



ITEM #33  
BOMA  
11/08/2011

## MEMORANDUM

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### Memorandum

TO: Board Of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator

DATE: November 2, 2011

RE: Items approved by City Administrator  
On behalf of the Board of Mayor and Aldermen

Through the authority granted by the Board of Mayor and Aldermen, the following items of action were approved by me on your behalf:

A. Acknowledgement Of Approval For Annual Master And Synchronization Agreement (Three Year License) With Killer Tracks (City of Franklin Contract No. 2011-0155) For Use Of Certain Musical Compositions And Sound Recordings In An Amount Not To Exceed \$1,755.00.

Ray Foglia, Cable Channel 10

B. 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).

Paul Holzen, Interim Engineering Director

C. Consideration of Amendment No 2 to the professional Services Agreement for the Harpeth River Greenway Project COF Contract No. 2011-0073.

Paul Holzen Interim Engineering Director

# KILLER TRACKS™

## ANNUAL AGREEMENT *Master and Synchronization Agreement* COF Contract #2011-0155

This Agreement (the "Agreement") is made this 19<sup>th</sup> day of October, 2011 by and between Killer Tracks, a unit of Universal Music – MGB NA LLC, 9255 W. Sunset Blvd., Suite 200, Los Angeles, California 90069 (hereafter referred to as KT) and CITY OF FRANKLIN, City Hall 109 3rd Ave., South, Franklin, TN, 37064 (hereafter referred to as COMPANY).

Whereas, KT is the owner or administrator of certain rights in and to the musical compositions and sound recordings (hereafter referred to as COMPOSITIONS) in the PRODUCTION MUSIC LIBRARIES as listed in Exhibit "A" (hereafter referred to as LIBRARIES). For the avoidance of doubt, the term "CD," as used throughout this Agreement, shall mean a physical compact disc and/or a digital-file equivalent.

Whereas, COMPANY desires to license the music in the LIBRARIES for the purpose of synchronization with COMPANY's productions.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, KT HEREBY GRANTS TO COMPANY THE FOLLOWING RIGHTS:

1. The non-exclusive right, license and authority to synchronize and embody those COMPOSITIONS in the LIBRARIES with COMPANY's productions, to make copies of such embodiments and to distribute such copies throughout the TERRITORY (as defined in paragraph two (2) below) subject to the terms and conditions of this Agreement. COMPANY may continue to distribute such copies in perpetuity, even after termination or expiration of this Agreement, so long as the production is not altered in any way (either its audio or visual parts) provided it embodies the COMPOSITIONS in the manner set forth in paragraph 4 herein. Upon expiration of this Agreement by either party, COMPANY's ability to download (if applicable) the musical COMPOSITIONS from the WEBSITE and COMPANY's ability to possess, control, use or exploit any of the COMPOSITIONS from the LIBRARIES will terminate. To that effect, COMPANY shall, within ten (10) days of either (i) COMPANY's receipt of KT's notice of termination, or, (ii) expiration of this Agreement, destroy all electronic files of the COMPOSITIONS in its possession, return to KT an executed Affirmation of Destruction and return any physical CD's in a commercially acceptable condition, all at COMPANY's expense.

2. The TERRITORY covered by this license is COMPANY'S location noted above as it relates to synchronization and the World as it relates to distribution.

3. The Term of this license is for a period of **Three (3) Years**, commencing upon execution, as evidenced by the signatures of the parties.

4. COMPANY agrees that use of the productions embodying such COMPOSITIONS from LIBRARIES will be limited to the following clearance(s):

\* **INTERNET BROADCAST** - Limited to Licensee's website only. Does not include episodic/series productions or themes. For purpose of this Internet Clearance, the territory is considered to be the World.

\* **BROADCAST** - Commercials, promos, infomercials, and PSA's; Programming including episodes, but excluding themes;- News, excluding themes

\* **NON BROADCAST** - COMPANY's non-broadcast, in house use

Productions requiring any clearances other than those noted above must be licensed separately from this Agreement at the prevailing rate card rates. **All rights not specifically granted above are reserved to KT.** License application forms will be supplied upon request. COMPANY acknowledges that any further or different uses of the COMPOSITIONS in the LIBRARIES are infringements of KT's copyrights.

5. **COMPANY agrees to pay KT for the rights granted herein the sum of One Thousand Seven Hundred Fifty Five US Dollars (\$1,755.00), which is due in full within thirty (30) days of the signing of this agreement.**

6. KT shall make available to COMPANY the music in the LIBRARIES in the form of 20 compact discs and/or digital equivalent (CD) recordings, and any automatic updates as listed in EXHIBIT "A", which are *on loan* to COMPANY during term hereof. Upon termination of this Agreement, if COMPANY possesses any physical CDs, all CDs must be returned in good condition within thirty (30) days, to KT at COMPANY's expense. COMPANY agrees to reimburse KT in the amount of Seventy-Five US Dollars (\$75.00) for each missing or damaged physical CD. Any temporary copies of the COMPOSITIONS made by COMPANY during the course of normal production must be returned or destroyed.

7. Upon COMPANY's request, COMPANY may preview additional CDs not listed in EXHIBIT "A" ("Preview CDs"), at any time during the term of this Agreement, for a period of thirty (30) days from receipt of Preview CDs. In the event COMPANY would like to add any Preview CDs to this Agreement, each additional Preview CD will be invoiced at a rate of One Hundred US Dollars (\$100.00) per Preview CD for the balance of the term of the Agreement. If COMPANY does not wish to retain the Preview CDs, all electronic or digital versions of the COMPOSITIONS contained on the Preview CDs must be destroyed and COMPANY shall submit to KT an Affidavit of Destruction within ten (10) days following the conclusion of the preview period. If the Affidavit of Destruction for the COMPOSITIONS contained on the Preview CDs is not returned to KT within the ten (10) day return period, and no other arrangements have been made, COMPANY will be billed at the aforementioned rate, regardless of whether or not COMPANY has actually used the Preview CDs. All terms of this license shall apply to any additional Preview CDs retained by COMPANY during the term of this Agreement.

8. The LIBRARIES are granted by the Agreement to COMPANY solely for its benefit and usage. COMPANY agrees that it shall not make any copies of the COMPOSITIONS other than for COMPANY's use as permitted by this Agreement. COMPANY shall not sell, lease, lend, give, physically convey, or otherwise transfer, the KT compact discs, to any person, firm or corporation without KT's prior written consent. Upon KT's request, COMPANY agrees to supply KT with an audio-video copy in a mutually agreed upon format of a specific production(s) produced by COMPANY utilizing KT's Music Library solely for the purpose of promoting its music library.

9. KT represents and warrants that it has the full right, power and authority to make this Agreement and grant the rights granted herein. Other than such limited rights of synchronization and uses designated in Paragraph four (4) herein, KT reserves to itself all rights and uses of every kind and nature whatsoever in and to the LIBRARIES including, without limitation, the mechanical and the grand and small performing rights. All other rights or uses shall be negotiated separately with KT. With respect to the performing rights, COMPANY shall negotiate directly with KT or with the appropriate performing rights society.

10. In the event that COMPANY violates this Agreement or breaches any of its covenants contained herein, COMPANY, upon written notice from KT, shall have a period of thirty (30) days to materially cure such claim. If claim is not resolved during such period, the license hereunder may be terminated at KT's sole discretion. KT shall thereafter be under no obligation to license to COMPANY the use of the LIBRARIES or any COMPOSITIONS contained therein for any purpose whatsoever. In addition to any other remedy available to KT, should COMPANY be unable to cure such claim during the thirty (30) days, KT shall thereupon be entitled to seek an injunction to enjoin COMPANY from any **new** use of said LIBRARIES produced before or after notification of breach.

11. COMPANY warrants and represents that: (i) it has the right and power to enter into this Agreement, and to fully perform in accordance with all of the terms hereof; and (ii) it shall comply with all applicable laws, rules and regulations in the performance of its obligations hereunder.

12. This Agreement shall be governed by and construed in accordance with the Laws of the State of Tennessee and the jurisdiction of any dispute hereunder shall be with the courts of Williamson County, Tennessee.

13. The license granted herein shall not become effective for any purpose until accepted and executed by an authorized representative on behalf of COMPANY and by an authorized representative on behalf of KT., and payments are made by COMPANY as provided herein. Notwithstanding the foregoing, this Agreement shall be binding upon full and complete execution by the parties hereto. Neither party may assign this Agreement or any of its rights or obligations

hereunder without the prior written consent of the other party, and any such attempted assignment shall be void, except that KT may, without the consent of COMPANY, assign this Agreement, or any of its rights or obligations hereunder, to any party controlling, controlled by or under common control with KT, to any party as part of a sale by KT of stock or a substantial portion of KT's assets or to any party with whom KT may merge or enter any other business combination.

14. This Agreement and the attached Addendum constitute the entire agreement of the parties hereto and may not be amended except by an agreement in writing executed by the parties hereto. To the extent that the terms and conditions of this Agreement conflict with another unexecuted document (i.e., purchase order, etc.) then the terms of this Agreement shall prevail. COMPANY and KT agree that a faxed or emailed counterpart of the AGREEMENT evidencing the signature of a party shall be effective as an original signature for all purposes.

Eric S. Stuckey  
AUTHORIZED SIGNATURE  
CITY OF FRANKLIN

Don Moyer 10/20/11  
Don Moyer – Account Executive  
Killer Tracks, a unit of Universal Music – MGB NA LLC  
Federal Tax ID 95-310-4625

City Administrator \_\_\_\_\_  
TITLE

Eric Stuckey \_\_\_\_\_  
PRINT NAME

DATE: \_\_\_\_\_

FEDERAL TAX ID: 62-6000290 \_\_\_\_\_

**APPROVED AS TO FORM**  
**by City Attorney's Office**  
  
By: Husten  
Date: 10/20/11

EXHIBIT A

Libraries Available	Updates	Package Description	# of CDs
NM	No	Network Music	20

TOTAL CD COUNT	20
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CITY OF FRANKLIN / Shipping Contact & Email Ray Foglia

rayfi@franklintn.gov

CITY OF FRANKLIN / Billing Contact & Email Accounts Payable

annellew@franklintn.gov

**\*Please make checks payable to Killer Tracks at address below\***

15044 Collections Center Drive

Chicago, IL 60693

Website: [www.killertracks.com](http://www.killertracks.com)

Phone: (800) 454-5537 Fax: (800) 787-2257

**Addendum of Standard Terms and Conditions  
City of Franklin, Tennessee**

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This addendum shall modify and supersede the attached contract titled **MASTER AND SYNCHRONIZATION AGREEMENT** and entered into on the \_\_\_ day of \_\_\_\_\_, 2011, by the City of Franklin, Tennessee and Killer Tracks ("Vendor") and together with same shall constitute the entire agreement ("Contract").

1. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
2. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
4. Notices. Any notice provided pursuant to the Contract, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which this Addendum may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin  
Attn: Ray Foglia  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305  
E-mail: rayf@franklintn.gov

In the case of Vendor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract 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.
6. Severability. If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract will not be affected.
7. Precedence. In the event of conflict between the provisions of this Addendum and any contract, agreement or other document which this Addendum may accompany, the provisions of this Addendum will to the extent of such conflict take precedence unless such document expressly states that it is amending this Addendum.

**Addendum of Standard Terms and Conditions  
City of Franklin, Tennessee**

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8. Entire Agreement. This Addendum, including any contract, agreement or other document which this Addendum may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Addendum. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this Addendum by section number and signed by an authorized representative of each party.
  
9. Breach. Upon deliberate breach of this Contract by either party, the non-breaching party shall be entitled to terminate this Contract without notice, with all of the remedies it would have in the event of termination under section 10 above, and may also have such other remedies as it may be entitled to in law or in equity.
  
10. Survival. This Addendum shall survive the completion of or any termination of any contract, agreement or other document which this Addendum may accompany.

City of Franklin, Tennessee

By: Eric S. Stuckey  
Eric Stuckey  
City Administrator

Killer Tracks

By: Don Moyer  
Don Moyer  
Account Executive

Approved as to form by:

Kristen L. Corn  
Kristen L. Corn  
Staff Attorney




HISTORIC  
FRANKLIN  
TENNESSEE

## 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)
<b><u>Amendment No 1</u></b>	<b><u>\$ 2,800.00</u></b>
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



HISTORIC  
FRANKLIN  
TENNESSEE

## MEMORANDUM

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November 1, 2011

TO: Board of Mayor and Alderman

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

SUBJECT: Consideration of Amendment No. 2 to the Professional Services Agreement for the Harpeth River Greenway Project COF Contract No. 2011-0073

### **Purpose**

The purpose of this memo is to recommend approval of Amendment No 2 to the Professional Services Agreement for the Harpeth River Greenway Project.

### **Background**

The Harpeth River Greenway Project located at 200 North Margin Street was formerly utilized as a dump for approximately 20 years in the mid 1900s. 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 2011-0073 as recommended by the Engineering Department. This contract was for TVG Environmental, Inc to prepare a phase II report and test /analyze the soils located on the project site. The additional phase II report and testing found no significant contamination allowing the project to continue forward. On October 11, 2011 the Board of Mayor and Alderman approved Amendment No 1 for additional testing. This additional testing was necessary to satisfy the Landfill and TDEC requirements. Unfortunately Ten of Twelve composite samples were contaminated with oil and will once again require additional out of scope testing. This additional testing will determine if the samples are below the regulatory levels for classification as a non-hazardous waste.

### **Financial Impact**

COF Contract No 2011-0073	\$ 9,750.00 (Approved May 5, 2011)
Amendment No 1	\$28,000.00 (Approved October 11, 2011)
<b><u>Amendment No 2</u></b>	<b><u>\$ 4,200.00</u></b>
Total:	\$41,950.00

### **Recommendation**

Staff recommends approval of Amendment No. 2 to the Professional Services Agreement for the Harpeth River Greenway Project COF Contract No. 2011-0073 in an amount not to exceed \$4,200.00.



October 28, 2011

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

*emailed to: paul.holzenfranklintn.gov*

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

Dear Mr. Holzen:

Pursuant to our recent discussions, we now submit this proposal for providing additional environmental consulting services for the subject project.

#### **1.0 BACKGROUND & OBJECTIVE OF ADDITIONAL LABORATORY ANALYSIS**

The objective of the proposed additional laboratory analysis is 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.

On October 18, TVG collected 72 discrete samples from the stockpiled excavated soil and wastes. The discrete samples were collected from 72 individual locations approximately evenly spaced along the total length of the stockpiles. Each discrete sample was collected from not less than 12" below the surface of the stockpile, and was randomly 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 were composited into a single composite sample, thereby resulting in a total of 12 composite samples for laboratory analysis. Each composite sample was placed in two clean new 4 oz. laboratory jars, appropriately marked, and placed in iced coolers and transported 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 were analyzed for the following analytes:

- SVOCs by EPA Method 8270: Cresol, 1,4-Dichlorobenzene, 2,4-Dinitrotoluene, Hexachlorobenzene, Hexachlorobutadiene, Hexachloroethane, Nitrobenzene, Pentachlorophenol, Pyridine, 2,4,5-Trichlorophenol, 2,4,6-Trichlorophenol
- Pesticides by EPA Method 8081: Chlordane, Endrin, Heptachlor, Lindane, Methoxychlor, Toxaphene
- Herbicides by EPA Method 8151: 2,4D & 2,4,5-TP Silvex
- PCBs by EPA Method 8082: Sum of all Arochlors

When the laboratory commenced analysis of the samples, it was determined that the composite samples were contaminated with oil to varying degrees, which in itself is not necessarily a problem, except that the oil can contaminate the column in the gas chromatograph (GC) and prevent the required quality control being obtainable unless the instrument samples are diluted prior to being run in the GC. The samples were therefore diluted as necessary to obtain satisfactory QC results. However, dilution raises the minimum detection levels directly proportional to the dilution factor. This results in those chemicals of concern that have low regulatory levels having detection levels that are above the low regulatory levels, in which case it cannot be determined whether or not the compounds are below the regulatory levels for classification as a non-hazardous waste.

## 2.0 PROPOSED ADDITIONAL LABORATORY ANALYSIS

It is therefore necessary for ten of the twelve samples to be submitted for analysis by the Toxicity Characteristic Leaching Procedure (TCLP), which method eliminates the oil concerns, and that will provide results that can be compared to the regulatory levels. The relevant chemicals of concern with low regulatory levels are as follows:

- Chlordane
- 2,4-dinitrotoluene
- Hexachlorobenzene

## 3.0 PROFESSIONAL FEE

TVG's professional fee for this additional work will be as follows:

• Laboratory analytical fees:		
Chlordane	10 samples @ \$126.00 ea.	\$1,260.00
2,4-dinitrotoluene & Hexachlorobenzene	9 samples @ \$260.00 ea.	\$2,340.00
• Additional project management & reporting time:		
Principal	4 hrs @ \$150.00/hr	\$600.00
<b>Total additional fee</b>		<b>\$4,200.00</b>

## 4.0 SCHEDULE FOR COMPLETION OF THE WORK

Following your email dated October 27 authorizing TVG to proceed with the additional laboratory analyses, TVG authorized the lab to proceed today. At this time, we expect the lab report approximately by close of business on Tuesday, November 8.

## 5.0 GENERAL TERMS & CONDITIONS

This additional work will be performed under the same agreed terms and conditions as those of the previous work on this project.



Mr. Paul Holzen, P.E.  
City of Franklin  
October 28, 2011  
Page 3 of 3 Pages

## 6.0 ACCEPTANCE OF PROPOSAL AND TERMS & CONDITIONS

Please confirm your emailed instruction for TVG Environmental, Inc. to proceed with this project 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. Pfothenauer, P.E. (Tennessee), CHMM, REPA