

**AMENDMENT NO. 4 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE FRANKLIN WASTEWATER RECLAMATION FACILITY
COF Contract No. 2013-0001**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2017, by and between the **City of Franklin, Tennessee** ("City") and **CDM Smith** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled City of Franklin, Tennessee Professional Services Agreement, Wastewater Reclamation Facility Modifications and Expansion Project (COF Contract No. 2013-0001), dated the 3rd day of March 2013, at a fee not to exceed \$2,967,150.00; and

WHEREAS, the City and Consultant modified the Agreement as approved by Amendment No. 1 to the Agreement dated May 27, 2014, at a fee not to exceed \$2,293,000.00; and

WHEREAS, the City and Consultant modified the Agreement as approved by Amendment No. 2 to the Agreement dated November 10, 2015, at a fee not to exceed \$740,500.00; and

WHEREAS, the City and Consultant modified the Agreement as approved by Amendment No. 3 to the Agreement dated August 8, 2016, at a fee not to exceed \$484,230.00; and

WHEREAS, during the final stages of the engineering (design) of the Project the Consultant and City staff determined that there is a need for a revision in the Scope of Services for the Agreement to add Task 1, Task 1A, Task 2, Task 3 and Task 4 as found in Attachment A, Amendment 4 Proposal (attached and made a part hereto); and

WHEREAS, the Consultant has presented to the City staff a summary of costs that breaks down the anticipated work effort for each Task (Table 1) as found in Attachment A; and has been reviewed by City staff and appears to be appropriate for the work required for the completion of the Tasks; and

WHEREAS, City staff feels the Task Values as present in Table 1 of Attachment A are appropriate for the anticipated work required for the Scope of Services revisions as presented in the Amendment of the Agreement.

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 April 19, 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 **FOUR HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$482,750.00)** for the additional Services as described in Attachment A for Task 1, Task 1A, Task 2, Task 3 and Task 4.

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 March 3, 2013, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The 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