



## MEMORANDUM

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October 3, 2011

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator  
David Parker, P.E., CIP Executive  
Eric J. Gardner, P.E., Director of Engineering  
Paul P. Holzen, P.E., Engineering Supervisor

SUBJECT: Consideration of Amendment No. 1 to the Professional Services Agreement for the Harpeth River Greenway Project COF Contract No. 2011-0073

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider Amendment No. 1 to the Professional Services Agreement (PSA) for the Harpeth River Greenway Project.

### **Background**

The Harpeth River Greenway Project located at 200 North Margin Street was formerly utilized as a privately owned dump for approximately 20 years in the mid 1900's. This property was purchased on 12/2/2003 by the City of Franklin for the future Bicentennial Park. As part of the Bicentennial Park Project the City is currently in the process of building the Harpeth River Greenway Trail. Prior to construction, the City Administrator approved Contract No. 2011-007 on behalf of the Board as recommended by the Engineering Department. This contract was for TVG Environmental, Inc. to prepare a Phase II environmental report and test /analyze the soils located on the project site. The additional Phase II report and testing found no significant contamination and all samples were found to be characterized as non-hazardous allowing the project to continue forward. Contract No. 2011-007 was set up to allow the City of Franklin to obtain a Special Waste Permit from the State of Tennessee allowing the contractor to dispose of all excess material.

BVC and Company (Contractor for the Harpeth River Greenway) will be disposing all material at Allied Waste Services / Middle Point Landfill. Prior to accepting this material Middle Point Landfill is requesting additional information/testing. BVC and Company cannot continue working on the Harpeth River Greenway Project until this testing is completed and approved by the landfill. Amendment No. 1 will provide the landfill with the necessary information and allow the project to move forward.

### **Financial Impact**

COF Contract No 2011-0073                      \$9,750 (Approved May 5, 2011)

**Amendment No 1**                                      **\$9,000**

Total:    \$18,750

### **Recommendation**

Approval of Amendment No. 1 to the Professional Services Agreement for the Harpeth River Greenway Project COF Contract No. 2011-0073 in an amount not to exceed \$9,000 is recommended.

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE HARPETH RIVER GREENWAY PROJECT  
COF Contract No. 2011-0073**

**THIS AMENDMENT** is made and entered into on this the 11<sup>th</sup> day of October, 2011, by and between the **City of Franklin, Tennessee** ("City") and **TVG Environmental, Inc.** ("Consultant").

**WITNESSETH:**

**WHEREAS**, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Harpeth River Greenway Project (COF Contract No 2011-0073) ("Project"), approved on behalf of the Franklin Board of Mayor and Aldermen (BOMA) by Eric S. Stuckey, City Administrator on the 5<sup>th</sup> day of May, 2011; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid up to an amount not to exceed Nine Thousand Seven Hundred Fifty and No/100 Dollars (\$9,750.00) for the completion of Sections 3.1 and 3.2 as detailed in the Scope of Services for the Project; and

**WHEREAS**, the City has negotiated with the Consultant a fee increase for the Agreement for the work as found in **EXHIBIT A - Proposal for Additional Soil Sampling & Analysis**; to be considered as an integral part of this Amendment No 1; in an amount not to exceed **Nine Thousand and No/100 Dollars (\$9,000.00)** based on hourly services billed and Laboratory Analytical Fees as per Section 3.0 Professional Fee of EXHIBIT A.

**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 professional services as described in EXHIBIT A to complete the Project in addition to the Professional Services as provided for in the Agreement approved by the City Administrator on May 10, 2011.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Professional Services a fee not to exceed **Nine Thousand and No/100 Dollars (\$9,000.00)**.

The City reserves the right to issue any payments jointly to the Consultant and Contractor when the City receives information that the Consultant has not paid its Contractor.

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.

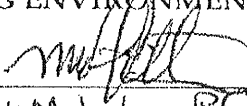
All other provisions of the Agreement approved by the City on May 10, 2011, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

TVG ENVIRONMENTAL, INC.

By: \_\_\_\_\_  
Dr. Ken Moore  
Mayor  
Date: \_\_\_\_\_

By:   
Print: Malcolm Pfotenhauser  
Title: President  
Date: 10-3-2011

Attest:

\_\_\_\_\_  
Eric S. Stuckey  
City Administrator/Recorder  
Date: \_\_\_\_\_

Approved as to form:

  
Shauna R. Billingsley, City Attorney



# TVG ENVIRONMENTAL, INC.

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September 28, 2011

EXHIBIT A

Mr. Paul Holzen, P.E.  
Engineering Department  
City of Franklin  
109 Third Avenue South  
Franklin, TN 37064

*emailed to: paul.holzenfranklin@tn.gov*

Re: **Harpeth River Greenway Project**  
**Second Avenue North & North Margin Street, Franklin, Tennessee 37064**  
**Proposal for Additional Soil Sampling & Analysis**

Dear Mr. Holzen:

We thank you for inviting TVG Environmental, Inc. to submit this proposal for providing additional environmental consulting services for the subject project.

## 1.0 OBJECTIVE OF ENVIRONMENTAL CONSULTING SERVICES

The objective of the proposed additional environmental consulting services will be to characterize with greater accuracy, for purposes of off-site disposal, the nature of the already excavated old landfill wastes along the route of the new greenway.

## 2.0 PROPOSED SCOPE OF WORK

TVG will collect 72 discrete samples from the stockpiled excavated soil and wastes. The discrete samples will be collected from 72 individual locations approximately evenly spaced along the total length of the stockpiles. Each discrete sample will be collected from not less than 12" below the surface of the stockpile, and will randomly be collected from varying locations on the stockpile, i.e. left side, right side, bottom, top, etc., thereby obtaining a good representation of the stockpiled wastes. Each successive six discrete samples will be composited into a single composite sample, thereby resulting in a total of 12 composite samples for laboratory analysis. Each composite sample will be placed in two clean new 4 oz. laboratory jars, appropriately marked, and placed in iced coolers for transport under chain of custody to the laboratory of Environmental Science Corporation in Mt. Juliet for analysis.

As required by Allied Waste, the composited waste samples will be analyzed for the following analytes:

- SVOCs by EPA Method 8270, including Cresol, 1,4-Dichlorobenzene, 2,4-Dinitrotoluene, Hexachlorobenzene, Hexachlorobutadiene, Hexachloroethane, Nitrobenzene, Pentachlorophenol, Pyridine, 2,4,5-Trichlorophenol, 2,4,6-Trichlorophenol, 2,4,5 TP (Silvex)
- Pesticides by EPA Method 8081: including Chlordane, Endrin, Heptachlor, Lindane, Methoxychlor, Toxaphene
- Herbicides (8151), including 2,4D

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- PCBs by EPA Method 8082: Sum of all Arochlors

The laboratory results will be summarized in a written report prepared by TVG.

### 3.0 PROFESSIONAL FEE

TVG's professional fee for this additional work cannot be precisely established in advance, and TVG's professional fees will be charged on a time and cost basis. However, our best estimate of the total fee is as follows:

• Travel, field sampling, & sample packaging Sr. Environmental Technician	8 hrs @ \$75.00/hr	\$600.00
• Mileage	40 miles @ \$0.50/mile	\$20.00
• Laboratory analytical fees	12 samples @ \$504.00 ea.	\$6,048.00
• Report & project management Environmental Specialist	8 hrs @ \$85.00/hr	\$680.00
Principal	4 hrs @ \$150.00/hr	\$600.00
<b><u>Estimated total fee</u></b>		<b>\$7,948.00</b>

Note: The final fee will be adjusted based upon the actual times involved, but will not exceed \$9,000.00

### 4.0 SCHEDULE FOR COMPLETION OF THE WORK

TVG will be able to perform the field work on Monday, October 3, provided that we receive your prompt written acceptance of this proposal and the General Terms & Provisions.

### 5.0 LIMITATIONS

5.1 It is possible that the final scope of the work may be different, depending upon field conditions, such as nature of landfill materials encountered, site access conditions, etc. As far as possible, we would immediately inform the Client of any significant impact before implementing any changes to any proposed scope of work.

5.2 The final cost of the work will be adjusted, and will be based upon the actual work performed, and the applicable rates and unit prices.

5.3 It is possible that undiscovered information may indicate significant environmental compliance liabilities. These liabilities could include:

- Being a potentially Responsible Party (PRP) to a CERCLA (Superfund) cleanup, where the regulatory authorities hold facility owners and/or operators, or others liable as PRP's for the costs of cleanup,
- Being in jeopardy of losing, or not being able to obtain a permit or licence that would allow any activities to be conducted on the site, or,

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- The allocation of significant sums of money to bring the site into compliance with environmental regulations.

## 6.0 GENERAL TERMS & CONDITIONS

6.1 The Client shall make payments for services upon receipt of invoices from TVG Environmental, Inc. All invoices are due upon presentation, and will be considered past due if not paid within thirty (30) calendar days from the date of the invoice. All invoices over thirty (30) days old will be subject to a monthly service charge of 1½% per month (18% annual).

6.2 TVG Environmental, Inc. reserves the right to suspend or terminate services if the Client fails to make payments when due. In addition, TVG Environmental Inc. reserves the right to recover all costs of collecting overdue unpaid balances from the Client, including reasonable attorneys' fees and court costs.

6.3 The Client shall provide for TVG Environmental, Inc.'s right to enter the property owned by the Client and/or others in order for TVG Environmental, Inc. to fulfill the Scope of Services included under this Agreement. Although TVG Environmental, Inc. will exercise reasonable care in performing its services, the Client understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless TVG Environmental, Inc., its officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from procedures associated with testing or investigative activities or connected in any way with the discovery of hazardous materials or suspected hazardous materials on the property.

6.4 Other than the original paper copy of the final report provided to the Client, all reports, plans, field data, notes and other documents, including all documents on electronic media, prepared by TVG Environmental, Inc. as part of the services rendered under this Agreement will remain the property of TVG Environmental, Inc. TVG Environmental, Inc. shall retain all common law, statutory and other reserved rights, including the copyright thereto.

6.5 TVG's report will be prepared for the exclusive use of the Client to whom they are addressed and such Client's representatives and associates, to assist in identifying and dealing with actual and potential environmental liabilities connected with the project site. TVG will not authorize its use for any purpose other than these uses, nor is the report intended to be relied upon for any purpose by any third party. The validity of the report is limited to the site conditions on the date of the field investigations. If there are discovered or undiscovered changed conditions, the validity of this report will expire with the date of the change(s) in conditions. The use of the TVG name, without the written permission of TVG is prohibited. The reproduction of TVG's report by any party, except in its entirety, is prohibited.

6.6 TVG Environmental, Inc. agrees to keep confidential and not to disclose to any person or entity, other than TVG Environmental, Inc.'s employees, subconsultants and others, if appropriate, any data or information not previously known to and generated by TVG Environmental, Inc. or furnished to TVG Environmental, Inc. and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict TVG Environmental, Inc. from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for TVG Environmental, Inc. to defend itself from any legal action or claim.

6.7 Both the Client and TVG Environmental, Inc. owe a duty of care to the public that requires them to conform to applicable codes, standards, rules, regulations and ordinances, principally to protect the public health and safety. The Client shall make no request of TVG Environmental, Inc. that, in TVG Environmental, Inc.'s reasonable opinion, would be contrary to TVG Environmental, Inc.'s professional responsibilities to protect the public. The Client shall take all actions and render all reports required of the Client in a timely manner. Should the Client fail to take any required actions or render any required notices to appropriate public authorities in a timely manner, the Client agrees TVG Environmental, Inc. has the right to exercise its professional judgment in reporting to appropriate public officials or taking other necessary action. The Client agrees to take no action against or attempt to hold TVG Environmental, Inc. liable in any way for carrying out what TVG Environmental, Inc. reasonably believes to be its public responsibility.

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6.8 TVG Environmental Inc. carries professional liability insurance, workers' compensation insurance, commercial general liability insurance, automobile liability insurance, and contractor's pollution liability insurance related to its performance of services under this Agreement in commercially reasonable amounts, and will furnish the Client with certificates evidencing such coverage upon request. In recognition of the relative risks, rewards and benefits of the project to both the Client and TVG Environmental, Inc., the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, to limit the liability of TVG Environmental, Inc. and its sub-consultants to the Client for any and all claims, losses, costs, or damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of TVG Environmental, Inc. and its sub-consultants to all those named shall not exceed \$10,000 in respect of professional negligence insurable under TVG Environmental Inc.'s professional liability insurance policy. Such claims and causes include, but are not limited to professional negligence, professional errors or omissions, strict liability, breach of contract or warranty. The Client agrees that any and all limitations of TVG Environmental, Inc.'s liability and indemnifications by the Client to TVG Environmental, Inc. shall include and extend to those individuals and entities TVG Environmental, Inc. retains for performance of the services under this Agreement, including but not limited to TVG Environmental, Inc.'s officers, partners and employees and their heirs and assigns, as well as TVG Environmental, Inc.'s subconsultants and their officers, employees, heirs and assigns.

6.9 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor TVG Environmental, Inc., their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to services rendered under this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and TVG Environmental, Inc. shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

6.10 All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after two years from the date of completion of TVG Environmental, Inc.'s services under this agreement, unless this Agreement shall be terminated earlier, in which case the date of termination of this Agreement shall be the date on which such period shall commence.

6.11 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

6.13 This Agreement can only be amended in a writing signed by both parties to this Agreement.

6.14 Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

6.15 The laws of the State of Tennessee will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of the State of Tennessee.



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**7.0 ACCEPTANCE OF PROPOSAL AND TERMS & CONDITIONS**

If you require TVG Environmental, Inc. to proceed with this project, please indicate your acceptance of this proposal/agreement and the terms and conditions by signing in the space below, and returning one copy of the signature page to TVG by fax, or by email to: [malcolm.pfotenhauer@tvgenvironmental.com](mailto:malcolm.pfotenhauer@tvgenvironmental.com)

**Proposal and Terms & Conditions Accepted by:**

City of Franklin

\_\_\_\_\_  
Name of Person Authorized to Sign

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If you have any questions, please call the writer at (615) 324-3850. Thank you for retaining TVG Environmental, Inc. for this environmental project.

Sincerely,

**TVG Environmental, Inc.**



Malcolm V. Pfothenhauer, P.E. (Tennessee), CHMM, REPA