



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #33  
BOMA  
11/22/2011

## MEMORANDUM

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### Memorandum

TO: Board Of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator

DATE: November 16, 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. Professional Services Agreement (COF Contract No 2011-0175) with Crossroads Architecture, LLC for Design Services for the Roof Rehabilitation of the Historic Hayes Home on Harlinsdale Farms Park in the Amount of \$6,500.00.
- B. Professional Services Agreement (COF Contract No. 2001-0163) with John M. Hahn, Jr. for Property Appraisals for the SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project in an Amount Not To Exceed \$3,750.00.
- C. Fiduciary Liability Insurance



**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No 2011-0175**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **CROSSROADS ARCHITECTURE, LLC** hereinafter referenced as Consultant, who mutually agrees as follows:

**DECLARATIONS.** City desires to retain Consultant to provide architectural, related technical, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**ROOF REHABILITATION TO HISTORIC HAYES HOME  
FRANKLIN, TENNESSEE**

1. **SCOPE OF SERVICES.** Consultant shall provide architectural and related technical services for the Project in accordance with the **SCOPE OF SERVICES**. The **SCOPE OF SERVICES** as found in **Attachment A** shall be considered as an integral part hereof.
2. Consultant shall be paid a fee of **Six Thousand Five Hundred and No/100 Dollars (\$6,500.00)** for the work as proposed under Compensation in the **SCOPE OF SERVICES (Attachment A)**.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The City Administrator Approved this Agreement on the \_\_\_\_ Day of November 2011 under the Authority Granted by the Franklin Board of Mayor and Aldermen by Resolution 2009- 25.

BY: \_\_\_\_\_  
Consultant's Signature  
TITLE: \_\_\_\_\_  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Mr. Eric S. Stuckey  
City Administrator  
Date: \_\_\_\_\_

## TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

### ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry.
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

### ARTICLE 2. CITY'S RESPONSIBILITIES. City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

### ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from

engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this paragraph.

3.5 INDEMNIFICATION. Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 LIMITATIONS OF RESPONSIBILITY. Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, SCOPE OF SERVICES; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, SCOPE OF SERVICES.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 Termination for Convenience. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate

outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
  - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the time of performance of Consultant's services as indicated in Attachment A shall be adjusted equitably.



## ARTICLE 7. USE OF DOCUMENTS, DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS: Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant 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 Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or

- of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

#### ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### ARTICLE 9. PAYMENT.

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 TRAVEL; EXPENSES  
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at [www.gsa.gov](http://www.gsa.gov) [click on 'per diem rates' under the 'etools' category].

## ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts

relating to this Project.

10.3 **NO THIRD PARTY RIGHTS CREATED.** City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

## ARTICLE 11. EXTENT OF AGREEMENT:

11.1 **APPLICABLE LAW/CHOICE OF FORUM AND VENUE.** This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's

choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

#### ARTICLE 12. DISPUTE RESOLUTION, BREACH.

- 12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract with 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.

#### ARTICLE 13. SURVIVAL.

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.



**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No 2011-0163**

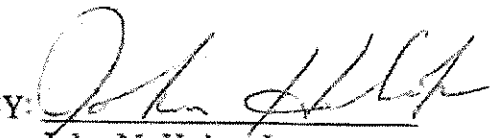
THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **John M. Hahn, Jr.** hereinafter referenced as Consultant, who mutually agrees as follows:


**DECLARATIONS.** City desires to retain Consultant to provide Property Appraisals, related technical, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**McEWEN DRIVE @ WILSON PIKE INTERSECTION IMPROVEMENTS  
PROPERTY APPRAISALS**

1. **SCOPE OF SERVICES.** Consultant shall provide Property Appraisals in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and related technical services for use in the acquisition of right-of-way and easements for the Project for five (5) properties as indicated in **Attachment A**. Attachment A shall be considered as an integral part hereof.
2. Consultant shall receive payment for the Property Appraisals completed at an average cost of \$750.00 per tract as detailed in Attachment A for a total amount not to exceed **Three Thousand Seven Hundred Fifty and No/100 Dollars (\$3,750.00)**.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The City Administrator approved this Agreement on the 21<sup>st</sup> Day of October 2011 under the Authority Granted by the Franklin Board of Mayor and Aldermen by Resolution 2009- 25.

BY:   
 John M. Hahn, Jr.  
 TITLE: Appraiser  
 Date: 10-21-11

BY:   
 Eric S. Stuckey  
 City Administrator  
 Date: 10-21-11

## TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

### ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

### ARTICLE 2. CITY'S RESPONSIBILITIES. City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

### ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from



engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this paragraph.

3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, **SCOPE OF SERVICES**; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, **SCOPE OF SERVICES**.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate

outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
  - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the time of performance of Consultant's services as indicated in Attachment A shall be adjusted equitably.

## ARTICLE 7. USE OF DOCUMENTS, DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS: Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant 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 Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or

of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

#### ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 **TRAVEL; EXPENSES**  
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at [www.gsa.gov](http://www.gsa.gov) [click on 'per diem rates' under the 'etools' category].

**ARTICLE 10. MISCELLANEOUS PROVISIONS**

10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.3 **NO THIRD PARTY RIGHTS CREATED.** City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

**ARTICLE 11. EXTENT OF AGREEMENT:**

11.1 **APPLICABLE LAW/CHOICE OF FORUM AND VENUE.** This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's



choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

- 11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract with 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.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

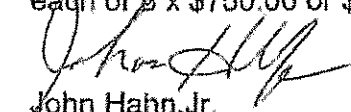
Attachment A

John M. Hahn, Jr.  
10-14-11

Ben Worley  
City of Franklin

Ben,

Thank you once again for considering me for this assignment, after a review of the plans: it appears that the need or type of appraisals would be that of "Value of Part Acquired", improvement, per plans will not be affected by proposed acquisition. Therefore "FPA" or Formal Part Affected would be required. Fees@ \$750 each or 5 x \$750.00 or \$3750. The allocated time of 30 days more than adequate.



John Hahn, Jr.

Property Address	Tax Map	Parcel
1862 Wilson Pike	61	8.03
1858 Wilson Pike	61	12
Wilson Pike	61	8.06
1846 Wilson Pike	61	11
1828 Wilson Pike	61	10



HISTORIC  
FRANKLIN  
TENNESSEE

330

## MEMORANDUM

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To: Eric Stuckey, City Administrator

From: Shirley Harmon, Human Resources Director  
Rodney Escobar, Risk Manager

Date: November 2, 2011

RE: Fiduciary Liability Coverage

This memorandum is to inform you of the coverage for Fiduciary Liability insurance. Fiduciary Liability insurance coverage protects the fiduciaries of the employee benefit plans for sums they are legally obligated to pay as a result of actual or alleged, "wrongful act" or breach of their fiduciary duties. The policy also provides coverage for defense expenses to defend a claim made against the fiduciary for an actual or alleged "wrongful act."

The City of Franklin sponsors retirement, health, and dental plans for its employees and staff. The Board of Mayor and Alderman are involved in the management of those plans and are considered fiduciaries, which include the City positions of City Administrator, Chief Financial Officer, and the Human Resources Director, and duly appointed members of the City's Pension Committee. All trustees of the plan can be held personally liable for any wrongdoing or negligence to properly managing these plans. The Fiduciary Liability policy not only covers administrative errors and omissions, but it also covers the personal liability of all trustees and administrative staff for a breach of a fiduciary duty in connections with the City's employee benefit plan. Please let us know if you have any questions or concerns.

SH/re

### APPLICATION

NOTICE: THE POLICY FOR WHICH APPLICATION IS MADE APPLIES, SUBJECT TO ITS TERMS, ONLY TO ANY "CLAIM" FIRST MADE OR DEEMED MADE AGAINST THE "INSURED" DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS MAY BE REDUCED BY THE AMOUNTS INCURRED AS "DEFENSE EXPENSES", AND "DEFENSE EXPENSES" MAY BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT.

Agent/ Broker	Code: <b>CXZ11</b>	Name: <b>TENNESSEE RISK MANAGEMENT PARTNERS LLC</b>	Policy Number:
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<b>GENERAL INFORMATION</b>			
1. Name & Address of Insured (Sponsor Organization): <b>CITY OF FRANKLIN, TENNESSEE</b> <b>109 3RD AVENUE SOUTH</b> <b>FRANKLIN, TN 37064</b>		5. Annual Sales or Revenues: <b>\$ 50,548,937</b> <b>FYE 6/30/2010</b>	
2. Description of Named Insured's Business: <b>MUNICIPALITY</b>		6. Is this a Publicly Traded Entity?: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>AUDITED</b>	
EIN#: <b>62-6000290</b> SIC Code:		7. Years in Business: <b>ESTABLISHED 1799</b>	
3. Total Number of Employees or Members*: <b>670</b>		8. Sponsorship: <input type="checkbox"/> Single Employer or Controlled Group of Corporations <input type="checkbox"/> Multi-Employer (Collectively-bargained) <input type="checkbox"/> Multi-employer <input type="checkbox"/> Multiple Employer <input type="checkbox"/> Church <input checked="" type="checkbox"/> Governmental <input type="checkbox"/> Other (Explain)	
4. Maximum number of individuals in your workforce in the following capacities over the past 12 months: Temporary: <b>52</b> Leased: <b>6</b> Independent Contractors: <b>—</b>			

\* For Single Employer/Controlled Group of Corporations or Governmental Sponsors indicate employees. For all other sponsors use total members. **612 FT 52 PT/TEMP**

<b>INSURANCE INFORMATION</b>			
1. Expiring Fiduciary Liability Coverage: Limit _____ Deductible <b>NONE</b> Eff/Exp Date _____ Premium _____ Insurer _____		4. Premium Payable: <input checked="" type="checkbox"/> Annually <input type="checkbox"/> Three Years Installment <input type="checkbox"/> Three Years Prepaid	
2. Coverage Requested: Limit <b>\$,000,000</b> Deductible <b>25,000</b> Eff/Exp Date _____		Premium to be Paid By: <input checked="" type="checkbox"/> Employer or Union <input type="checkbox"/> Trust or Plan	
3. Insurance Representative (The individual acting as the exclusive agent to act on behalf of the Insureds in matters of this insurance): <b>LAURA JUNGMICHEL</b>		(Endorsement will be issued to eliminate recourse on insureds who are fiduciaries if the premium is paid by the Employee Benefit Plan. Premium for this endorsement must be paid from funds other than the assets of the Employee Plan.)	

<b>LOSS INFORMATION</b>			
1. Has any plan, entity or person proposed for this insurance been:	Yes	No	
(a) Accused or found guilty or held liable for a breach of fiduciary duty, or a violation of ERISA, or any similar state, local or foreign law?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(b) Accused or found guilty of any criminal act?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
2. Has any fiduciary liability or fidelity coverage for any plan, entity or person proposed for this insurance ever been refused, canceled or non-renewed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

<b>PRIOR COVERAGE (select one)</b>			
I. <input checked="" type="checkbox"/> New Policy with no prior similar coverage:	Yes	No	
(a) Are there any facts or circumstances which may result in a claim under the proposed policy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
II. <input type="checkbox"/> New Policy with prior similar coverage with another insurer (Attach a copy of the prior application for request for continuity of coverage):			
(a) Prior similar coverage has been continually in effect since ____/____/____. At the time of original application to the insurer who wrote such coverage, were there any facts or circumstances which might have resulted in a claim being made against any insured?	<input type="checkbox"/>	<input type="checkbox"/>	
(b) Are there any pending claims?	<input type="checkbox"/>	<input type="checkbox"/>	
(c) During the past five years, have any claims been brought against any plan, entity or person proposed for this insurance?	<input type="checkbox"/>	<input type="checkbox"/>	

**PRIOR COVERAGE (continued)**

III.  Renewal Policy of the Company:

- (a) Prior similar coverage has been continually in effect with Travelers Property Casualty or any current or former affiliates since \_\_\_\_/\_\_\_\_/\_\_\_\_.
- (b) Prior to obtaining coverage with Travelers Property Casualty or any current or former affiliates, similar coverage has been continually in effect with another insurer since \_\_\_\_/\_\_\_\_/\_\_\_\_.

(If Yes to any question above, attach details including type and amount of claim and whether any insurance responded.)

**PLAN DATA**

Complete Chart for all plans for which coverage is requested. For each plan listed, indicate in the corresponding column the applicable letter(s) and number.

Plan Type (Column 2)	Fund Status (Column 4)	Plan Status (Column 8)
Defined Benefit (DB)	1. Trust	A - Active
Defined Contribution (DC)	2. Trust and Insurance	F - Frozen
Welfare Benefit Plan (W)	3. Insurance	M - Merged
Other (O) - Attach Explanation	4. Funded exclusively from general assets of the Sponsor (unfunded)	T - Terminated
	5. Funded partially from insurance and partially from assets of the Sponsor	S - Sold (Spun-off)
		If any plan has been merged, terminated or sold, indicate date of transaction.

1. Full Plan Name	2. Plan Type	3. Report Year	4. Fund Status	5. Asset Value (000)	6. Annual Contributions	7. No. of Participants	8. Plan Status
CITY OF FRANKLIN RETIREMENT PLAN	DB DC	1/1/2011	1	41,981,639	9,747,684	586 ACTIVE 109 VESTED	A
CITY OF FRANKLIN HEALTH INSURANCE	W	—	5	—	6,500,000	3 DISABLED 111 RETIRED	A
CITY OF FRANKLIN DENTAL PLAN	W	—	4	—			A

\* List any additional plans on a separate attachment

Total assets of all plans to be covered under this policy: \$ 41,981,639 FYE 6/30/2010 AUDITED

Total number of plan trustees and other employees who act in a fiduciary capacity: 13

**Plan Underwriting Questions**

	Yes	No
1. Has the IRS withdrawn or threatened to withdraw the tax exempt status of any plan? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Has any plan experienced an event reportable to the PBGC within the past three years? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Has any plan been the subject of an investigation by the DOL, IRS or similar foreign regulatory agency in the last three years? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Does the plan(s) conform to the standards of eligibility, participation, vesting and other provisions of ERISA or similar foreign law? If No, explain.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Has any plan filed for exemption from a prohibited transaction? If Yes, attach copy of filing and DOL response.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Has an actuary certified that the plans are adequately funded in accordance with ERISA's minimum funding standard? If No, explain. <u>EVERY YEAR</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Is each plan reviewed periodically to assure there are no violations of prohibited transactions or party-in-interest rules of ERISA? If No, explain.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Has any plan received an adverse opinion as to its financial condition by an independent public accountant? If Yes, attach copy of plan audit.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Does any plan hold employer securities or employer real property in violation of ERISA or in excess of ERISA limits? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Is any plan loan, lease or debt obligation in default or classified as uncollectible? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Are there any outstanding delinquent plan contributions? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Does any plan invest in or provide an option to invest in employer securities? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. In the past two years have there been any plan amendments or do you anticipate any plan amendments that will result in a reduction in benefits? If Yes, explain.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Has any plan been merged with another plan, terminated or sold within the past two years or are any anticipated to be merged, terminated or sold in the next 12 months? If Yes, explain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. If any plan has been terminated, were benefits secured with the purchase of annuities? If Yes, please provide the name of the insurance carrier(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Does the employer, committee of employer representatives, or union board of trustees have final say over the determination of whether benefits will be paid under any health and welfare plan sponsored by this Insured? <u>TPA RESPONSIBLE</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**INVESTMENT ADVISORS**

Please list all outside professional investment advisor(s) utilized by the plan(s) listed on page 2.

DAERY BRYANT WITH DAHAB AND KAMEL and GEORGE AND BOB HEWSTON AT US BANK

If any plan does not utilize outside professional investment advisor(s), please attach a schedule of each plan's investments.

**CURRENT INSURANCE COVERAGES**

Policy	Limit	Deductible	Insurance Co.	Eff. Date	Premium
Directors & Officers					
Errors & Omissions	2,000,000	10,000	TML RISK MANAGEMENT POOL	7/1/2011	244,154
Employment Practices					
Fidelity/Crime	500,000	0	TML RISK MANAGEMENT POOL	7/1/2011	1986
Workers Comp.	STATUTORY / 1,000,000 <sup>EL</sup>	550,000 <sup>AGG</sup>	TML RISK MANAGEMENT POOL	7/1/2011	176,640
Commercial GL	2,000,000	10,000	TML RISK MANAGEMENT POOL	7/1/2011	92,961

**REQUIRED ATTACHMENTS**

For Single Employer Plans or Controlled Groups of Corporations:


- Coverage limit requests of \$1,000,000 or greater attach:
  - Sponsor financial statements,
  - Form 5500's for each pension plan with attached schedules A, B, C, E (ESOP) & G as applicable, and
  - Plan financial statements for each pension plan.

Information requests may vary from the above based on specific account or industry characteristics.

The undersigned declares that the statements set herein are true to the best of his or her knowledge and belief. The undersigned agrees that this application and attachments form the basis of the contract should a policy be issued and shall be deemed attached to and form part of a policy. The Company is hereby authorized to make any investigation and inquiry in connection with this application.

*Attention: Insureds in KY*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and subjects such person to criminal and civil penalties.

Signed by Trustee/Fiduciary:  Dated: 9/20/2011

Print Name: KEN MOORE

Title: MAYOR

**INVESTMENT ADVISORS**

Please list all outside professional investment advisor(s) utilized by the plan(s) listed on page 2. \_\_\_\_\_

BARRY BERNT WITH DANAS AND KAMEER and GEORGE AND BOB HEUSTON AT US BANK

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Policy	Limit	Deductible	Insurance Co.	Eff. Date	Premium
Directors & Officers					
Errors & Omissions	2,000,000	10,000	TRUL RISK MANAGEMENT PCL	7/1/2011	244,154
Employment Practices					
Fidelity/Crime	500,000	0	TRUL RISK MANAGEMENT PCL	7/1/2011	186
Workers Comp.	STATUTORY / 1,000,000 GL	550,000 PGL	TRUL RISK MANAGEMENT PCL	7/1/2011	176,640
Commercial GL	2,000,000	10,000	TRUL RISK MANAGEMENT PCL	7/1/2011	92,961

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**Attention: Insureds in KY**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and subjects such person to criminal and civil penalties.

Signed by Trustee/Fiduciary:  Dated: 9/20/2011

Print Name: Ken Moore

Title: Mayor / plan trustee