR neither guarantees the performance of any Contractor nor assumes the responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. CONSULTANT shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except CONSULTANT'S own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER, without consultation and advice of CONSULTANT.

6.02 Authorized Project Representative

A. Contemporaneous with the execution of this Agreement, CONSULTANT and OWNER shall designate specific individuals to act as CONSULTANT'S and OWNER'S representatives with respect to the services to be performed or furnished by CONSULTANT and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER'S representatives or a third party, CONSULTANT'S Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating phase as outlined in Exhibit A.

B. It is understood and agreed that if CONSULTANT'S Basic Services under this Agreement do not include project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the CONSULTANT that may be in any way connected thereto.

6.04 Use of Documents

A. Copies of OWNER-furnished data that may be relied upon by CONSULTANT are limited to the printed copies (also known as hard copies) that are delivered to the CONSULTANT pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to CONSULTANT are only for convenience of CONSULTANT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

B. Copies of Documents that may be relied upon by OWNER 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 OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. 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. CONSULTANT shall not be responsible to maintain documents store in electronic media format after acceptance by OWNER.

D. 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 those used by CONSULTANT at the beginning of this Project.

E. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

6.05 Insurance

A. CONSULTANT shall procure and maintain insurance as set forth in Exhibit B, "Insurance". Additionally, CONSULTANT shall maintain and keep in effect valid and collectible Comprehensive General Liability Insurance in an amount that is not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage that shall be in effect for the duration of the Project. CONSULTANT is required to provide OWNER with a certificate of insurance naming the OWNER as an additional insured within fourteen (14) days of the Effective Date of this Agreement.

B. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause CONSULTANT and sub Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

C. At any time, OWNER may request that CONSULTANT, at OWNER'S sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit B. If so requested by OWNER, with the concurrence of CONSULTANT, and if commercially available, CONSULTANT shall obtain and shall require CONSULTANT'S consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in

accordance with the terms hereof through no fault of the terminating party.

b. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of notice.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at the time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the State of Tennessee.

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successor, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor CONSULTANT may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

I. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or CONSULTANT to any Contractor,

Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

A. This item is Deleted.

B. In the event of any dispute between the parties arising out of or in connection with the Agreement, the parties agree that the sole proper forum for any cause of action shall be in the Court of Williamson County, Tennessee, and the parties agree to subject themselves to the personal jurisdiction of the Court of Williamson County, Tennessee.

6.10 Hazardous Environmental Condition

A. OWNER represents to CONSULTANT that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to CONSULTANT the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, CONSULTANT shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that CONSULTANT'S scope of services does not include any services related to a Hazardous Environmental Condition. In the event CONSULTANT or any other party encounters a Hazardous Environmental Condition, CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with the applicable Laws and Regulations.

E. OWNER acknowledges that CONSULTANT is performing professional services for OWNER and that

CONSULTANT is not and shall not be required to become an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with CONSULTANT'S activities under this Agreement.

F. If CONSULTANT'S services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify CONSULTANT'S terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless OWNER, OWNER'S officers, directors, partners, and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and professionals, and all court costs) caused solely by the negligent acts or omissions of CONSULTANT or CONSULTANT'S officers, directors, partners, employees, and CONSULTANT'S consultants in the performance and furnishing of CONSULTANT'S services under this Agreement.

2. This item is Deleted.

3. To the fullest extent permitted by law, CONSULTANT'S total liability to OWNER and anyone claiming by, through or under OWNER for any cost, loss, or damages caused in part by the negligence of CONSULTANT and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that CONSULTANT'S negligence bears to the total negligence of OWNER, CONSULTANT, and all other negligent entities and individuals.

4. This item is Deleted.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONSULTANT, who agrees that the Agreement shall be reformed to replace such stricken provision or party thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 – DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Documents.

2. *Additional Services* – The services to be performed for or furnished to OWNER by CONSULTANT in accordance with Exhibit A of this Agreement.

3. *Agreement* – This "Standard Form of Agreement between OWNER and CONSULTANT for Professional Services".

4. *Application for Payment* – The form acceptable to CONSULTANT which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Document.

5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services* – The services to be performed for or furnished to OWNER by CONSULTANT in accordance with Exhibit A of this Agreement.

7. *Bid* – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order* – A document recommended by CONSULTANT, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the work.

11. *Construction Contract* – The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost* – The cost to OWNER of those portions of the entire Project designed or specified by CONSULTANT. Construction Cost does not include costs of services of CONSULTANT or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER'S costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others.

13. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and

CONSULTANT'S written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price* – The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times* – The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by CONSULTANT'S written recommendation of final payment.

16. *Contractor* – An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period* – The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CONSULTANT'S recommendations of final payment.

19. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by CONSULTANT to OWNER pursuant to this Agreement.

20. *Drawings* – That part of the Contract Documents prepared or approved by CONSULTANT which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement* – The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is

indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *Consultant's Sub-Consultants* – Individuals or entities having a contract with CONSULTANT to furnish services with respect to this Project as CONSULTANT'S independent professional associates, consultants, subcontractors, or vendors. The term CONSULTANT includes Sub-Consultants.

24. *Field Order* – A written order issued by CONSULTANT which directs minor changes in the Work but does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions* – The part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the solid Waste Disposal Act (42 USC § 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

29. *PCB's* – Polychlorinated biphenyls.

30. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid as standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC § 2011 *et seq.*) as amended from time to time.

32. *Record Drawings* – The Drawings as issued for construction on which the CONSULTANT, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which CONSULTANT considers significant based on record documents furnished by Contractor to CONSULTANT and which were annotated by Contractor to show changes made during construction.

33. *Resident Project Representative* – The authorized representative of CONSULTANT, if any, assigned to assist

CONSULTANT at the Site during the Construction Phase. The Resident Project Representative will be CONSULTANT'S agent or employee and under CONSULTANT'S supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit A.

34. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

35. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to CONSULTANT to illustrate some portions of the Work.

36. *Site* – Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated to use of Contractor.

37. *Specifications* – The part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

38. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of CONSULTANT, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

39. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements the General Conditions.

40. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of CONSULTANT or other design professionals and consultants, cost of land, rights-of-way, or other compensation for damages to properties, or OWNER'S cost for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit A of this Agreement.

41. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided

under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

42. *Work Change Directive* – A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the CONSULTANT, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price of the Contract Times but is evidenced that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

43. *Written Amendment* – A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, “CONSULTANT’S Proposal of Services”
- B. Exhibit B, “CONSULTANT’S Certificate of Liability Insurance”
- C. Exhibit C, “CONSULTANT’S E-Verify Affidavit”

8.02 Total Agreement

A. This Agreement consisting of pages 1 to 9 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

City of Franklin, Tennessee

By: Eric Stuckey

Signed: *E. Stuckey*

Title: City Administrator

Date Signed: 1-31-2014

Address for giving notices:

109 Third Avenue South

Franklin, Tennessee, 37064

Designated Representative (paragraph 6.02.A):

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

CONSULTANT:

Tusa Consulting Services II, LLC

By: C. Allen Cutts

Signed: *C. Allen Cutts*

Title: Partner

Date Signed: 1/30/14

Address for giving notices:

3225 Harvester Woods Road

Decatur, GA 30034

Designated Representative (paragraph 6.02.A):

C. Allen Cutts (Tusa Consulting Services II, LLC.)

Title: Partner

Phone Number: (404) 288-2298

Facsimile Number: (985) 249-6468

E-Mail Address: allen.cutts@tusaconsulting.com

APPROVED AS TO FORM
by City Attorney's Office
By: *Shauna R. Billingsley*
Date: 2.3.14