

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE WATER RECLAMATION FACILITY  
NUTRIENT OPTIMIZATION PLAN  
COF Contract No. 2016-0232**

**THIS AMENDMENT** is made and entered into on this the 8<sup>th</sup> day of August, 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, Water Reclamation Facility Nutrient Optimization Plan Project (COF Contract No. 2016-0232), dated the 8th day of August, 2016, at a fee not to exceed \$15,000.00; 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 as found in Attachment A, Amendment 1 Proposal (attached and made a part hereto); and

**WHEREAS**, City staff feels the cost as submitted by the Consultant for the proposed work is appropriate for the anticipated effort required for the Scope of Services revisions as presented in the Amendment of the Agreement; and

**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 3, 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 **SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00)** 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.

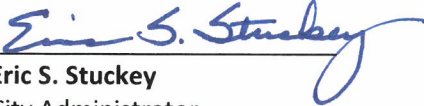
All other provisions of the Agreement dated August 8, 2016, are unchanged and remain in full force and effect.

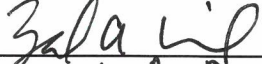
(Signatures on next page)

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

CDM Smith

By:   
Eric S. Stuckey  
City Administrator  
Date: 8-15-2017

By:   
Print: Zack A. Daniel  
Title: Associate  
Date: August 10, 2017

Approved as to form:

  
Kristen L. Corn, Assistant City Attorney



Parkview Towers  
210 25<sup>th</sup> Avenue North, Suite 1102  
Nashville, Tennessee 37203  
tel: 615-771-2466  
fax: 615-778-9733

April 3, 2017

Mr. Mark Hilty  
Assistant City Administrator for Public Works  
City of Franklin  
109 3<sup>rd</sup> Avenue South  
Franklin, Tennessee 37064

Subject: Nutrient Optimization Plan - Franklin Water Reclamation Facility  
Amendment No. 1 Proposal Request

Dear Mark:

As you are aware, the overall effort and accompanying cost for the work associated with the Nutrient Optimization Plan has exceeded the original contract upper limit of \$15,000. A more in-depth treatment of the subject matter was performed by CDM Smith to produce a plan that is effective and executable by the plant operations staff, while meeting the intent and requirements of the NPDES permit. This additional effort resulted in minimal additional costs to complete the plan. The current expenditures are approximately \$20,000, and we expect some minor modifications to be necessary after receipt of final comments from the City. Based on the assumption that an additional \$2,000 will be required to update and complete the optimization plan once review comments are received, the final cost would be \$22,000. Therefore, we request that the upper limit be increased by \$7,000 to the estimated \$22,000 plan completion cost.

Please let Zack or I know if you have any questions or would like to discuss this request or the optimization plan in more detail. We appreciate this opportunity to continue our work with the City of Franklin and to support you all for the development of the Nutrient Optimization Plan.

Very truly yours,

Robert P. Huguenard  
Senior Project Manager  
CDM Smith

Enclosure

cc: Michelle Hatcher, City of Franklin  
Zack Daniel, CDM Smith  
Jennifer Osgood, CDM Smith

