

**AMENDMENT NO. 5 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE WATER TREATMENT PLANT MODIFICATIONS
COF Contract No. 2012-0183**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 201_, by and between the **City of Franklin, Tennessee** ("City") and **Smith Seckman Reid, Inc. (SSR)** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") (COF Contract No. 2012-0183) entitled City of Franklin, Tennessee Professional Services Agreement, Water Treatment Plant Modifications ("Project"), dated the 27th day of November, 2012; and

WHEREAS, the City approved Amendment No 1 to the Consultant's Professional Services Agreement (COF Contract No 2012-0183) on June 25, 2013, for the engineering design services for an upgrade to the Raw Water Intake and Pump Station for the Water Treatment Plant; and

WHEREAS, the City approved Amendment No. 2 to the Consultant's Professional Services Agreement (COF Contract 2012-0183) on January 14, 2014, for the design, bid and installation of the interim Ultraviolet (UV) disinfection treatment upgrade to meet Environmental Protections Agency's (EPA) imposed deadline of September 30, 2014, for adherence EPA's Long Term Surface Treatment Rule (LT2 Rule); and

WHEREAS, the City approved Amendment No. 3 to the Consultant's Professional Services Agreement (COF Contract 2012-0183) on May 4, 2015, for the preselection process of the hollow fiber membrane filtration system (Membrane) and the design efforts needed for the inclusion of other alternative treatment solutions, such as the Advanced Oxidation Process (AOP), selected by staff to better enhance the capabilities upgrade of the Water Treatment Plant; and

WHEREAS, the City approved Amendment No. 4 to the Consultant's Professional Services Agreement (COF Contract 2012-0183) on October 27, 2015, for the Consultant's Construction Administration (CA) and Resident Project Representative (RPR) Services during construction of the Water Treatment Plant; and

WHEREAS, the City and Consultant realize the need for additional engineering services related to construction services support to fully complete the Project's final construction; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services for the Water Treatment Modifications Project, as described in Attachment A dated October 30, 2017, in the amount of **NINETY-THREE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$93,750.00)**; and

WHEREAS, the City has reviewed the Proposal and desires to enter into an amendment to the Agreement to include the final design as stated above for the Project as proposed by the Consultant.

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. The Consultant shall perform the work as proposed in the Scope as found in the October 30, 2017, letter of proposal (**Attachment A**) which includes the Scope of Services for this Amendment. Attachment A shall be considered as an integral part hereof.
3. City's Responsibilities and Duties. The City shall pay the Consultant in an amount not to exceed **NINETY-THREE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$93,750.00)** for the additional services as described in Attachment A.

The City reserves the right to issue any payments jointly to the Consultant and Sub-Consultant when the City receives information that the Consultant has not paid its Sub-Consultant.

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 November 27, 2012, and its subsequent amendments, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

SMITH SECKMAN REID, INC.

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Tiffani M. Pope, Staff Attorney

October 30, 2017

Mrs. Michelle Hatcher – Director
Franklin Water Management Department
124 Lumber Drive
Franklin, Tennessee 37064

**Re: Franklin Water Treatment Plant Modifications
COF Contract Number: 2012-0183
CA/RPR Additional Services Request**

Dear Michelle,

Based upon the current construction schedule, we will exhaust the hourly fee ceiling established in our proposal dated July 21, 2015. Our proposal covered 26 months of construction administrative (CA) activities and 24 months of Resident Project Engineer (RPE) presence during this period. The project bid on August 4, 2015 and a Notice to Proceed was issued on October 26, 2015. November will mark the 25th *complete* month on site with an Engineer, and 28th month of CA activity.

Our billings to date have trailed below the budget established in our proposal, which allows us to extend our scope over a longer period than estimated initially. Based upon our estimation at this time, the budget remaining will cover our services through January 2018.

We believe we will exhaust our fee at some point in February 2018, and expect the need for our services to continue through the project close out period and record drawing production anticipated in late April. We estimate billing during the February and March Period to be no more than the average of the monthly billing amount over the past year which is just below \$37,500/month. Should the project be substantially complete in late March as anticipated, we would expect our billing to decrease to approximately half of this amount (\$18,750) in April 2018, which would be the last month of billing based upon the current schedule.

We are respectfully requesting to increase our fee ceiling fee by **\$93,750.00** for the continuation of our construction phase services at the rates established in our initial proposal.

We appreciate the opportunity to continue to serve to the City of Franklin. The adjusted fee ceiling will not be exceeded without prior approval by the City. If the City is in agreement with the terms of this fee increase, we will execute a formal amendment to our contract. If you have any questions or concerns regarding this request, please do not hesitate to call me at (615)460-0522.

Sincerely,

SMITH SECKMAN REID, INC.

A handwritten signature in blue ink, appearing to read 'A. Johnson', is written over the company name.

Andrew Johnson, P.E.

cc: Patricia McNeese - FWMD
JAG, KDM – SSR
File (7)