

**CITY COUNCIL MEETING**

**AGENDA ITEM III**



CITY OF FRANKLIN  
COUNCIL AGENDA REPORT

January 7, 2013

**From:** Holly Burbank, City Clerk/Tax Collector *Auley*  
**Subject:** Approve 2013 Contract between City of Franklin and Jane Sanders Searches

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**Recommended Motion:**

Councilor moves: "I move that the Franklin City Council approve the 2013 contract between the City of Franklin and Jane Sanders Searches.

**Discussion:**

As part of the annual Lien and Deed Process in the Tax Collector Office, and as required by NH State Law, Mortgagee Searches must be done on each property before they are brought forward for lien and deed for the purpose of notifying Mortgage Holders of the Impending Tax Lien or Impending Tax Deed.

There are approximately 275 searches that must be completed each year.

These searches must begin on February 12<sup>th</sup> to remain within the NH State Guidelines for notifying mortgage holders.

**Fiscal Impact:** As a repeat client of Jane Sanders Searches, she will be dropping her per parcel rate from \$12.00 to \$8.38 (a savings of \$3.62 per search), and has also dropped her cap on the invoice from \$3700 to \$2406.46 (a savings of \$1293.54).

**Alternatives:** Find new Search Company with risk of increased per search fee.

**Attachments/Exhibits:**

Contract

## Contract with Independent Contractor with Confidentiality Agreement

Independent Contractor agreement made on \_\_\_\_\_ (*date*), between Jane Sanders d/b/a Jane Sanders Searches (*Sanders*) of P. O. Box 509, Durham, NH 03824, referred to herein as *Sanders* and City of Franklin (*Franklin*), an incorporated city and existing under the laws of the State of New Hampshire, with its principal office located at 316 Central St., Franklin, NH 03235 (*street address, city, county, state, zip code*), referred to herein as *Franklin*.

Whereas, *Franklin* operates at the address set forth above, and *Franklin* desires to have the following services performed in order to comply with New Hampshire Chapter 80 laws relative to identifying mortgagees for the purpose of notification of liens and impending deeding to said *Franklin* and

Whereas, *Sanders* agrees to perform these services for *Franklin* under the terms and conditions set forth in this Contract.

Now, therefore, for and in consideration of the mutual covenants contained in this agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. Description of Work

The work to be performed by *Sanders* includes all services generally performed by *Sanders* in *Sanders's* usual line of business, including, but not limited to, the following: searches, by property owner, of indices of the County Registry of Deeds and ~~Uniform Commercial Code documents on file at the New Hampshire Secretary of State's office.~~ *Sanders* agrees to provide a written report to *Franklin* within thirty (30) days of receipt of the list of property searches to be performed. *Franklin* shall provide said list within seven (7) days of the execution of new liens or sixty (60) days prior to the deadline for mailing notification of impending deed notices to potentially identified mortgagees. *Sanders* shall make every effort to provide said report to *Franklin* as soon as possible so that the deadlines for notification can be met.

### 2. Payment

*Franklin* will pay *Sanders* \$8.38 per search or an amount not to exceed the amount of \$2,406.46 for the work to be performed under this contract. Payment is expected to be made to the *Sanders* at the completion of the work described in item 1 above.

### 3. Relationship of Parties

The parties intend that an independent contractor-Franklin relationship will be created by this Contract. *Franklin* is interested only in the results to be achieved, and the conduct and control of the work will lie solely with *Sanders*. *Sanders* is not to be considered an agent or employee of *Franklin* for any purpose. *Franklin* is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payments which it owes *Sanders*, and any employees of *Sanders* are not entitled to any of the benefits that *Franklin* provides for *Franklin's* employees. It is understood that *Sanders* is free to contract for similar services to be performed for other Municipalities while under contract with *Franklin*.

**4. Employees of Sanders**

*Sanders* shall be solely responsible for paying all FICA and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing and other benefits for *Sanders* and her employees, servants and agents, if any.

**5. Liability**

*Sanders* will carry, for the duration of this Contract, errors and omissions insurance and proof of same shall be provided to *Franklin*. *Sanders* agrees to indemnify, defend and hold harmless *Franklin* for any and all liability or loss arising in any way out of the performance of this Contract.

**6. Duration**

This Contract shall remain in force for a period of one (1) year from the date written above unless terminated prior thereto as set forth below.

Either party may terminate this Contract immediately upon written notice to the other party in the event such termination is for "Cause". "Cause" shall mean (a) the failure of *Franklin* to timely pay *Sanders* in accordance with this Contract; or (b) the failure of *Sanders* to timely complete the work and deliver the written reports.

Either party may terminate this Contract with or without Cause upon giving the other party not less than fourteen (14) days written notice. Upon receipt of such notice from *Franklin*, *Sanders* shall complete all pending work and *Franklin* shall pay *Sanders* therefore. In the event of termination on the part of *Sanders*, *Sanders* shall complete all pending work hereunder within such fourteen (14) day notice period and *Franklin* shall pay *Sanders* therefore.

**7. Confidentiality**

*Sanders* agrees that: (a) all knowledge and information that *Sanders* may receive from *Franklin* or from its employees or other contractors of *Franklin*, or by virtue of the performance of services under and pursuant to this Agreement, relating to the identification of mortgagees related to lien properties such as property owner information belong to *Franklin* or to those with whom *Franklin* has contracted regarding such information; and (b) all information provided by *Sanders* to *Franklin* in reports of work done, together with any other information acquired by or as direct result of employment as *Sanders* by *Franklin* and during the term of such employment, shall be regarded by *Sanders* as strictly confidential and held by *Sanders* in confidence, and solely for *Franklin's* benefit and use, and shall not be used by *Sanders* or directly or indirectly disclosed by *Sanders* to any person whatsoever except to *Franklin* or with *Franklin's* prior written permission. Any information considered to be public, such as the recording of executed liens at the County Registry of Deeds, shall be exempt from this clause.

**8. No Waiver**

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**9. Governing Law**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Hampshire.

**10. Notices**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

11. **Mandatory Arbitration – Clause removed by Sanders**

12. **Entire Agreement**

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

13. **Modification of Agreement**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

14. **Assignment of Rights**

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

In this contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns, singular includes plural and masculine includes feminine.

WITNESS our signatures as of the day and date first above stated.

Franklin  
*(Name of City)*

Jane Sanders  
*(Printed name)*

*Jane Sanders*  
*(Signature of Sanders)*

\*By: \_\_\_\_\_  
*(Printed name & Office in Franklin)*

\_\_\_\_\_  
*(Signature of Officer)*

This agreement was approved by a vote of the Franklin City Council on

\_\_\_\_\_, 2012

\* City Manager or other authorized officer