

**AMENDMENT NO. 5 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 _____, 20__, 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, the City and Consultant modified the Agreement as approved by Amendment No. 4 to the Agreement dated August 8, 2017, at a fee not to exceed \$482,750.00.00

WHEREAS, during the bidding process 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 2, Task 3, Task 4, Task 5 and Task 6 as found in Attachment A, Amendment 5 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 March 1, 2018, 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 **EIGHT HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FIFTY AND NO/100 DOLLARS (\$839,350.00)** for the additional Services as described in Attachment A for Task 1, Task 2, Task 3, Task 4, Task 5 and Task 6.

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; Amendment No. 1 dated May 27, 2014; Amendment No. 2 dated November 10, 2015; Amendment No. 3 dated August 8, 2016; and Amendment No. 4 dated August 8, 2017 are unchanged and remain in full force and effect.

(Signatures on Page 4)

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:

Tiffani M. Pope, Staff Attorney

Proposed Amendment 5

Franklin Wastewater Reclamation Facility

Modifications and Expansion Project

1.0 Project Background

Bids were opened for the Franklin WRF improvements project on January 4, 2018. The three lowest bids were in the range of \$151, \$152 and \$153 million dollars. While the bids were very consistent, indicating that the documents did a good job of conveying the scope of work, the bids were significantly higher than the available funding. After the bids were reviewed, CDM Smith met with the City Water Management Department staff, the City Administrator, the Assistant Administrator and the City Attorney to review the bids and decide on how to proceed. A tentative plan for proceeding with redesign and rebid was established and was confirmed after interviews with bidders. The scope associated the City's decision to redesign and rebid is captured within this Amendment.

In addition to the above, the duration and breadth of the bidding services had to be expanded, impacting the cost of performing the bidding services. This proposal includes scope items for expansion of the bidding services scope, recovery of bidding advertisement costs, preparation of "interim conformed documents" to act as the base drawings for the rebid, services associated with rescoping of the construction to reduce cost, redesign, rebidding, and conforming the drawings after rebidding.

2.0 Scope

Task 1, Additional Bidding Services

This task is associated with the additional services and level of effort required of the CDM Smith management and design team during the bidding period (October 1, 2017 through January 4, 2018). The services provided by CDM Smith were significantly greater than what was anticipated during the initial scope of work development and exceeded the scope and budget established in our original 2012 proposal. As indicated below, the original proposal assumed that up to three addendums would be prepared during bidding.

"Prepare addenda during bidding to interpret, clarify, respond to inquiries and/or further define the Contract Documents. Addenda will be issued by ENGINEER. We assume that up to three addenda will be prepared."

CDM Smith prepared twelve total addendums; two of which simply extended the bid period; however, four of the addendums were extensive in nature, requiring hundreds of hours of management and technical time to address and resolve questions and comments provided by the bidders, support crafts and manufacturers. In particular, Addendums 8, 9, 10 and 12 were the most complex of the Addendums ranging in length from 93 pages to 324 pages. In total, over 900 pages of additional correspondence and clarifications were developed as part of the bid process by CDM Smith.

In addition to the 12 addendums, numerous conference calls and coordination sessions were required with both the City staff and equipment manufacturers during the 67 day extended bid period to address bid dates, schedule for substantial and final completion based on contractor feedback, Davis Bacon wage rates, and significant changes in the layout and process arrangement for the pre-selected Trojan UV disinfection equipment and the pre-dewatering screw press specification and requirements due to equipment changes since the time of selection over 4 years ago, as well as other minor issues.

Task 2, Advertisement for Bid Costs

CDM Smith paid for the placement of all required bid advertisements, per the City and SRF requirements, as part of the bidding process. Although assistance with the advertisement process was part of the original scope of work, no allocation for payment for these bid advertisements was included in our design services scope of work. CDM Smith coordinated all the bid advertisements and paid the advertisement costs due to the compressed schedule that both the City and CDM Smith team agreed was required for the bid process to meet internal deadlines. This subtask is the reimbursement to recover the actual advertising cost associated with the process which was \$10,420. Appropriate back-up will be provided with the invoice associated with the costs.

Task 3, Preparation of “Post Addenda Drawings and Specifications”

The bidders who participated in the initial bid spent hundreds of thousands of dollars in development of their bids. To recognize this investment and incentivize the original bidders to participate in the rebid, CDM Smith and the City decided to prepare the revised drawings and specifications in a way that would allow the previous bidders to easily see what changed. A first step in this process is to create base drawings that incorporate all of the changes made during the initial bidding. We refer to these documents as the “Interim Post Addenda Drawings and Specifications”. The proposed new changes will be made on top of these base drawings and marked to differentiate them to the bidders. The changes to the drawings will be identified by clouding, and the changes to the specifications will be identified by showing added text in a different font and showing deletions as strike throughs. It was assumed that the drawing set will consist of 564 drawings.

Task 4, Redesign Planning Effort

It was evident upon opening of the bids that the bids could not be accepted outright, as the difference between the bid prices and the available funding was too great to be accommodated within the City current finances. After the bid opening, CDM Smith worked with the City to arrive at a decision on the path forward. The following steps were taken to arrive at a plan:

- CDM Smith reviewed the bids and produced a draft bid tab, bid review matrix, and bid recommendation letter. This was performed under the bidding task.
- Bob Huguenard and Zack Daniel with CDM Smith met with the Water Management Department Director and Assistant Director, the City Administrator and Assistant City Administrator, and the City Attorney on January 9, 2018 to review bids, discuss the options for proceeding, and develop an initial path forward. The decision was made to proceed as if all bids would be rejected and the project would be rebid after design. CDM

Smith was asked to make contact with the contractors and attempt to set up calls with them to solicit input on cost reduction ideas and concurrently.

- CDM Smith proceeded accordingly. After discussions with a few of the contractors, CDM Smith reconvened with the parties identified above on January 19, 2018 to check in and verify that the group wanted to hold fast to the selected path. After revisiting the potential options, it was decided to proceed the rebid path in a design, bid, build manner, but to check in one more time.
- A final check in with the City occurred on February 6, 2018 (after completion of the scoping discussions with the City). The redesign, rebid, build path was confirmed.
- CDM Smith then finalized the bid review documents and prepared a letter notifying the bidders that all bids would be rejected, the project would be redesigned to incorporate cost reduction ideas, and the project would be rebid. These documents were taken before the Board of Mayor and Aldermen on February 13, 2018.

The planning for the redesign was performed in three steps: 1) soliciting and development of cost reduction ideas, 2) evaluation of ideas by CDM Smith, and 3) final decision making on ideas with the City. Soliciting and development of ideas included:

- Development of ideas by CDM Smith
- Conference calls with each of the prime bidders to solicit ideas
- Conference calls with one electrical contractor and one building mechanical contractors to solicit ideas.
- Various communications with vendors to solicit ideas

The meetings ranged from 1 to 3 hours in duration each. Notes were created for each meeting and each of the ideas was logged in a spreadsheet. A total of approximately 300 ideas were logged, with some being repeats from differing sources. Each of the ideas was then assigned to a CDM Smith technical lead for evaluation to provide input on potential savings, potential positive and negative impacts, the level of effort required to implement the idea, and our recommendation on whether to pursue the idea (i.e., implementation of Step 2).

At that point, CDM Smith held meetings with the City to review and make Go/No Go decisions on each idea. Three meeting were held on February 2nd, 5th and 6th, 2018 totaling about 16 hours for each attendee. A Go or No-Go designation was then assigned to each item and the details of each item were fleshed out, where applicable. Meeting notes are currently being finalized.

Task 5, Redesign

The scope for the redesign is described in the “Go” items on the spreadsheet in Attachment A. The redesign work began on February 7, 2018 at the City’s direction and a redesign kickoff coordination meeting was held with CDM Smith technical leads on February 14, 2018. It is assumed that at completion of the redesign four complete hard copies of the drawings will be created, one for the City, one for CDM Smith and two for the Tennessee State Revolving Fund (SRF). It is assumed that the project manager will meet with the City to review the revised

documents while the drawings and specifications are concurrently going through review and cross-check by CDM Smith Staff. Electronic drawings will be sent to the City prior to the meeting.

Upon receipt of input from the City the drawings and specifications will be finalized. The finalized drawings will be signed and sealed and used for bidding. Concurrently, the drawings and specifications will be transmitted to the Tennessee Department of Environment and Conservation (TDEC) via the Tennessee State Revolving Fund (SRF) for their review and approval. We have assumed that this review and approval can occur concurrent with bidding.

Task 6, Re-Bidding

CDM Smith will provide the following services during bidding:

- Administration of document distribution. CDM Smith will be the point of contact for bid document distribution of documents and will keep a list of document holders and transmit any addendums to the document holders. Documents will be distributed to plan holders in electronic format only (Adobe Acrobat pdf). Plan holders will include plan rooms as well.
- Pre-bid meeting. CDM Smith will conduct the pre-bid meeting and will produce and distribute the meeting minutes.
- Day to day administration of the bid process. CDM Smith will field calls and requests for information and coordinate the bid process.
- Preparation of addenda. CDM Smith will prepare up to three addenda. We have budgeted a total of 120 hours for this subtask.
- Bid Opening and Review of bids. CDM Smith will attend the bid opening and will review the bids, create a bid tab, and create a tabulation of exceptions for each bidder. CDM Smith will then prepare a recommendation letter that provides a summary of the bid evaluation and recommendations.
- CDM Smith will arrange for advertisement in the same newspapers as the original bid. It is assumed that the cost will be no greater than \$11,000.

3.0 Time of Completion/Schedule

The proposed schedule is provided in Figure 1

4.0 Compensation and Payment

The work in this amendment will be performed for an additional not-to-exceed budget of \$839,350.00. A breakdown of the cost for this amendment is provided in Table 1. The work will be performed on a billing rate basis in accordance with the rates established in the original contract.

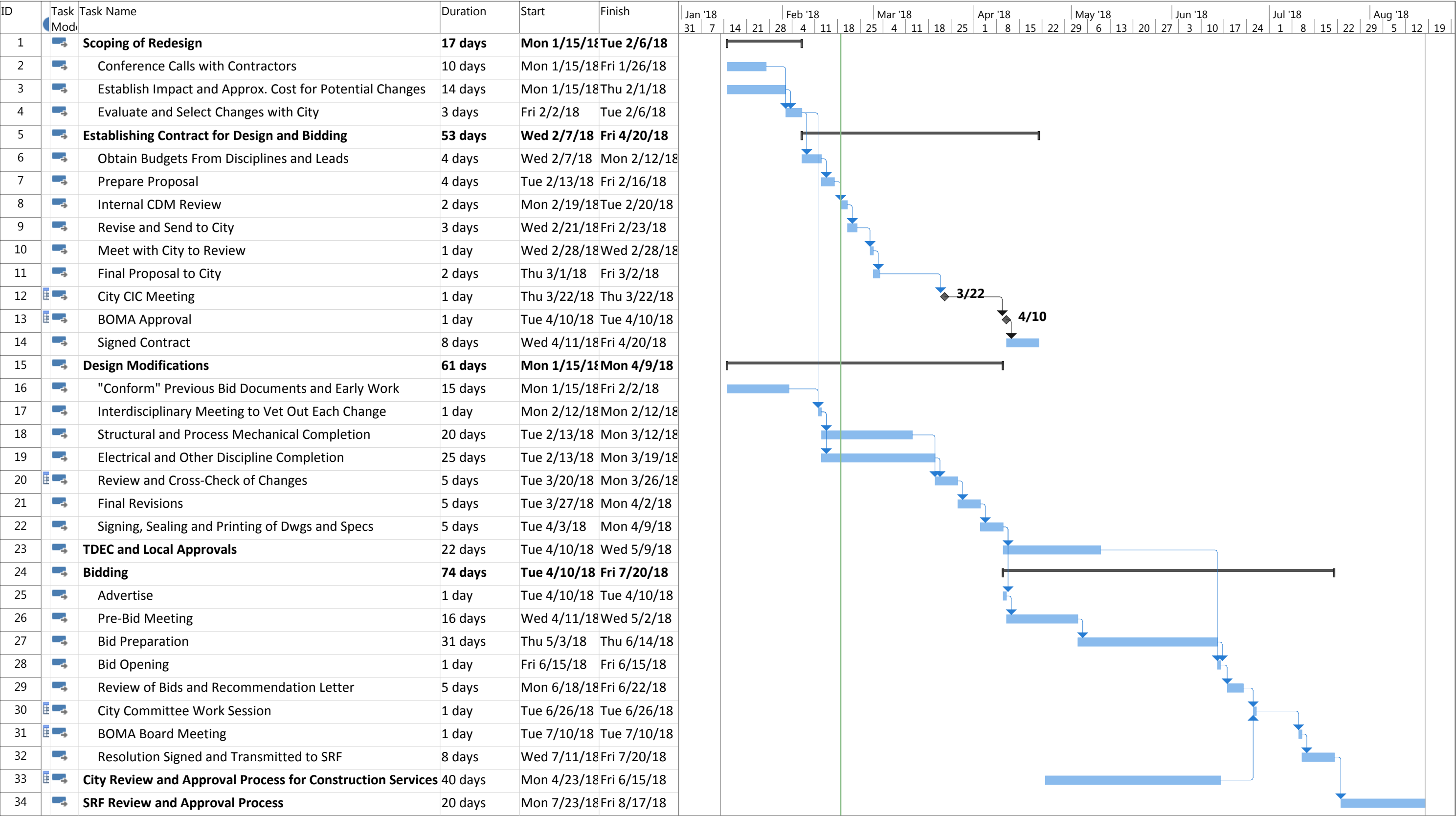


Figure 1
Franklin WRF Redesign/Rebid
Last Updated: February 19, 201

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

Manual Progress

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Table 1
Summary Spreadsheet
Franklin WRF Amendment 5

	Task No.	1	2	3	4	5	6	
LABOR	Rate	Additional Bidding Services	Advertisement for Bid Costs	Preparation of "Post Addenda Drawings and Specifications"	Redesign Planning Effort	Redesign	Re-Bidding	Totals
Officer	\$220	4	0	0	24	22	16	66
Project Manager	\$195	0	0	0	127	178	128	433
Senior Technical Specialist	\$195	187	0	35	107	352	192	873
Technical Specialist	\$180	238	0	37	25	342	96	738
Senior Eng./Sci/SRF Specialist	\$165	145	0	6	22	134	32	339
Engineer/Scientist	\$145	0	0	5	0	264	120	389
Junior Engineer/Scientist	\$120	119	0	65	200	354	160	898
Senior Designer	\$130	26	0	182	0	226	32	466
Senior Construction Specialist	\$195	0	0	0	0	0	0	0
Construction Esimator	\$160	0	0	0	0	0	0	0
Designer/Drafter/Technician	\$90	34	0	69	0	224	32	359
Administration	\$85	68	0	8	2	84	68	230
TOTAL HOURS		821	0	407	507	2180	876	4791
TOTAL DOLLARS		\$130,610	\$0	\$53,550	\$83,210	\$329,300	\$137,900	\$734,570
OTHER DIRECT COSTS								
Car Mileage		\$0	\$0	\$0	\$576	\$576	\$576	\$1,728
Rental Car		\$0	\$0	\$0	\$0	\$0	\$0	\$0
Air Fare		\$0	\$0	\$0	\$0	\$0	\$0	\$0
Meals		\$0	\$0	\$0	\$180	\$180	\$180	\$540
Hotel		\$0	\$0	\$0	\$284	\$284	\$284	\$852
Telephone		\$0	\$0	\$0	\$0	\$0	\$0	\$0
Document Reproduction		\$0	\$0	\$850	\$100	\$8,600	\$500	\$10,050
Shipping		\$0	\$0	\$0	\$0	\$800	\$200	\$1,000
Advertisement Costs		\$0	\$10,420	\$0	\$0	\$0	\$11,000	\$21,420
TOTAL ODCs Plus 0% Markup		\$0	\$10,420	\$850	\$1,140	\$10,440	\$12,740	\$35,590
OUTSIDE PROFESSIONALS								
CDM India		\$0	\$0	\$0	\$0	\$1,400	\$0	\$1,400
Civil Infrastructure Associates		\$9,150	\$0	\$7,500	\$5,000	\$34,850	\$5,000	\$61,500
		\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal OPs		\$9,150	\$0	\$7,500	\$5,000	\$36,250	\$5,000	\$62,900
OPs with 10% Markup	10%	\$10,065	\$0	\$8,250	\$5,500	\$39,875	\$5,500	\$69,190
TOTALS		\$140,675	\$10,420	\$62,650	\$89,850	\$379,615	\$156,140	\$839,350