

**AMENDMENT NO. 5 TO
PROFESSIONAL SERVICES AGREEMENT
FOR MACK HATCHER EXTENSION PROJECT [SR-397 MACK HATCHER PARKWAY WEST, FROM
SOUTH OF SR-96, WEST FRANKLIN TO EAST OF SR-106 (US-431) NORTH OF FRANKLIN
WILLIAMSON COUNTY]**

COF Contract No. 2013-0034

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2018, by and between the **City of Franklin, Tennessee** ("City") and **CDM Smith, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled Mack Hatcher Extension Project [SR-397 Mack Hatcher Parkway West, From South of SR-96, West Franklin to East of SR-106 (US-431) North of Franklin Williamson County] (COF Contract No. 2013-0034), dated the 23rd day of April 2013; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of **TWO HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED and No/100 Dollars (\$277,500.00)**; and

WHEREAS, the City and the Consultant amended this agreement through the following amendments:

- Amendment No. 1, dated November 25, 2014 (\$355,056.00)
- Amendment No. 2, dated February 9, 2016 (\$81,607.00)
- Amendment No. 3, dated April 11, 2017 (\$92,600.92)
- Amendment No. 4, dated September 12, 2017 (\$432,600.00)

WHEREAS, the City and Consultant realize the need for additional design work for the Project due to circumstances beyond the control of the Consultant; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services, as described in Exhibit A dated March 23, 2018, in the amount of **THIRTY-TWO THOUSAND SIX HUNDRED FORTY AND NO/100 DOLLARS (\$32,640.00)**; and

WHEREAS, the City has reviewed the Proposal and desires to enter into an agreement for the Project as proposed.

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 the work as proposed in their March 23, 2018, letter of proposal (**Exhibit A**) which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the work as described in Exhibit A an amount not to exceed **THIRTY-TWO THOUSAND SIX HUNDRED FORRTY AND NO/100 DOLLARS (\$32,640.00).**

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 April 23, 2013, Amendment No. 1 dated November 25, 2014: Amendment No. 2 dated February 9, 2016: Amendment No. 3 dated April 11, 2017: and Amendment No. 4 dated September 12, 2017 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, 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



210 25th Avenue North, Suite 1102
Nashville, Tennessee 37203
tel: 615-320-3161
fax: 615-320-6560

March 23, 2018

Mr. Paul Holzen
City of Franklin
109 3rd Ave. S.
Nashville, TN 37064

RE: STP-HPP-397(10), PIN 101454.01
SR-397 (Mack Hatcher Parkway)
From West of SR-96 to East of SR-106
Franklin, Williamson County

Dear Mr. Holzen:

We are pleased to submit this scope of work and associated fee estimate for the additional work as approved by TDOT staff on the above referenced project. This additional work results from requests by TDOT to revise the project plans for Right of Way.

In summary, this work includes the revisions to the right-of-way plans, associated legal description updates, and other right of way issues as discussed with TDOT in the December 15, 2017 meeting. We anticipate one right of way revision and associated letting revision submittal to TDOT, which are included in this scope of work. This estimate also includes a partial reimbursement for lighting design, performed at request of TDOT during the construction plans review process, which was not anticipated with the previous revision scope.

A more detailed description of the additional work can be found in the Project Scope (Exhibit A).

The total work order request is for **\$32,640.00**. In summary, the requested estimate is distributed as follows:

Tasks	Fees
Portfolio development and re-submittal	\$3,480.00
Roadway lighting fixture changes and quantity update	\$6,810.00
Plans updates for tract 9 revisions	\$22,350.00
Total	\$32,640.00

CDM Smith appreciates the opportunity to continue to support the design and future construction of the Mack Hatcher extension and provide these design services to the City of Franklin and TDOT. If you have any questions about this proposal, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Brandie C. Cookston".

Brandie C. Cookston, PE, CPESC, CPSWQ, ENV-SP
Client Service Leader
CDM Smith Inc.





cc: Zack Daniel – CDM Smith
Jeff Mize – CDM Smith
Nathan Long – Amec Foster Wheeler
Jonathan Marston – City of Franklin

Attachments: Exhibit A – Project Scope and Fee

Exhibit A Project Scope and Fee

STP-HPP-397(10), PIN 101454.01
SR-397 (Mack Hatcher Parkway)
From West of SR-96 to East of SR-106
Williamson County

March 23, 2018

This scope of services for additional work on the above referenced project as requested by TDOT. The tasks outlined below are in addition to the work included in the original scope of work and previous supplements.

This scope includes the revisions to the right-of-way plans, associated legal description updates, and lighting revisions (quantities and fixture changes).

- CDM Smith will perform right of way plans revisions to Tract 9 as prescribed by TDOT staff in the project meeting on December 15, 2017, limited to the following items:
 - Addition of ROW commitments sheet
 - Evaluation of grading on Tract 9 for future use
 - Change driveway access right of way from permanent to temporary (construction).
 - Legal Descriptions were revised accordingly for the listed plans revisions.
- Lighting updates include fixture changes and associated quantity updates (included in construction plans submission).
- CDM Smith anticipates one additional right of way revision and has included anticipated time associated with this revision and coordination required.
- CDM Smith anticipates one additional portfolio submittal for the updates listed.

The project fee will be distributed as follows:

Tasks	Fees
Portfolio development and re-submittal	\$3,480.00
Roadway lighting fixture changes and quantity update	\$6,810.00
Plans updates for tract 9 revisions	\$22,350.00
Total	\$32,640.00

The total amount of \$32,640.00 will be invoiced in accordance with the pre-approved billing rate contract. See attached TDOT approved hourly estimates for the required revisions.

3/2/2018

TDOT approved fee
estimate

**EXHIBIT A
DESIGN
FEE ESTIMATE**

**REGION 3
WILLIAMSON COUNTY
STP-HPP-397(10), PIN 101454.01
SR-397 (Mack Hatcher Parkway)
From SR-96 to SR-106**

Tasks	HOURS PER PERSONNEL CLASS				
	Proj. Mgr.	Proj Eng	Engineer	CAD Tech	CAD Drafter
Portfolio development and resubmittal	4	8	4	8	
Roadway lighting fixture changes and quantity update	4	16	12	16	
Plans updates for Tract 9 revisions	24	20	60	60	
HOURS PER CLASSIFICATION	32	44	76	84	
MANDAYS	4	5.5	9.5	10.5	
TOTAL HOURS	236				
TOTAL DAYS	29.5				

DIRECT (LABOR)	RATE		HOURS		LABOR
Project Manager	\$ 58.00	x	32	=	\$ 1,856.00
Project Engineer	\$ 56.00	x	44	=	\$ 2,464.00
Engineer/Senior Designer	\$ 45.00	x	76	=	\$ 3,420.00
CAD Tech	\$ 35.00	x	84	=	\$ 2,940.00
CAD Drafter	\$ 25.00	x		=	\$ -
LABOR =					\$ 10,680.00

OVERHEAD (DL x 1.76)					
	\$ 10,680.00		X	176.30%	\$ 18,828.84

FEE (DL x 2.35 x 12.5%)						
\$	10,680.00	X	2.35	X	12.5%	\$ 3,137.25

DIRECT EXPENSES					
Mileage			X	0.470	\$ -
Meals			X		\$ -
Lodging			X		\$ -
Printing (Half-size Bond)			X	0.25	\$ -
Lodging			X	142.61	\$ -
Per Diem			X	49.5	\$ -
Postage/Shipping					\$ -
DIRECT EXPENSES =					\$ -

FINAL DESIGN = \$ 32,646.09