


# MEMORANDUM

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October 19, 2011

TO: Board of Mayor and Alderman

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

SUBJECT: Consideration of Amendment No. 1 to the Professional Services Agreement for the Carothers Parkway & Cool Springs Blvd Additional Right Turn Lane Project. (COF Contract No. 2011-0167)

### Purpose

The purpose of this memo is to recommend approval of Amendment No 1 to the Professional Services Agreement for the Carothers Parkway & Cool Springs Blvd Additional Right Turn Lane Project.

### Background

On May 13<sup>th</sup>, 2008 the Board of Mayor and Aldermen approved a professional services agreement with Wilbur Smith and Associates for the design of a right turn lane from Carothers Southbound to Cool Springs Westbound. Boyle Investment Co. has proposed to complete this project at their cost as part of the Meridian Development. The construction drawings for this project were completed by Wilbur Smith and Associates in 2009 for the City of Franklin and will need to be updated prior to bidding and construction. Staff has conceptually agreed to provide Boyle with updated construction plans to help get the project completed.

### Financial Impact

This amendment would be 100% funded by the Engineering budget authorized by BOMA for FY 2011-2012 under line item 82500 Contractual Services. Below is a summary of the cost.

COF Contract No 2011-0167	\$61,700.00 (Approved May 13, 2008)
<u>Amendment No 1</u>	<u>\$ 2,800.00</u>
Total:	\$64,500.00

### Recommendation

Staff recommends approval of Amendment No. 1 to the Professional Services Agreement for the Carothers Parkway & Cool Springs Blvd Additional Right Turn Lane Project in an amount not to exceed \$2,800.

# Exhibit A

## Proposal for Engineering Services



October 13, 2011

Mr. Paul Holzen, PE  
City of Franklin  
Engineering Department  
109 3<sup>rd</sup> Avenue South  
P.O. Box 305  
Franklin, TN 37064

RE: Carothers Parkway & Cool Springs Blvd. Additional Right Turn Lane – Additional Services  
for Updating Construction Plans (COF Contract No. 2011-0167)

Dear Paul,

Wilbur Smith Associates (WSA) is pleased to present the fee proposal for updating construction plans for the above mentioned project. This is in response to a request made on October 5, 2011 by City of Franklin. We are including the lump sum fee and scope of work that will be completed.

We are proposing an increase to our contract fees by a lump sum amount of \$2,800 to complete these additional tasks. This fee includes the review of existing plans and update to reflect fiber optic lines recently installed within the project limits, using "As Built" information supplied by the City, in order to allow for plans to be sealed by a registered PE and issued for construction. We assume that no further design modifications will be requested by the City, since these plans have been previously been approved. We anticipate 10 days to complete these tasks from Notice- to-Proceed.

If you should have any questions please do not hesitate to contact me.

Respectfully,  
Wilbur Smith Associates

A handwritten signature in cursive script that reads "Tony Montiel".

Tony Montiel, P.E.  
Principal

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE COOL SPRINGS BLVD/CAROTHERS PARKWAY  
INTERSECTION IMPROVEMENTS CAROTHERS  
SOUTHBOUND TO COOL SPRINGS WESTBOUND TURN  
LANE DESIGN  
COF Contract No. 2011-0167**

THIS AMENDMENT is made and entered into on this the 8<sup>th</sup> day of November, 2011, by and between the City of Franklin, Tennessee ("City") and Wilbur Smith and Associates ("Consultant").

**WITNESSETH:**

WHEREAS, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Cool Springs Blvd/Carothers Parkway Intersection Improvements Carothers Southbound to Cool Springs Westbound Turn Lane Design Project ("Project"), approved by the Franklin Board of Mayor and Aldermen (BOMA) on the 13<sup>th</sup> day of May, 2008; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a lump sum fee of \$61,700 for the design of the Project; and

WHEREAS, the Consultant completed the design of the Project per the Agreement in 2009; and

WHEREAS, the City has determined that in order to bid the Project the Consultant will need to update the design and have the design resealed by a Professional Engineer (PE) licensed in Tennessee; and

WHEREAS, the City has not approved funding for the construction of the Project; and

WHEREAS, the City and BOYLE Cool Springs II JOINT VENTURE, a Tennessee general partnership ("Developer"), entered into a Road Impact Fee Offset Agreement (COF Contract No 2010-0191) for improvements to the City's roadway network along Carothers Parkway on December 14, 2010; and

WHEREAS, the Developer desires to construct the Project using the updated design plans from the Consultant and seek an amendment to receive additional impact fee offsets; 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 Engineering Services**; to be considered as an integral part of this Amendment No 1; in a lump sum amount of **Two Thousand Eight Hundred and No/100 Dollars (\$2,800.00)**.

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 in addition to the Professional Services as provided for in the Agreement approved by BOMA on May 13, 2008.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Professional Services in a lump sum amount of **Two Thousand Eight Hundred and No/100 Dollars (\$2,800.00)**.

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 Board of Mayor and Aldermen on May 13, 2008, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

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

WILBUR SMITH AND  
ASSOCIATES

By:   
Print: ROBERT F. POLK  
Title: ASSOCIATE  
Date: 10/31/11

**Attest:**

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

**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney