

**AMENDMENT NO. 6 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 _____, 2015, 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 Sixty Three Thousand and No/100 Dollars (\$63,000.00) for construction administration services and assumed a 240 calendar days construction project; and

WHEREAS, the Board of Mayor and Aldermen (BOMA) approved Amendment No. 1 on April 24, 2012, in the not to exceed total amount of Fifteen Thousand 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, the BOMA approved Amendment No. 3 on June 25, 2013, in the not to exceed total amount of Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) for additional Project Coordination and Evaluation of Dewatered Material; and

WHEREAS, the BOMA approved Amendment No. 4 on October 8, 2013, in the not to exceed total amount of Twenty-Six Thousand Six Hundred and No/100 Dollars (\$26,600.00) due to the extended length of the construction project and a final bathymetric survey of Jackson Lake; and

WHEREAS, the BOMA approved Amendment No. 5 on May 13, 2014, in the not to exceed total amount of Sixty-Three Thousand Eight Hundred Forty

and No/100 Dollars (\$63,840.00) due to the lawsuit filed by the subcontractor and disputed amount removed from Jackson 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 Fifteen Thousand Four Hundred Ten and No/100 Dollars (\$15,410.00).

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 dated March 22, 2011.
3. City's Responsibilities and Duties. City shall pay Consultant in an amount not to exceed **Fifteen Thousand Four Hundred Ten and No/100 Dollars (15,410.00)** 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, Amendment No 2 dated September 11, 2012, Amendment No 3 dated June 25, 2013, Amendment No 4 dated October 8, 2013, and Amendment No 5 dated May 13, 2014 are unchanged and remain in full force and effect.

The Board of Mayor and Aldermen approved this agreement on the _____ day of _____ 2015.

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