



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #16  
FINANCE  
2-15-11

## MEMORANDUM

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February 10, 2011

**TO:** Board of Mayor and Aldermen

**FROM:** Eric Stuckey, City Administrator  
Fred Banner, MIT Director

**SUBJECT:** MIT Contractual Agreement for Programming Services

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider a contractual agreement with VACO for programming services.

### **Background**

The MIT Department needs Visual Basic.Net programming and Technical Writing services to complete our move to Hansen 8 for assets, community development reporting and billing and revenue services. Our schedule is to have the conversion completed for all applications by January 2012. The current version of Hansen we are using has been installed for six years. Our billing application was installed fifteen years ago.

MIT posted a job request in November for a Data Base Analysis with Visual Basic, SQL and C# skill sets. From the seventeen applications received, we interviewed three. None of the three applicants had the experience required in Visual Basic or C#.

During the past three years the two DBA's we had on staff have moved to other positions elsewhere. In discussions with other organizations, they are using consultants to fill their short term needs. We are asking to do the same.

### **Financial Impact**

A proposed contract for contractual services from VACO (local firm) is recommended to the Board of Mayor and Aldermen to use their services during the conversion from Hansen 7 to Hansen 8. The cost of services for the remainder of this year will be offset by the three previously approved and budgeted positions that have not been filled this year (DBA, Financial Application Manager and Enterprise Application Manager). Estimated cost of the proposed contract is \$70,000.

### **Recommendation**

Approval of the agreement with VACO is recommended.



Vaco, LLC  
Client Services Agreement  
COF Contract No. 2011-20

This agreement is entered into as of 2/4/11 by and between City of Franklin ("Client") and VACO, LLC ("Vaco").

**Terms and Conditions:** Client hereby contracts with Vaco for consulting services as detailed in addendum(s) to this agreement. Client and Vaco are each a ("Party") to this agreement and are collectively the ("Parties"). This agreement may only be modified or extended in writing signed by authorized representatives of the Parties. This agreement, along with attached addenda, is the entire agreement between the Parties concerning this subject matter and supersedes any prior or contemporaneous agreements or understandings regarding the same. All notices to a Party required under this agreement must be in writing to each Party's address.

1. **Services:**

(a). Vaco will provide consulting services, under the supervision and direction of Client, on a project basis according to Client needs. Specific work performed by project will be included as an addendum(s) to this agreement. The Parties may subsequently agree to add projects and/or work through addendum(s), without the necessity of entering into a new Client Services Agreement. The terms of this Client Services Agreement will control any such projects and/or work, unless and to the extent the Parties agree otherwise in a writing signed by both Parties.

(b). Any work product of Consultant resulting from the services shall be "work-for-hire" and shall belong to the Client. The Consultant shall not be deemed an employee of Client and shall not be entitled to benefits or privileges of Client's employees. Vaco acknowledges it is solely responsible for compensating the Consultant or Consultant's employer for the services he/she performs and will withhold such federal, state and local taxes and unemployment insurance as required by law. Client agrees to pay Vaco for such services at the rate(s) specified in addendum(s) to this agreement. Client agrees to approve and sign Consultant weekly time records within five (5) days of receipt. Approval of weekly time records will constitute Client's full acceptance of the services. Failure to sign or notify Vaco in writing of a deficiency within the five (5) day period will constitute Client's approval of these services. Invoicing will be weekly and payment is due to Vaco within thirty (30) days of invoicing. Any late invoicing by Vaco shall not affect Client's obligation to pay for services rendered.

2. **Warranty:** Vaco warrants that the services of Consultant will be provided utilizing reasonable care and skill in accordance with customary industry standards.

3. **Term/Termination:** The term of this agreement will commence as of the start date specified in the initial addendum(s) to this agreement. Each Party may terminate this agreement and subsequent addendums without cause upon thirty (30) days written notice to the other Party. Each Party may terminate this agreement with five (5) days written notice in the event that the other Party has breached any of the terms or conditions of this



agreement and such breach has not been cured within the notice period. Client agrees to pay Vaco for all fees and expenses incurred through the effective date of any termination. Upon expiration or termination of this agreement for any reason, Sections 1 – 4, 6 - 8 and 11 will survive and the Parties rights and responsibilities hereunder shall remain in full force and effect. If a change of consultant is required due to circumstances beyond the control of Vaco, Vaco will make every reasonable effort to replace said consultant.

4. **Client Responsibilities:** Client will provide all technical data, information and resources necessary for Consultant's performance under this agreement, including workspace, office supplies and reasonable access to information.
5. **Compliance with laws:** The Parties will comply with all applicable laws, rules, orders, statutes and regulations, including those laws regarding non-discrimination in employment, occupational health and safety, environmental protection, and fair labor standards that may govern them.
6. **Non-Solicitation:** Except as provided by this Agreement, Client and its divisions and affiliates will not hire or offer employment to, or otherwise directly or indirectly use the services of, on a full-time, part-time or temporary basis,
  - a. any Consultant who has provided services for Client hereunder until the expiration of one (1) year after termination of the most recent assignment, or
  - b. any Consultant or prospective Consultant who has been introduced to, recommended to or interviewed by Client through the services of Vaco, until the expiration of one (1) year after the latest of such interview, discussion, or presentation of Consultant.

In the event that Client provides the services of, or introduces any Consultant to, any third party during the course of any assignment, Client shall obtain the agreement of such third party to the foregoing restrictions and shall be responsible to Vaco for any breach thereof by it or the third party.

If Client (or its divisions or affiliates) breaches this section it will pay Vaco as a conversion fee an amount equal to 25% of the gross annual compensation (including salary plus any guaranteed bonus) of the Consultant at issue, if the Consultant is an employee of, or offered employment by, Client (or its divisions or affiliates) or a third party to whom Client introduced the Consultant. If the Client breaches this section by having Consultant provide services to the Client (or its divisions or affiliates) or relevant third party in a capacity other than that of employee (i.e., on a consulting/hourly basis), then Client will pay Vaco an amount equal to the Consultant's last Vaco bill rate multiplied by the total number of hours worked by the Consultant for the Client (or its divisions or affiliates) or relevant third party in the twelve (12) month period following the breach of this section.

7. **Insurance:** The Parties each agree to carry and maintain in force during the term



of this agreement insurance coverage as follows: for Vaco, Workers' Compensation – Statutory with limits as prescribed by applicable state law and Employer's Liability with limits of \$2,000,000 per accident and \$4,000,000 in the aggregate, these limits may be provided in conjunction with an umbrella policy; for Client, insurance coverage will be maintained sufficient to provide for the limits established by the Tennessee Governmental Tort Liability Act.

- 8. **Force Majeure:** Neither Party will be held liable nor deemed to be in default of this agreement if it is prevented from carrying out its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, any act of God, fire, natural disaster, accident, war, acts of war (declared or not), insurrections, riots, civil commotion, strikes, lockouts or any other labor disturbances, shortages in the marketplace, or acts, omissions or delays in acting by any governmental authority or the other Party.

The Parties represent that they have full corporate power and authority to execute this agreement and to perform their obligations hereunder, and that the person whose signature appears below is fully authorized to enter into this agreement on behalf of the company.

Client: City of Franklin

Title: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

**APPROVED AS TO FORM**  
**by City Attorney's Office**  
By: Kristen Alcom  
Date: 2/4/11

Vaco, LLC

By: Alex Naddell

Printed Name: Alex Naddell



**ADDENDUM A TO CLIENT SERVICES AGREEMENT  
WORK SCHEDULE**

**Client:** City of Franklin  
**Client Location:**

**Description of Work to be Performed:**

**Client Project Manager:**  
**Client Contact Information:**

**Vaco Consultant Resources:**

Consultant Name	Hourly Bill Rate	OT Bill Rate	Estimated Start Date	Estimated End Date

**Conversion Fee:**

The conversion fee for the consultants listed above, for this project, shall be as follows:  
If Client, or any of its related companies (divisions, subsidiaries, parents, etc.) elects to hire or otherwise directly or indirectly use the services of, on a full-time, part-time or temporary basis, any person assigned by Vaco to perform services to Client pursuant to this agreement, Client agrees to pay Vaco a conversion fee of 25% of such person's annual compensation (salary plus any guaranteed bonus). This fee is payable for any person who has performed work for Client through Vaco within one (1) year after the termination of the person's assignment. In the event that Client provides the services of, or introduces any Consultant to, any third party during the course of any assignment, Client shall obtain the agreement of such third party to the foregoing and shall be responsible to Vaco for any breach thereof. This document is not intended to replace the Client Services Agreement between the parties. By signing this agreement, Client agrees to all Terms and Conditions set forth in the Client Services Agreement.

**Client:** City of Franklin

**Title:** \_\_\_\_\_

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

**Printed Name:** \_\_\_\_\_

## Addendum B

COF Contract #2011-0020

This addendum shall modify and supersede the contract titled Vaco, LLC Client Services Agreement, (the "Agreement") and entered into on the \_\_\_ day of 2/4, 2011, by the City of Franklin, Tennessee ("City") and Vaco, LLC. ("Vendor") and together with same shall constitute the entire agreement ("Contract"). Acceptance of payment as stated in the Contract constitutes Vendor's acceptance of all terms and conditions stated herein.

### Standard Terms and Conditions

1. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor 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 Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
2. 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 Vendor to limit its liability shall be void and unenforceable.
3. No Taxes, No Interest Payments. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
4. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract 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. Vendor agrees to waive any convenience fee for the use of payment by purchasing card.
5. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum 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 Addendum.
6. Entire Agreement. This Addendum, including any contract, agreement or other document which this Addendum may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Addendum. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this Addendum by section number and signed by an authorized representative of each party.
7. Additions/Modifications. If seeking any addition or modification to the Contract, 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 Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be

**Addendum B**  
COF Contract #2011-0020

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 Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

8. Breach. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract 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.
9. Applicable Law: Choice of Forum/Venue. The Contract constitute the entire agreement and are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
10. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.

<p><b>APPROVED AS TO FORM</b> by City Attorney's Office</p> <p>By: <u>Kristen Lora</u></p> <p>Date: <u>2/4/11</u></p>
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