



City of Franklin

109 3rd Ave S
Franklin, TN 37064
(615)791-3217

Meeting Agenda Capital Investment Committee

Thursday, February 22, 2018

4:00 PM

Board Room

Call To Order

1. [18-0174](#) Consideration of Approval of Minutes from January 25, 2018
2. [18-0163](#) Presentation of Proposed Pavement Marking Plan for Hillsboro Road

Sponsors: Engineering
Attachments: [HillsboroRdPh2_PavementMarkings_ORIGINAL_ExhibitA](#)
[HillsboroRdPh2_PavementMarkings_PROPOSED_ExhibitB](#)
3. [18-0100](#) Discussion Concerning the West Main Street Pedestrian Improvements Project (North Petway Street to 11th Ave South)

Sponsors: Paul Holzen and Jonathan Marston
Attachments: [ST West Main Street.pdf](#)

Legislative History
1/25/18 Capital Investment Committee referred to the Capital Investment Committee
4. [18-0155](#) Consideration of Amendment No. 3 to the Professional Services Agreement (COF Contract No. 2014-0209) with CT Consultants, Inc. (formerly EG&G, Inc.) for the Preparation of Final Plans and Specifications for the Franklin Road Corridor Improvements Project, from the Harpeth River Bridge to Harpeth Industrial Court, at a cost INCREASE not-to-exceed \$25,000.00.

Sponsors: Paul Holzen, Jonathan Marston and William Banks
Attachments: [2014-0209_PSA_Amend3_CTC_FranklinRdImprov_with Exhibit A.Law Approve](#)
5. [18-0160](#) Consideration of a DRAFT Professional Services Agreement (COF Contract No. 2018-0019) with Boozer & Company, P.C. for Real Estate Appraisal. Services for the SR-96 West Multi-Use Trail - Phases 1 & 2 in the Amount Not-to-Exceed \$88,000.00

Sponsors: Engineering
Attachments: [C2018-0019_PSA_Appraisal_SR96WTrail_DRAFT](#)
[C2018-0019_PSA_Scope_ReviewAppraisal_SR96WTrail_DRAFT](#)

6. [18-0161](#) Consideration of a Professional Services Agreement (COF Contract No. 2018-0020) with R. Rhett Turner, MAI, SR/WA for Real Estate Appraisal Review Services for the SR-96 West Multi-Use Trail - Phases 1 & 2 in the Amount Not-to-Exceed \$61,600.00
- Sponsors:** Engineering
- Attachments:** [2018-0020_PSA_ReviewAppraisal_SR96WTrail_with Attachment A.Law Approv](#)
7. [18-0171](#) Consideration of DRAFT Amendment No. 2 to the Professional Services Agreement (COF Contract No. 2015-0096) with Civil & Environmental Consultants, Inc. for the Jordan Branch/Spencer Creek Restoration Project in an Amount Not-to-Exceed \$123,850.00
- Sponsors:** Engineering
- Attachments:** [C2015-0096_PSA_Amend2_CEC_JordanSpencerRestoration_DRAFT](#)
[C2015-0096_PSA_Amend2_Scope_CEC_JordanSpencerRestoration_DRAFT](#)
8. [18-0165](#) Consideration of DRAFT Professional Services Agreement CDM Smith (COF Contract No. 2018-0023) for the Reclaimed Water System Model and Masterplan Update in an Amount Not-to-Exceed \$195,500.00
- Sponsors:** Mark Hilty and Michelle Hatcher
- Attachments:** [2018-0023_PSA_CDM_Smith_Reclaimed_Model_and_Masterplan](#)
[20171218_PROP_Reclaimed_Water_System_Model_&_Masterplan_Update_V1](#)
9. [18-0166](#) Consideration of DRAFT Resolution 2018-13, A Resolution Authorizing Condemnation for the Acquisition of Property for the Holiday Court Pump Station Improvements Project.
- Sponsors:** Michelle Hatcher and Mark Hilty
- Attachments:** [2018-13_Condemnation_Resolution](#)
[Holiday_Court_Pump_Station_map_for_condemnation_resolution](#)
10. [18-0167](#) Consideration of DRAFT Professional Services Agreement with Boozer & Company (COF Contract No. 2018-0024) for the Appraisal Services for Holiday Court Pump Station Improvements Project in an Amount Not-to-Exceed \$3,000.00
- Sponsors:** Mark Hilty and Michelle Hatcher
- Attachments:** [2018-0024_PSA_with_Boozer_for_Appraisals](#)
[City_of_Franklin-Holiday_Court-Easement_Appraisals](#)
11. [18-0162](#) Transportation, Stormwater, and Parks Capital Projects Status Report
- Sponsors:** Engineering
12. [18-0168](#) Water and Sewer Projects Status Report

Other Business

Adjournment

ANYONE REQUESTING ACCOMMODATIONS DUE TO DISABILITIES SHOULD CONTACT A.D.A. COORDINATOR, AT 791-3277 AT LEAST 10 DAYS PRIOR TO THE MEETING, IF POSSIBLE.

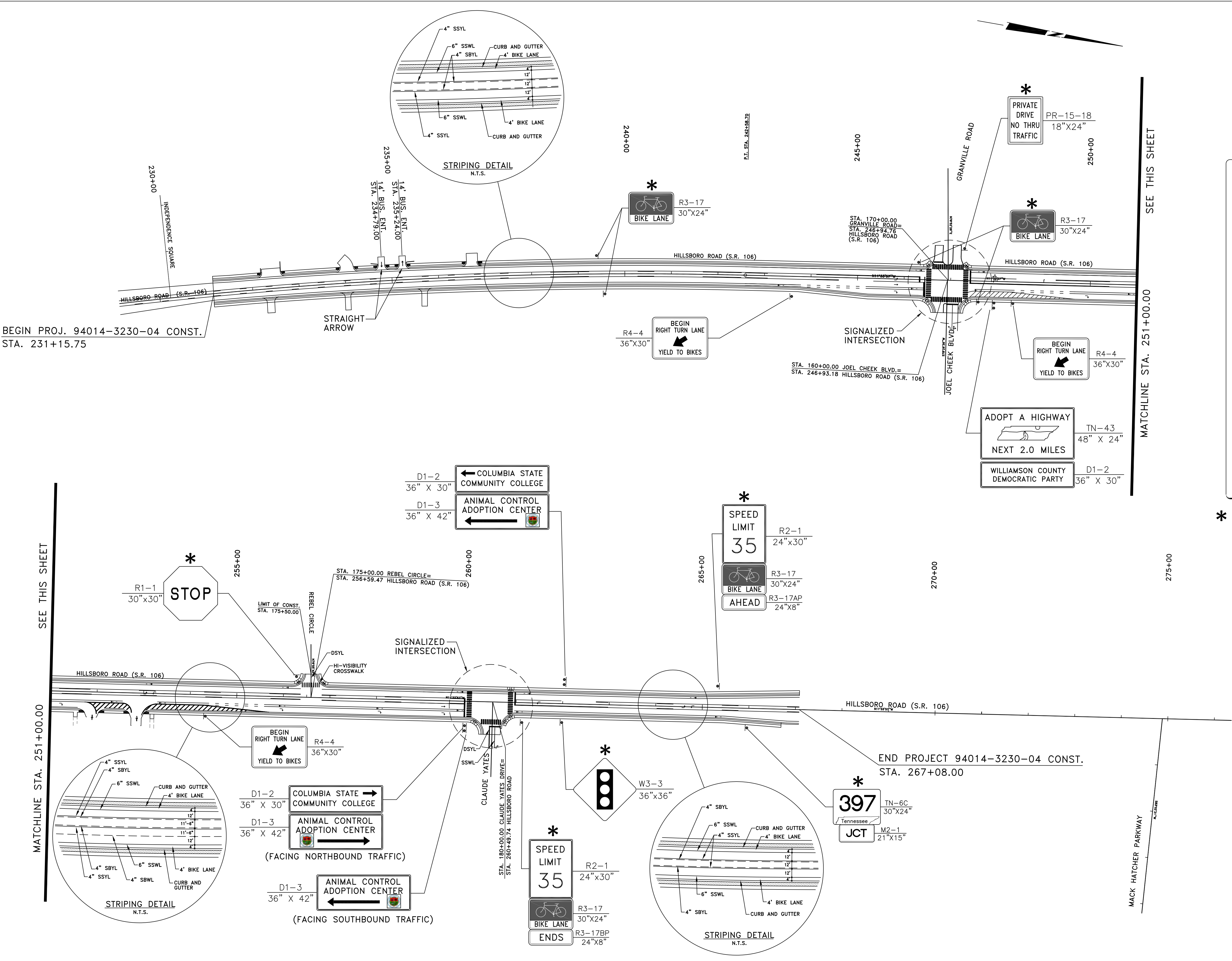
Hillsboro Road Phase 2 Improvements Project

Exhibit A - Original Pavement Marking Plan

TYPE	YEAR	PROJECT NO.	SHEET NO.
R.O.W.	12	12-013	-
CONST.	15	STP-EN-106(22)	17

- NOTES:
1. ALL PERMANENT SIGNING ON HILLSBORO ROAD TO BE INSTALLED IN ACCORDANCE WITH EG&G PROJECT NO. 24012.13.
 2. ALL PERMANENT PAVEMENT MARKINGS SHALL BE THERMOPLASTIC.
 3. SEE TRAFFIC SIGNAL PLANS FOR STRIPING LAYOUT AT INTERSECTIONS. STRIPING SHOWN ON THE TRAFFIC SIGNAL PLANS SHALL OVERRIDE OTHER BID DOCUMENTS.
 4. COORDINATE WITH TDOT STD. DWG. FOR ADDITIONAL LANES MARKING DETAILS NOT SHOWN.
 5. COORDINATE WITH TRAFFIC SIGNAL LAYOUTS FOR CROSSWALK LOCATIONS.
 6. COORDINATE WITH STREETSCAPE DESIGN DOCUMENTS FOR DETAILS AND MATERIALS REQUIRED FOR CROSSWALK & SIGN CONSTRUCTION.
 7. EXISTING REGULATORY, ROUTE MARKERS, EMERGENCY AND HISTORIC INTEREST SIGNS WITHIN THE CONSTRUCTION AREA SHALL BE MAINTAINED BY THE CONTRACTOR THROUGHOUT THE CONSTRUCTION PERIOD. PRIOR TO CLOSURE OF THE CONSTRUCTION CONTRACT THE PROJECT ENGINEER SHALL DETERMINE IF THESE SIGNS ARE TO BE REPLACED OR REMAIN AS-IS.
 8. EXISTING SIGN LOCATIONS ARE APPROXIMATE, AND SHOULD BE FIELD VERIFIED. COORDINATE WITH EG&G PROJECT NO. 24012.13 FOR PLACEMENT OF ALL NEW AND/OR RELOCATED SIGNAGE, AND POST REQUIREMENTS.
 9. ALL SIGN POSTS AND BACKS OF SIGN PANELS SHALL BE FINISH PAINTED TO MATCH FRANKLIN GREEN COLORING.

* SIGNS TO BE IN ACCORDANCE WITH E.G.&G. DETAIL NO. 11, SHEET NO. D-4.



8-1-15

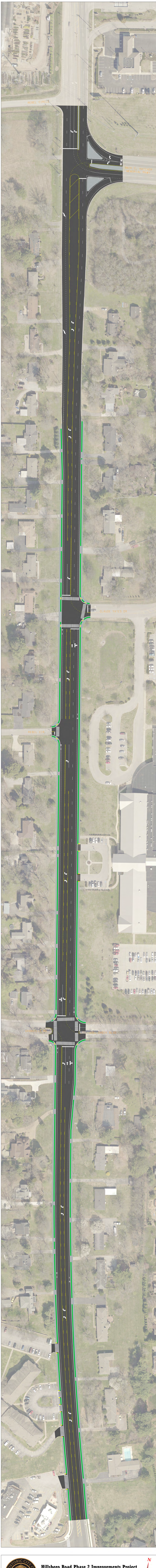
THE CITY OF FRANKLIN

SEI SULLIVAN ENGINEERING, INC.
317 MAIN STREET, SUITE 201
FRANKLIN, TENNESSEE 37064

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
BUREAU OF PLANNING & DEVELOPMENT

HILLSBORO ROAD (S.R. 106)
FROM: INDEPENDENCE SQUARE
TO: MACK HATCHER PARKWAY

SIGNING AND PAVEMENT MARKING PLAN
(REFERENCE ONLY)
SCALE: 1"=100'



Hillsboro Road Phase 2 Improvements Project

Exhibit B - Proposed Pavement Marking Plan

Scale: 1" = 50'



CIP FY2019-2029

FY 19 *thru* FY 23

City of Franklin, Tennessee

Project # ST 16037
Project Name West Main Street Pedestrian Improvements

Department Streets
Contact Engineering Director
Type Improvement
Useful Life 20+
Category Transportation
Priority 3 Star Project
Status Not Funded

Total Project Cost: \$2,946,750**Description**

The purpose of this project is to widen an existing bridge on West Main Street between N Petway Steet and 11th Ave South. The existing bridge does not adequately allow for pedestrian access along the roadway.

Expenditures	FY 19	FY 20	FY 21	FY 22	FY 23	Total
Design/Planning (Professional Services)	200,000					200,000
ROW and Easements		300,000				300,000
Construction Engineering / Inspection			200,000			200,000
Construction			2,246,750			2,246,750
Total	200,000	300,000	2,446,750			2,946,750

Funding Sources	FY 19	FY 20	FY 21	FY 22	FY 23	Total
General	50,000	300,000	926,000			1,276,000
Stormwater	50,000		910,000			960,000
Wastewater Renewal	50,000		330,000			380,000
Water Renewal	50,000		280,750			330,750
Total	200,000	300,000	2,446,750			2,946,750



**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR FRANKLIN ROAD CORRIDOR IMPROVEMENTS,
HARPETH RIVER BRIDGE TO HARPETH INDUSTRIAL COURT
COF Contract No. 2014-0209**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2018, by and between the **City of Franklin, Tennessee** ("City") and **CT Consultants, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled Franklin Road Corridor Improvements, Harpeth River Bridge to Harpeth Industrial Court – Final Plans and Specifications, dated the 14th day of October 2014; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not-to-exceed fee of One Hundred Thirty-Six Thousand Four Hundred and No/100 Dollars (\$136,400.00), as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, on February 9, 2016, the Board of Mayor and Aldermen approved Amendment No. 1 to the Agreement with the Consultant for additional LED street lighting design work in the amount of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00); and

WHEREAS, on June 11, 2017, the Board of Mayor and Aldermen approved Amendment No. 2 to the Agreement with the Consultant for additional design and coordination with three (3) new fiber optic utilities that now occupy existing utility poles, the addition of two (2) 10'x18' box culverts at the Harpeth River as recommended by the Army Corp of Engineers' Franklin Road Feasibility Study, and right-of-way and easement coordination with recently completed water and sanitary sewer plans in the amount not-to-exceed Sixty-Five Thousand Five Hundred Ninety and No/100 Dollars (\$65,590.00); and

WHEREAS, the City and Consultant realize the need for additional design work for the project due to circumstances beyond the control of the Consultant; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services, as described in Exhibit A dated January 30, 2018, in the amount not-to-exceed **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)**; and

WHEREAS, the City has reviewed the Proposal and desires to enter into an amendment to the Agreement as proposed.

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 work as proposed in their January 30, 2018, letter of proposal (**Exhibit A**) which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the work as described in Exhibit A an amount not to exceed **Twenty-Five Thousand and No/100 Dollars (\$25,000.00).**

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

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 dated October 14, 2014, Amendment No. 1 dated February 9, 2016, and Amendment No. 2 dated June 11, 2017, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

CT CONSULTANTS, INC.

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Tiffani M. Pope, Staff Attorney



January 30, 2018

Mr. William Banks
Staff Engineer
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37064

***Re: Franklin Corridor and Connector Streets Economic Development Project:
Franklin Road
Proposal for Amendment No. 3 to Professional Services Agreement for the
Franklin Road Corridor Improvements, Harpeth River Bridge to Harpeth
Industrial Court, Project COF Contract No. 2014-0209***

Dear William:

In follow-up to our recent discussions, I am submitting this updated proposal related to additional services for the Franklin Road project. This request is due to multiple factors, namely the installation of improvements over the past couple of years and modifications to the proposed utility relocations (as directed by utility companies). The additional services to be provided include:

Update Existing Conditions Survey:

1. Update survey to provide existing conditions and topography for the drive entrance (and removal of previous drive entrance) at 300 Franklin Road and for the fence that was installed on the property immediately north of this parcel. (Area shown in RED on the attached exhibit.) These improvements were installed after the survey was updated in 2015.
2. Update survey to provide existing conditions and topography for the property immediately south of Morningside Drive. (Area shown in YELLOW on the attached exhibit.) This area is beyond the original project area, which originally ended at Harpeth Industrial Court) for the installation of MTEMC improvements.
3. Update survey to provide existing conditions and topography for the area west of Franklin Road and North of Hooper Lane. (Area shown in BLUE on the attached exhibit.) This area is also beyond the original project area for the installation of MTEMC improvements.
4. Update survey to provide existing conditions and topography in front of 206 Franklin Road. (Area shown in GREEN on the attached exhibit.) These improvements were installed after the survey was updated in 2015.



January 30, 2018

Additional Utility Coordination:

1. As a result of multiple meetings with the utility companies over the past couple of months, additional existing utility facilities have been identified in the field along Franklin Road. Also, there have been some ownership transition and/or merges between some of the utility companies and their facilities. As a result, additional coordination is required for the design work that our team is preparing and for coordination with the design work that is being prepared by the utility companies.
2. Additional utility coordination has already occurred in order to facilitate the identification of easement areas and right-of-ways required for the relocation of the existing utilities and site improvements.

Contingency Funds/Additional Meetings:

1. In order to expedite the final design of this project, we would suggest allocating some funds for additional meetings and/or additional services that may be required in order to finalize the design drawings. This could be in relation minor scope changes / additions for utility relocations, coordination with Army Corps of Engineers, etc.

Fee Schedule:

<i>Update Existing Conditions Survey:</i>	\$13,500
<i>Additional Utility Coordination:</i>	\$ 6,500
<i>Contingency Funds/Additional Meetings:</i>	<u>\$ 5,000</u>
TOTAL:	\$25,000

Should you have any questions or comments, please do not hesitate to contact us.

Respectfully,

CT CONSULTANTS, INC.

Paul J. Roszak, RLA, ASLA, LEED GA
Project Manager

Attachments – Survey Exhibits

Untitled Map

Write a description for your map.

Existing conditions/
topo

Item 1 - Location/Elevation of drive and removed drive
entrance & Location of fence.

Item 2 - Existing conditions/topo for area shown in yellow.

Item 3 - Existing conditions/topo for area shown in blue.

COF Contract No. 2014-0209

Amendment 3 Exhibit A

Page 3 of 4

Location of fence

Existing conditions/
topo

Location/Elevation of
removed drive
entrance

Location/Elevation of
drive entrance

Google earth

© 2018 Google



200 ft

Untitled Map

Write a description for your map.

Item 4 - Existing conditions/topo for area shown in green.

COF Contract No. 2014-0209
Amendment 3 Exhibit A
Page 4 of 4

Existing conditions/
topo

Google earth

© 2018 Google

Old Liberty Pike

100 ft



**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2018-0019**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **BOOZER & COMPANY, P.C.** hereinafter referenced as “Consultant”, who mutually agree as follows:

DECLARATIONS. City desires to retain Consultant to provide real estate appraisal and related services in connection with the City’s project hereinafter referenced as “Project”. The Project is described as follows:

**Real Estate Appraisal Services for
SR-96 West Multi-Use Trail – Phases 1 & 2**

1. SCOPE OF SERVICES. Consultant shall provide real estate appraisal and related services for the Project in accordance with the Scope of Services (“Services”) as found in Attachment A which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount Not-to-Exceed **Eighty-Eight Thousand and No/100 Dollars (\$88,000.00)**.

**The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 201__.**

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 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 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.
- 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 Article.
- 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 Agreement 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 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.

6.3 **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.

- 6.4 Should City request changes in the scope, extent, or character of the Project, the fee and 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 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. 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 sixty (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 sub-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 (30) 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**
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 [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, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the 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 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** City and 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 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 City and Consultant.
- 10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** City reserves all rights afforded to local governments under law for all general and implied warranties. 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 this Agreement. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement 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 Agreement, contract 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.

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to Form;

Shauna R. Billingsley, City Attorney

**BOOZER &
COMPANY, P.C.**

Professional Real Estate Appraisers & Consultants

February 6, 2018

Mr. Ben Worley
City of Franklin
109 3rd Avenue South
Franklin, TN 37064

RE: Proposal for Real Estate Appraisals:
S.R. 96 Multi-Use Trail
From Vera Valley Drive to 5th Ave. North
Franklin, Williamson County, Tennessee

Dear Mr. Worley,

Per your request, I respectfully submit this formal proposal for **Ted Boozer, MAI of Boozer & Company, P.C.** to conduct appraisals on the above-referenced project.

The purpose of the appraisals will be to estimate the amount due the property owner as a result of the acquisition for the S.R. 96 Multi-Use Trail project. The intended use of the appraisals is to assist the City of Franklin in right-of-way acquisition for this project. The intended users of these reports are the City of Franklin and TDOT. **Boozer & Company, P.C.** will not be responsible for unauthorized use of the report.

The appraisals will be completed in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Act, and TDOT Guidelines for Appraisers. A fee schedule outlining the tracts to be appraised is included on the following page.

The appraisals will be completed on or before May 15, 2018, assuming authorization to proceed is given by February 28, 2018. Invoices will be due and payable in full within 30 days of invoice. Any subsequent revisions or updates to the appraisals, or testimony/conferences regarding condemnation of the tracts, shall be billed at a rate of **\$250 per hour**.

Thank you for allowing **Boozer & Company, P.C.** the opportunity to submit this proposal. I will proceed with the preparation of the appraisals upon receipt of a signed copy of this letter or a formal contract that includes the terms of this letter. If you have any questions, please feel free to contact me at 615-591-4422 ext. 203. I look forward to working with you on this assignment.

Sincerely,



Ted A. Boozer, MAI, CG-973
State Certified General Real Estate Appraiser

Engagement Letter Accepted

Date

Mr. Ben Worley
 February 6, 2018
 Page 2

**S.R. 96 MULTI-USE PATH
 FEE SCHEDULE**

Tract ID	Property Type	Appraisal Type	Fee
1	Institutional	FPA	\$4,000
2	Church	FPA	\$4,000
3	Church	FPA	\$4,000
4	Residential	FPA	\$4,000
5	Residential	FPA	\$4,000
6	Residential	FPA	\$4,000
7	Residential	FPA	\$4,000
8	Residential	FPA	\$4,000
9	Residential	FPA	\$4,000
10	Residential	FPA	\$4,000
11	Institutional	FPA	\$4,000
12	Institutional	FPA	\$4,000
13	Institutional	FPA	\$4,000
14	City Owned	Not Needed	N/A
15	Commercial	FPA	\$4,500
16	Commercial	FPA	\$4,500
17	Commercial	FPA	\$4,500
18	Commercial	FPA	\$4,500
19	Commercial	FPA	\$4,500
20	Commercial	FPA	\$4,500
21	Commercial	FPA	\$4,500
22	Commercial	FPA	\$4,500
Total			\$88,000

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2018-0020**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **R. RHETT TURNER, MAI, SR/WA** hereinafter referenced as "Consultant", who mutually agree as follows:

DECLARATIONS. City desires to retain Consultant to provide real estate appraisal review and related services in connection with the City's project hereinafter referenced as "Project". The Project is described as follows:

**Real Estate Appraisal Review Services for
SR-96 West Multi-Use Trail – Phases 1 & 2**

1. SCOPE OF SERVICES. Consultant shall provide real estate appraisal review and related services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount Not-to-Exceed **Sixty-One Thousand Six Hundred and No/100 Dollars (\$61,600.00)**.

**The Board of Mayor and Aldermen Approved this Agreement on the _____ Day
of _____ 201__.**

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 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 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.
- 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 Article.
- 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 Agreement 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 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 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.
- 6.4 Should City request changes in the scope, extent, or character of the Project, the fee and 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 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. 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 sixty (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 sub-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 (30) 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**
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 [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, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the 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 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** City and 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 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 City and Consultant.
- 10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** City reserves all rights afforded to local governments under law for all general and implied warranties. 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 this Agreement. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement 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 Agreement, contract 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.

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to Form:

Tiffani M. Pope, Staff Attorney
COF Contract No. 2018-0020

R. Rhett Turner, MAI, SR/WA

P.O. Box 2191 Mt. Juliet, TN 37121 | 615-812-7698 | RRT2244@gmail.com

February 6, 2018

Mr. Ben Worley, Right of Way Agent
Engineering Department City of Franklin
109 Third Avenue South, Suite 142
Franklin, TN 37064

RE: Proposal for Real Estate Appraisal Reviews and Form 2s
SR-96 West Multi-Use Trail- Phases 1 & 2
TDOT PIN 123098.00 from Vera Valley Drive to 5th Avenue North
Franklin, Williamson County, Tennessee

Dear Mr. Worley:

I am pleased to submit the fee schedule for the appraisal reviews and Form 2s for above noted project. The appraisal review reports report will be in compliance with the Tennessee Department of Transportation (TDOT) Guidelines for Appraisers, the Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Foundation and the Appraisal Institute's Standards of Professional Appraisal Practice and Code of Professional Ethics. The Form 2 will be in compliance with TDOT Right of Way standard operating procedures.

The appraisal review reports and Form 2s will be delivered to you in electronic pdf file format. Original hardcopies are available on request. If the City of Franklin would like assistance with the Right of Way Certification or condemnation process, this service can be provided and will be invoiced at the administrative rate of \$250.00 per hour. Any revisions to the appraisal review reports or Form 2s will be billed at the administrative rate of \$250.00 per hour. The appraisal review reports and Form 2s will be completed and delivered within 15 days after receipt of the appraisal report from the appraiser, Ted A. Boozer, MAI provided that a fully executed contract with the City of Franklin is delivered to me prior to the appraisal reports. I will also need an electronic copy and hard copy of the most recent set of right of way plans and all other related documentation.

The following chart provides a tract by tract fee schedule based on property type. Payment is due and expected with 30 days of the invoice date. Prompt payment is appreciated. Summarizing the table, 21 tracts will be reviewed, 21 appraisal review reports and 21 Form 2s will issued for this project.

State Route 96 Multi-Use Path Fee Schedule

Tract Number	Property Type	Fee	
1	Institutional	\$	2,800.00
2	Church	\$	2,800.00
3	Church	\$	2,800.00
4	Residential	\$	2,800.00
5	Residential	\$	2,800.00
6	Residential	\$	2,800.00
7	Residential	\$	2,800.00
8	Residential	\$	2,800.00
9	Residential	\$	2,800.00
10	Residential	\$	2,800.00
11	Institutional	\$	2,800.00
12	Institutional	\$	2,800.00
13	Institutional	\$	2,800.00
14	City Owned	N/A	
15	Commercial	\$	3,150.00
16	Commercial	\$	3,150.00
17	Commercial	\$	3,150.00
18	Commercial	\$	3,150.00
19	Commercial	\$	3,150.00
20	Commercial	\$	3,150.00
21	Commercial	\$	3,150.00
22	Commercial	\$	3,150.00
Total		\$	61,600.00

Thank you for the opportunity to work with the City of Franklin on this project. Prompt attention to the contracting process will assist me in expediting this project. If you have any questions please feel free to contact me anytime.

Respectfully submitted,



R. Rhett Turner, MAI, SR/WA

AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT FOR
JORDAN BRANCH/SPENCER CREEK RESTORATION PROJECT
COF Contract No. 2015-0096

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2018, by and between the City of Franklin, Tennessee ("City") and Civil & Environmental Consultants, Inc. (CEC) ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled Jordan Branch / Spencer Creek Restoration Project, dated the May 26, 2015; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not-to-exceed fee of One Hundred Six Thousand Nine Hundred Forty-Five and No / 100 Dollars (\$106,945.00), as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, on January 10, 2017, the Board of Mayor and Aldermen approved Amendment No. 1 to the Agreement with the Consultant for additional engineering and survey services in the amount not-to-exceed Six Thousand Five Hundred and No / 100 Dollars (\$6,500.00); and

WHEREAS, the City and Consultant realize the need for additional archaeological and construction services due to circumstances beyond the control of the Consultant; and

WHEREAS, the Consultant has provided a Proposal for an increase in professional engineering services, as described in Exhibit A, dated February 12, 2018, in the amount not-to-exceed One Hundred Twenty-Three Thousand Eight Hundred Fifty and No/100 Dollars (\$123,850.00); and

WHEREAS, the City has reviewed the Proposal and desires to enter into an agreement for the Project as proposed.

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 work as proposed in their February 18, 2018 letter of proposal ("Exhibit A")

which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the work as described in Exhibit A in an amount not to exceed One Hundred Twenty-Three Thousand Eight Hundred Fifty and No/100 Dollars (\$123,850.00).

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

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 dated May 26, 2015 and Amendment No. 1 dated January 10, 2017 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

Civil and Environmental
Consultants, Inc. (CEC)

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney

February 12, 2018

COF 2015-0096
Attachment A
PG 1 of 13

Mr. Paul Holzen, P.E., LEED AP
Director of Engineering
City of Franklin
109 3rd Avenue South
Franklin, TN 37064
Delivered via electronic mail to: paul.holzen@franklinton.gov

Dear Mr. Holzen:

Subject: Proposal for Professional Engineering Services
Additional Archaeological Services and Construction Services for Jordan
Branch/Spencer Creek in The Meadow at Cool Springs subdivision off Sliders
Knob & Bakers Bridge Avenue
City of Franklin, Williamson County, Tennessee
CEC Project 140-624

Civil & Environmental Consultants, Inc. (CEC) is pleased to submit this proposal to the City of Franklin as discussed and requested. Our preparation of this proposal is based on our understanding of the additional archaeological consultation being required by the Nashville District U.S. Army Corps of Engineers (USACE), Tennessee Division of Archaeology (TDOA), and Tennessee State Historic Preservation Office (SHPO) for permitting. This proposal is also based on our understanding of the construction services needed by the City to complete this project that were not included in CEC's design services proposal.

1.0 BACKGROUND

CEC understands that the City of Franklin has had complaints for several years regarding erosion of Jordan Branch/Spencer Creek which flows behind several houses before flowing under Cliffe Run in The Meadow subdivision located off of Bakers Bridge Avenue. The stream originates near the corporate boundary between Brentwood and Franklin at the edge of The Meadow subdivision adjacent to a golf course. Google Maps lists the stream as Jordan Branch, but the Tennessee Department of Environment and Conservation (TDEC) GIS lists it as Spencer Creek and impaired for siltation. Subsequent hydrologic determination work demonstrated that much of the channel is actually a wet weather conveyance and not a stream.

The channel is severely entrenched with eroding and undercut banks. The trees are in danger of falling and many could possibly fall on or very near houses. Relatively large portions of backyards are likely going to be "uprooted" when the trees fall. Stormwater channels designed to convey flow from the

subdivision to the stream are “head-cutting” which is also contributing to the loss of backyards in the form of eroding channels between lots.

There is also a known presence of significant prehistoric archaeological resources in the immediate vicinity of the stream restoration project. The project area includes the Coats-Hines Site, which is listed in the National Register of Historic Places.

Under previous phases of this project, CEC completed a feasibility study, consulted with TDEC, USACE, and other stakeholders during the design and plans development, conducted surveys of the project site, performed initial archaeological investigations and consultations, and developed conceptual plans, preliminary plans, and permit plans for the Jordan Branch/Spencer Creek Channel Restoration project. CEC has also submitted a TDEC ARAP application and submitted for coverage under USACE Nationwide Permit #27 (NWP #27). The TDEC ARAP Notice of Coverage for the project was issued on December 20, 2017.

The submission for coverage under NWP #27 initiated the Resource Agency Consultation regarding the Section 106 cultural resources process for the project. An onsite meeting was conducted on January 10, 2018 with representatives from CEC, City of Franklin, USACE, TDOA, and SHPO. During the onsite meeting, the USACE, TDOA, and SHPO indicated the required additional consultation would be a phased approach. An initial testing strategy of exposing soil horizon profiles along both sides of the stream cutbank at set intervals (tentatively 20 meters) is being required in order to provide further information on the boundaries of the Coats-Hines Site and to assess the potential presence of other sites within the project area. In addition, TDOA and USACE are requiring a series of Shovel Test Probes (STPs) along the construction access road portion of the project, to confirm the presence of fill placed during the neighborhood construction.

On January 31, 2018, CEC along with a representative from the City met with USACE, TDOA, and SHPO to discuss the additional archaeological consultation being required. The determination at this meeting was the soil horizon profiles would still be required unless the project plans were revised to not impact Jordan Branch/Spencer Creek below ordinary high water. The City, in consultation with CEC, determined a revision to the project plans would limit the ability to remove trees that are in danger of falling and reduce the effectiveness of the stabilization and restoration of severely entrenched, eroding and undercut channel banks.

On February 7, 2018, the USACE sent a letter requesting additional information that outlines the required additional information to continue processing the NWP #27 permit application. Subsequently, CEC reached out to USACE to request reduction of the soil horizon profile widths and/or reduce the number of profiles. The USACE representative stated that he would check with the TDOA, but to date, CEC has not received an answer. Therefore, this proposal is based upon the requirements contained in the February 7, 2018 letter.

2.0 PURPOSE

The purpose of this project is to enhance and stabilize the subject stream to a more aesthetically pleasing and stable condition by incorporating natural stream design principles, bioengineering, and

traditional stabilization techniques to the channel and riparian area that will enhance the aquatic habitat and provide a level of safety from the threat of falling trees and vertical streambanks.

The purpose of this proposal is to provide a scope and fee for CEC to provide additional archaeological consultation required as part of the NWP #27 application, construction administration, and construction observation services as the project moves forward toward construction.

3.0 SCOPE OF SERVICES

Phase I and II of this project included Tasks 3.1 through 3.8. Phase III includes additional archaeological consultation, bat mist net survey, construction administration, and construction observation services as detailed below in Tasks 3.9 – 3.12.

This scope of services and estimated cost are based on the assumption no cultural or faunal remains are uncovered during the soil horizon profiles and additional archaeological consultation will not be required after the soil horizon profiles have been completed and report submitted to the agencies.

CEC also assumes the agencies will require archaeological oversight during the excavation portion of construction based on prior consultation with TDOA and USACE even if no cultural or faunal remains are found during the profiling work. The proposal and estimated cost does not include consultation and/or additional services that may be required if cultural or faunal remains are found during construction.

3.1 Task 3.9 – Additional Archaeological Consultation

CEC will perform the following tasks:

- As required by the USACE, submit for coverage under USACE Nationwide Permit #6 (NWP #6) for Survey Activities prior to commencement of the fieldwork required for the additional archaeological consultation.
- After receiving concurrence on the soil horizon profiles work plan from the TDOA and USACE and coverage under NWP #6, CEC will subcontract to have the soil horizon profiles and reporting completed. See attached subcontractor proposal. CEC will not add a mark-up to the subcontracted services.
- CEC will submit the soil horizon profile report and continue consultation with TDOA and USACE as needed for NWP #27.

3.2 Task 3.10 – Bat Mist Net Survey

The USACE requires a review for the potential impact on threatened and endangered species pursuant to the Endangered Species Act (ESA). The Indiana bat and Northern long-eared bat are listed as threatened or endangered species potentially located near the project area.

CEC understands that the purpose of this survey is to gain Indiana bat/Northern long-eared bat clearance for the Jordan Branch/Spencer Creek Channel Restoration. In order to gain clearance, the

potential impacts to the federally endangered Indiana bat and federally threatened Northern long-eared bat must be given adequate consideration.

CEC currently possess a US Fish and Wildlife Service (USFWS) Permit (TE148282-5) and a Scientific Collecting Permit from the State of Tennessee (TWRA 1193) necessary for conducting this work. CEC is prepared to conduct a mist net survey for the tree clearing activity for a length of (0.5 kilometer (km) (1,600 ft.)) associated with the Jordan Branch/Spencer Creek Channel Restoration project area. The proposed survey work is based on the technical criteria outlined in the USFWS 2017 Range-wide Indiana Bat Summer Survey Guidelines (Guidelines). The guidelines indicates a survey effort of four net nights per km (0.6 miles) suitable habitat. CEC proposes to survey one mist net location (site) with two nets for two nights = four net nights. Upon completion of the field survey, CEC will prepare a Mist Net Report with the results of the survey. The report will then be submitted to the USFWS for their concurrence.

If the Indiana and/or Northern long-eared bat are captured at the Jordan Branch/Spencer Creek Channel Restoration project area, CEC will attach a transmitter and conduct a telemetry survey and emergence counts per the Guidelines. Telemetry and emergence counts are not included in this scope of work and a separate proposal will be prepared if an Indiana and/or Northern long-eared bat are captured.

3.3 Task 3.11 – Construction Administration

CEC will perform the following tasks:

- Revise and finalize the construction plans based on permitting requirements resulting from the required additional archaeological consultation and feedback from USACE received during the January 10, 2018 site visit. These revisions do not include revisions to the proposed channel alignment, profile, or grading.
- Make necessary copies and sell bid documents and maintain a list of bidders (CEC assumes that the City will pay any costs associated with advertising the bid in a newspaper).
- Conduct a Pre-bid Meeting.
- Conduct the Bid Opening at the City of Franklin offices.
- Certify the Bid tabulation and make a recommendation to the City of Franklin.

3.4 Task 3.12 – Construction Observation

CEC will perform the following tasks:

- Conduct Pre-Construction Meeting and Project Walk Through
- Review and Approve Shop Drawings
- Coordinate Utility Location and Relocation (If Necessary)
- Coordinate with Testing companies (If Necessary)
- Conduct Site Visits

- o Tree removal observation assumes one site visit per week for eight weeks on average.

- o Archaeological observation during excavation activities. Assumes five days per week for six weeks of excavation. The archaeological observer will also provide construction observation during the excavation activities, except for the installation of the grade control structures. General daily field reports are included, however, detailed archaeological reporting is not included. If the TDOA and USACE require detailed archeological reporting of construction activities a separate proposal will be provided.
 - o Grade control structure observation assumes one site visit per structure on average.
 - o One site visit per week for four weeks on average from the end of excavation activities through substantial completion.
-
- Conduct/Attend Bi-Weekly On-site Progress Meeting.
 - Review Contractor Pay Requests and Make Recommendation to City.
 - Coordinate with City Inspector and Contractor.
 - Review and Make Recommendation on Change Orders.
 - Interpret/Clarify Plan and/or Specification Questions or Conflicts.
 - Conduct Substantial Completion Walk Through.
 - Prepare Punchlist
 - Conduct Final Walk Through
 - Prepare Final Punchlist
 - Prepare Final Change Order
 - Prepare Warranty documentation including a site visit one year after final completion.

4.0 SCHEDULE

CEC can begin work upon receiving your authorization to proceed.

CEC is prepared to complete the bat mist net survey as early as possible beginning May 15, 2018 (when the bat mist net survey season starts), authorization to proceed is received and weather permitting. The mist net report will be submitted to the Cookeville USFWS for approval within two weeks of completing the field survey.

5.0 COST

Our not-to-exceed costs are based on the scope of services described above and will be billed on a Time & Materials (T&M) basis. If CEC encounters conditions that require additional services and costs beyond what is presented in the proposal, CEC will provide a written revised scope of services and revised costs for the City of Franklin's approval prior to proceeding. The estimated cost to perform the scope of services outlined above is provided below:

Task	Not-to-Exceed Cost
3.9 Additional Archaeological Consultation	\$47,800
3.10 Bat Mist Net Survey	\$6,650
3.11 Construction Administration	\$5,900
3.12 Construction Observation	\$63,500
Total	\$123,850

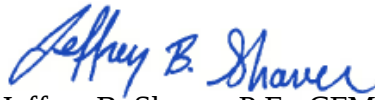
Invoicing of professional services will be in accordance with the attached fee schedule. Reimbursable expenses, including subcontracted services, are included in our estimated costs and will be invoiced according to the attached fee schedule. CEC assumes this proposal will be an addendum to CEC's existing City of Franklin contract number COF# 2015-0096.

6.0 CLOSING

CEC appreciates the opportunity to submit this proposal to you. We believe the scope of services outlined will address the City of Franklin's needs in a timely and cost effective manner. If you have any questions or comments, please call us at (615) 333-7797.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Jeffrey B. Shaver, P.E., CFM, CPESC
Project Manager



Jeffrey T. Duke, PWS, CPESC
Senior Principal



Steven E. Casey, P.E., CPESC
Principal

Cc: Jeff Willoughby, jeff.willoughby@franklintn.gov
Jonathan Marston, jonathan.marston@franklintn.gov

Enclosure 2018 Municipal Services Fee Schedule
Cultural Resource Analysts, Inc. Proposal

Task 3.10-3.12 will be dependent on the findings of task 3.9 and the City's agreement to this proposal does not imply agreement to proceed with task 3.10-3.12 if the findings from Task 3.9 deem the project unfeasible in the City's opinion.

Municipal Services Fee Schedule for 140-624

January 1, 2018 through December 31, 2018

PROFESSIONAL SERVICES

Classification	Rate/Hour
Senior Principal.....	\$220
Principal.....	\$195
Senior Project Manager	\$170
Project Manager III	\$160
Project Manager II	\$145
Project Manager I	\$135
Assistant Project Manager.....	\$110
Project Consultant / Geologist / Hydrogeologist / Biologist / Scientist.....	\$100
Staff Consultant / Geologist / Hydrogeologist / Environmental Specialist	\$95
CAD Designer.....	\$100
Draftsperson / CADD Operator.....	\$65
Senior Field Technician.....	\$80
Construction Observer / Environmental Technician.....	\$78
Senior Land Surveyor	\$150
Project Land Surveyor / GPS Specialist.....	\$100
Survey Technician IV	\$90
Survey Technician III.....	\$80
Survey Technician II.....	\$70
Survey Technician I.....	\$60
Administrative Assistant	\$65
Administrative Manager	\$73

DIRECT EXPENSES

Automobile Mileage	Current IRS Rate		
Printing and Reproduction	Cost		
Cost for	8.5"x11"	11"x17"	24"x36"
Black/White	.15	.15	\$2.00
Color	\$1.00	\$1.00	\$6.00 - \$10.00 (aerial)
Shipping	Cost		

SUBCONTRACT SERVICES

Services @ Cost

As stated on
 page 12 of this
 attachment A

**PROPOSAL TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS FOR THE PROPOSED
STABILIZATION OF JORDAN BRANCH IN
WILLIAMSON COUNTY, TENNESSEE**

February 8, 2018

Submitted to:

Jeffrey T. Duke
Senior Principal
Civil and Environmental Consultants, Inc.
325 Seaboard Lane, Suite 170
Franklin, Tennessee 37067

(616) 333-7797
jduke@cecinc.com

Cultural Resource Analysts, Inc. (CRA) is pleased to provide this proposal to conduct archaeological investigations of a section of the banks of Jordan Branch in Williamson County, Tennessee. This proposal includes our understanding of the project, as well as our scope of work, schedule and cost estimate. The information on this project was provided by Mr. Duke via emails dated February 6, 2018.

Project Description

This project includes the investigation of a portion of the banks of Jordan Branch near the town of Franklin in Williamson County, Tennessee. The project includes the stabilization of approximately 355 linear meters of bank on either side of Jordan Branch, a deeply incised wet-weather conveyance. The stream segment extends from Cliffe Run eastward to the boundary of the Nashville Golf and Athletic Club through a residential area. The stream banks are extensively eroded, exposing the roots of many of the large trees growing alongside the stream. Vehicular access to the stream will be along an access road running from Sliders Knob Avenue northeast along greenspace owned by the homeowner's association. The access road will cover approximately 300 linear meters. The project area encompasses approximately 3.6 acres in total.

Site 40WM31, the Coats-Hines Site, is situated immediately adjacent to the south bank of Jordan Branch on the eastern end of the project area. The Coats-Hines Site is nationally significant as it contains evidence of human interaction with now extinct Pleistocene fauna, including mastodon. Archaeological research at the site since the 1970s has produced the remains of mastodons and other animals, along with chert tools, carbonized plant remains, and pollen samples. Cut marks on the mastodon bones provide clear evidence of human activity, one of very few sites in the Southeast where this has been demonstrated.

As such, it is extremely important to Tennessee archaeology. The partial remains of at least two mastodons have been recovered from the south bank of Jordan Branch within the proposed project area. Pleistocene deposits have been identified in layers of gray and yellow clay buried as deep as 3m below the ground surface.

Scope of Work

A work plan for this project has been prepared by Civil and Environmental Consultants, Inc. (CEC) in consultation with the Tennessee Division of Archaeology and the Nashville District of the U. S. Army Corps of Engineers (USACE). This document was provided by Mr. Duke and was used in the preparation of this scope of work. No ground disturbance will take place within the existing boundaries of Site 40WM31.

Background Research

The background research for this project has been completed by CEC and it is assumed that this information will be shared for use in the field and final report.

Field Work

Given the extremely sensitive nature of the area to be examined during this project, standard archaeological methods for survey or testing are not appropriate. Instead, the work plan calls for profiles of the stream bank to be cleaned, drawn to scale, and photographed in order to determine the extent of the potentially cultural deposits. The profiles will be cleaned at 20m intervals on both banks, with the profiles on one bank spaced to fall between those of the opposite bank. The profiles will measure approximately one meter in width and will extend from the ground surface to the base of the stream bed. Each will be cleaned in such a way as to disturb as little soil as possible. No effort will be made to create vertical surfaces on sloped banks. Each soil zone will be described as to Munsell color and texture.

At this time, the amount of redeposited soil covering the natural soil strata is not known. Given the erosional nature of the stream, it is unlikely to be thick on the upper portions of the bank. However, it may be much thicker near the base. It is assumed for this project that a minimal amount of redeposited soil will be needed to be removed over the upper portions of the profiles. In addition, we anticipate that the slump deposits will be thicker near the base of the bank, but will not exceed 30cm in thickness.

While every effort will be made to obtain complete profiles at the prescribed intervals, the safety of the crew must take precedence. If sand lenses or other Class C soils (as defined by OSHA) are encountered, work will cease in that area. The client will be notified and a decision will be made on how to proceed at that point. At no time will OSHA regulations concerning deep excavations be violated. Deeply undercut portions of the stream bank will also be avoided.

If artifacts are encountered while cleaning profiles, their location will be recorded using a Total Station prior to being bagged. Lithic artifacts will be placed in paper bags marked with the horizontal and vertical provenience. Each bag will be issued a sequential bag number and that number recorded on a bag

list. If faunal remains are encountered, they will be left in situ until the proper means for their recovery has been decided in consultation with TDOA and USACE.

The access road corridor will be examined via systematic shovel testing. This area has presumably been covered by fill during the construction of the surrounding houses. Shovel tests will be excavated at a 15 meter interval along the centerline of the corridor, although additional tests will be necessary on the northern and southern ends where the corridor is wider. Each test will measure approximately 50 centimeters square and will be excavated no deeper than 61 cm below ground surface as no disturbance is anticipated beyond that depth. All of the excavated soils will be screened through ¼-inch mesh hardware cloth and all of the recovered artifacts retained for analysis. Records on each shovel test will be maintained throughout the project and will include total depth, soil stratigraphy, artifacts recovered, soil texture, and Munsell color. A GPS receiver will be used to record the location of each transect and positive shovel test. It is estimated that 25 shovel tests will be needed to complete the transects associated with the survey. No shovel tests will be excavated outside of the project area.

Notes on the overall project will be taken by the field director, along with appropriate photographs of the project area. Photographs of representative shovel tests will also be taken.

Laboratory Analysis

Upon arriving at CRA's laboratory, the recovered artifacts will be checked against the master bag list maintained in the field to assure that all materials are accounted for. The artifacts will then be cleaned in a manner appropriate to the material, allowed to dry, then placed in acid-free plastic bags with zip-type closures marked with the appropriate provenience information. The materials will be sorted and catalogued in keeping with the guidelines provided by the TDOA.

Given the nature of the site and the time period involved, it is expected that any recovered artifacts will be lithic tools or debitage. Analysis of the lithic artifacts will be conducted to provide an inventory of the recovered materials and an assessment of the likely temporal, spatial, and behavioral factors involved in the formation of the lithic assemblage. Analysis of these artifacts will focus on determining the raw material, manufacturing methods, technological characteristics, and possible function. Flake debris analysis will involve the use of multiple methods to determine the technological original of the flake. Three basic goals of the analysis are to: 1) provide information concerning the lithic technology utilized by the site inhabitants; 2) examine site use as indicated by the lithic artifacts; and 3) provide inferences concerning occupation intensity for the site. The resulting analysis will be presented in tabular form, which will be included in the technical report. A sample of diagnostic artifacts will be photographed. Following completion of the analysis of artifacts, they will be prepared for permanent curation in keeping with the requirements set forth by the TDOA. Curation will be at a facility to be agreed upon by the client and the USACE.

Deliverables

A summary of the field results will be provided to the client in an email at the conclusion of the field work. The results of the archaeological survey will be presented in a detailed technical report. The report

will provide a project description, methods, and field results. Project base maps showing areas surveyed and resources recorded during the investigation will also be included, along with appropriate photographs. Descriptions of each profile, including the soils encountered and any artifacts or faunal remains recovered will be included in the report. Our recommendations for additional work, if any, will also be included. In addition, the state site form for Site 40WM31 will be updated and submitted to TDOA.

A draft of the report will be provided to the client for initial review as a Portable Document Format (PDF) document. Once any comments have been received, final Draft Reports will be submitted for regulatory review. Three bound hard copies and three compact disks containing each draft report in PDF will be provided to the client.

Once comments have been received, the Final Report will be prepared which will incorporate any required revisions. An electronic version of the Final Report will be made available to the client to confirm that the revisions have been made. Three hard copies of each report and three compact disks with the reports in PDF format will be provided to the client following confirmation of the revisions.

Personnel

Mr. Travis W. Hurdle will serve as CRA's project manager for this project. The Principal Investigator for the archaeological survey will be Mr. Andrew Bradbury, who will also direct the field research and serve as author of the report. Mr. Bradbury has over 30 years of experience and is very familiar with deeply buried sites. He will be assisted in the field by four archaeologists with experience conducting investigations on prehistoric sites.

Schedule

We are prepared to begin work on the project within five business days following receipt of notice to proceed. It is anticipated that the archaeological investigations will require approximately 7-9 days in the field to complete. The draft report will be submitted to the client within 20 business days of completion of fieldwork. This schedule assumes that CRA will be running the project.

Assumptions

The following assumptions have been made when preparing the scope of work and estimated cost for this project. These are not intended to be all-inclusive, and it is recognized that unforeseen changes and circumstances may result during the course of the project. Should these situations arise, CRA will, in a timely manner, address specific scope or budget issues with the client to reach an agreement for any needed contract modifications and additional compensation per our standard rate schedule.

General Assumptions

- No issues with property access will be encountered. Access to private property will be coordinated by the client.
- Clear, detailed mapping (i.e., shapefiles of the project area) will be provided by the client.
- No extended periods of bad weather will occur during the fieldwork. Water levels within the stream channel will be sufficiently low to allow for the work to proceed.

- No presentations or meetings will be required as part of this project.
- No Archaeological Resources Protection Act permit is required. Any applicable USACE permits will be obtained by CEC prior to the beginning of the field work.
- No more than 1.9 acres will require shovel testing.
- No more than 25 shovel tests will be excavated.
- No more than 32 one-meter wide profiles will be prepared.
- No more than 30 cm of soil will need to be removed from each profile to expose the natural soil strata. Additional time may be needed to complete the profiles if this assumption is exceeded.
- No shovel test will exceed 61 cm in depth.
- No more than 50 artifacts will be recovered.
- No remains of megafauna will be discovered. Any specialized materials and additional time for the recovery of megafaunal remains is not included in this proposal.
- No Class C soils will be encountered.

Cost

We propose to complete the scope of work on a time and materials basis for a fee not to exceed of \$42,409 based on the scope of work and assumptions discussed above. This amount will not be exceeded without written permission from the client. Should any of the assumptions listed above be exceeded, a change to the budget may be requested. Terms are payment in full once the client has been paid.

This cost assumes the project will be managed and executed solely by CRA personnel. If CEC chooses to use CRA field personnel under the direction of CEC archaeologists, our costs will be billed on a per hour basis at the rates listed below, along with any associated expenses.

- Project archaeologist I \$96.11 per hour
- Staff Archaeologist I \$58.48 per hour
- Field Technician III \$50.03 per hour

Please sign below and return this page via email to twhurdle@crai-ky.com to authorize our services.

We appreciate the opportunity to assist you with this project. If you have any questions, please do not hesitate to call Mr. Travis Hurdle at 865-304-9141, or Mr. Paul Avery at 865-202-8091.

Sincerely,



Paul G. Avery, RPA
Principal Investigator
Cultural Resource Analysts, Inc.



Proposal Accepted and Work Authorized by:

Signed: _____

Name: _____

Position: _____

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2018-0023**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **CDM SMITH** hereinafter referenced as Consultant, who mutually agree as follows:

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

**RECLAIMED WATER SYSTEM MODEL
AND MASTERPLAN UPDATE**

1. SCOPE OF SERVICES. Consultant shall provide engineering related technical services for the Project in accordance with the Scope of Services (Services) as found in Attachment A which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount of **ONE HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$195,500.00)**.

**The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 201__.**

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 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 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.
- 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 Article.
- 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 Agreement 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 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.

6.3 **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.

- 6.4 Should City request changes in the scope, extent, or character of the Project, the fee and 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 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. 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 sixty (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 sub-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 (30) 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**
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 [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, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the 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 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** City and 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 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 City and Consultant.
- 10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** City reserves all rights afforded to local governments under law for all general and implied warranties. 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 this Agreement. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement 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 Agreement, contract 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.

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to Form;

Shauna R. Billingsley, City Attorney

Attachment to Exhibit A

Reclaimed Water System Hydraulic Model Development and Masterplan Update

Scope of Services

Background and Objectives

In the summer of 2017, the City of Franklin (COF) Reclaimed Water System experienced flow and pressure drops and delivery issues in multiple service areas, particularly along the southern service areas in and around the Berry's Farm subdivision. The City's Water Management Department solicited CDM Smith to develop a Reclaimed Water System model to evaluate the overall system; and specifically, evaluate the issues being experienced in the southern service areas in order to propose short-term alternatives that could address the operations (such as valve operations, system interconnections and potential storage options) over the remainder of the summer.

As a result of the discussions related to the reclaimed system service and a follow-up to the initial analysis, the City desired to update the existing reclaimed water system masterplan and progress the model to develop short-term and long-term recommendations for both operations and capital investment for the entire system. The updates would consider a broad-range of options to address future reclaimed water system demands city-wide; as well as, options for reclaimed water utilization to comply with increasingly stringent nutrient reduction requirements for the existing and future wastewater effluent discharge.

The following sections summarize the proposed tasks to provide the City with short-term solutions for system pressure issues and long-range planning for future reclaimed water demands.

Project Scope of Work

Task 1 – Model Development

Task 1.1 City Staff Coordination and System Information Gathering

CDM Smith will obtain the following information and determine the adequacy of the information to assist in the development of the reclaimed water system analytical model. The information assembled shall include, but is not limited to, the following:

- City's GIS geodatabase of the existing reclaimed water system infrastructure,
- Historical and current customer demands (billing data),
- Reclaimed pump station pump curves and control settings,
- SCADA Data, including average and peak day demands (as available), and
- As-built drawings (pipe size, material, etc.)

To date, CDM Smith and the City have coordinated on the available data for the system; as well as collected additional field data to assist in the initial development and calibration of the model. The information collected and utilized to date include the following items. Additional data collection to be completed is described in additional tasks herein.

- GIS database of existing reclaimed water network
- Pumps curves for reclaimed water pump station
- Actual usage (meter data) versus contract usage for customers
- System data collected on existing system pressures and flows at various locations within the system (see below)

System Data:

Location	Data Type	Dates
Franklin WRF at Reclaimed Pumps	Pressure	5/23/2017 - 5/26/2017 6/2/2017 - 6/6/2017 6/12/2017 - 6/13/2017 6/28/2017 - 7/3/2017 11/9/2017 – 11/10/2017
Franklin WRF at Reclaimed Pumps	Flow	6/2/2017 - 6/6/2017 6/28/2017 - 7/3/2017 11/9/2017 – 11/10/2017
Redwing Farms	Pressure	5/23/2017 – 5/26/2017 6/6/2017 – 6/13/2017 11/9/2017 – 11/10/2017
Berry Farms Air Release	Pressure	6/6/2017 – 6/13/2017
Berry Farms Hydrant	Pressure	5/23/2017 – 5/26/2017 6/6/2017 – 6/13/2017 6/28/2017 – 7/3/2017 11/9/2017 – 11/10/2017
Berry Farms Reclaim Meter	Pressure	6/28/2017 – 7/3/2017
Berry Farms Domestic Hydrant	Pressure	6/28/2017 – 7/3/2017
Downs Blvd.	Pressure	6/28/2017 – 7/3/2017
Legends Golf Club	Pressure	11/9/2017 – 11/10/2017
Westhaven LS	Pressure	11/9/2017 – 11/10/2017

Task 1.2 Develop Reclaimed System Hydraulic Model

After performing a review of the available data, CDM Smith will develop a WaterGEMS hydraulic model of the City's existing Reclaimed Water System. The City's GIS database will be used to construct the base model and incorporate all existing system infrastructure. Customer demands from City records will

be distributed to the appropriate nodes within the model and system wide diurnal demand curves will be developed.

Task 1.3 Inspect Effluent Pump Station for Reclamation

To ensure a thorough understanding of the condition and current operations of the system pump station, CDM Smith staff will visit and inspect the effluent pump station (water reclamation pump station) at the Water Reclamation Facility (WRF) to catalog the nameplate, information for each operable pump and verify the normal operating point(s) for the pump systems by recording flow and pressures for the station. If power meters are available, CDM Smith will calculate wire-to-water efficiencies and identify any inefficiencies of the pump(s).

Task 1.4 Pump Curves and Pump Controls Incorporated into the Model

CDM Smith will incorporate all the pump curves into the model, adding curves as needed and setting up controls to start and stop pumps during extended period simulations. If available, the City will provide test curves for any pumps that have been tested within the past 10 years, certified performance curves, or manufacturer's design curves for each pump. The City will provide on/off settings for automatically controlled pumps, and CDM Smith will interview operators to obtain information for simulating manually controlled pumps. CDM Smith will assimilate this information and the results of the water reclaimed pump station inspection(s) to ensure each pump station is accurately represented in the model. We will identify pumps that operated during spot-checks at points that do not fall on the provided curves in the model and recommend formal pump tests where discrepancies cannot be resolved. If SCADA data is available, we will also compare to field measurements for an additional accuracy check and utilize the SCADA data for the calibration efforts.

Task 1.5 System Field Testing

CDM Smith will conduct a multitude of field tests to best calibrate the system model to the conditions observed in the field. The testing will include a mix of system analysis including monitoring at individual customer meters, flow and pressure measurements within the system, hydrant testing (limited due to minimal hydrants and blow-offs on the system) and c-factor testing.

Initially, CDM Smith will coordinate the installation of recorders at approximately 10 of the City's largest customers to watch real-time usage within the system. A Meter Master 100EL, or similar type monitor, will be installed on the existing reclaimed water meters for an extended, continuous period, estimated from May 2018 to August 2018 to capture the extents of the high demand period. Monitors will record water usage in small increments (one to five-minute periods) for the entire period to ensure that the usage patterns are captured. The exact number of monitors will be adjusted as necessary to obtain the information required for successful calibration. Due to the unknown cost of the monitor rentals and data collection, an allowance for the equipment and/or subcontractor to perform the work has been included for \$20,000. The actual contract value of the monitoring program will be provided to the COF for approval prior to commencing the work.

In addition to the monitoring at the meters, CDM Smith will work with the COF to field measure flows and pressures within selected pipes similar to the data collected and shared above from the summer of 2017. These tests will typically be completed during high demand days during summer months to accentuate head losses along trunk mains during periods of minimal flushing. We will utilize system pressure loggers and associated flow data from the system to convert measured pressures to feet of water and add gauge elevations in order to plot hydraulic grade lines (HGLs) against distance. These plots will demonstrate the accumulation of head losses and illustrate bottlenecks or other potential hydraulic restrictions within the pipe network. The hydraulic gradient tests also provide accurate benchmark information for model calibration. We anticipate utilizing up to 8 pressure loggers within the reclaimed system assuming the locations can be accessed and available for the connection of the loggers. These field activities will be coordinated with the City of Franklin to identify the most appropriate, and available, locations.

In addition to the field tests identified above, CDM Smith may also utilize c-factor testing and hydrant testing as appropriate to collect additional calibration data. The c-factor testing is not anticipated to be as valuable as the testing above due to the relative newness of the piping network. CDM Smith will work with the City staff to identify up to five areas within the system with the oldest infrastructure to verify pipe c-factor. The purpose of these tests is to provide a characterization of the C-factor for the various grouping of pipes throughout the reclaimed water system. The chosen locations, including the primary piping leaving the WRF pump station, will assist with determining the conveyance capacity of the piping network; as well as assisting with any piping affected by tuberculation or deposits. The preliminary C-factors in the model will be adjusted based on the test results. We assume that the COF Water Management Department will provide staff to accompany CDM Smith during the tests and perform operation of hydrants/valves as required.

Finally, CDM Smith will perform hydrant testing within the system where possible. The lack of hydrants and blow-off locations within the system will limit the opportunities for the two-hydrant testing, but testing will be coordinated with the City staff. The field pressure data for static and flowing conditions will be collected utilizing the two hydrant testing protocols. Data for two flow tests and a static pressure reading near the highest system elevation will be collected. Flow tests will be conducted using a procedure similar to hydrant flow tests on the potable water system, with reclaimed water blowoff valves opened to induce a large demand on the system instead of opening a flow hydrant. Although the blowoff flow rate may not be able to be measured directly due to the configuration, we will be able to estimate the blowoff flow rate using SCADA data from the high service pumps at the WRFs. The system demands, operating conditions, and blowoff flow rates observed during the field tests will be simulated in the hydraulic model, and the modeled and field pressures will be compared and calibrated against at each location. Due to the lack of current knowledge in regards to the potential locations where testing could be completed, this proposal includes up to 10 flow (hydrant/blowoff) tests and will be adjusted based on actual coordination on potential locations with the City staff.

Task 1.6 Calibrate Model using Field Tests

The accuracy of a computer model is highly dependent on its degree of calibration. To determine if a computer model is calibrated, actual field conditions are simulated using the model. System operating

parameters (e.g. system pressures, flow, etc.) generated by the model are compared with the parameters measured in the field activities outlined above in task 1.5.

CDM Smith will calibrate the developed model by running steady-state simulations to mirror the existing operations observed during the field tests discussed above. The calibration will compare the predicted flows and pressures with measurements from the hydrant flow tests and hydraulic gradient tests. The model will be adjusted until its predictions agree reasonably, as agreed upon by CDM Smith and the COF, with the observed measurements. Major discrepancies will be investigated and resolved prior to finalizing the calibration.

Task 1.7 Prepare a Model Calibration Report

CDM Smith will prepare a briefing report that describes the sources of information used for background model data and documents the final calibration results. The report will include charts and tables comparing model predictions with flow and pressure measurements, including SCADA data sets (as available).

Task 1.8 Train City Staff

CDM Smith will conduct three 8-hour days of training for all appropriate City staff at the Water Management offices focusing on:

- Basic overview of model components, including general background and operations of WaterGEMS Software
- Updating the model using GIS data or drawings of new developments/subdivisions
- Creating scenarios to model multiple operations situations

In addition to the time for the actual training, this task includes all the time and effort to prepare the documents, presentation and materials for the training.

Task 2 – City-Wide Reclaimed Water System Analysis

Task 2.1 Kickoff and Additional Meetings to Develop System Goals and Demand Scenarios/Alternatives Approach

CDM Smith will facilitate a kickoff meeting and up to four follow-up meetings to determine the COF Water Reclamation System usage goals; for example, whom and where the City wants to serve (residential vs commercial) as major customers and how the City wants to expand and operate the system into the short-term and long-term future. The meetings will be utilized to develop demand and alternative scenarios based on the meeting discussions that will be utilized in the model and are intended to meet the following criteria:

- The adequacy of the system under its current demands, including identifying systems weakness. This will be a scenario consisting of two sub-sets: one with actual current metered use showing

deficiencies, if any, and a second showing contractual committed usages showing deficiencies, if any.

- The adequacy of the system where capacity has been granted, but is not currently in service. This will be a scenario that will consist of the two subsets. (actual use = existing metered use + granted contractual with peaking factor)
- The adequacy of the system to incorporate the City's future needs based on projected growth. This scenario will consist of the ability to add projected growth nodes and areas with appropriate peaking factors to the scenarios above.

Task 2.2 Hydraulic Model Update with Developed Scenarios/Alternatives

CDM Smith will utilize the hydraulic model developed in Task 1 to model the scenarios discussed above and any additional needs developed as part of Task 2.1 discussions. These scenarios will be incorporated into the model to allow for future usage of the scenarios by the COF.

Task 2.3 Develop Peaking Factors

Peaking factors will be assigned to represent daily and seasonal variation in water usage based on current usage patterns observed in the reclaimed system, specific usage information obtained from customer billing database, reclaimed profiles from customer types in other similar communities, and typical peaking factors from accepted manuals of practice. In addition, we will utilize the field testing and monitoring of individual meters in Task 1 to verify these peaking factors.

Task 2.4 Evaluation of Hydraulic Model Runs of Developed Scenarios/Alternatives and Developed Peaking Factors

CDM Smith will perform hydraulic model simulations to assess the capacity and ability of the existing water reclamation system's pumping, conveyance and storage to serve the developed scenarios. Water quality and operating conditions will be evaluated for seasonal conditions (winter average day, summer average day, summer maximum day). CDM Smith will review the City's Standard Operating Procedures with respect to best practices from other utilities resources and provide recommendations, as necessary, to improve system operations.

Task 2.5 Development of Water Reclamation System to Serve Water Reclamation Demand

After the water reclamation system scenarios/alternatives are established in the model, projections will be updated and potential system Improvement projects will be developed as part of both a short-term and long-term capital improvements program. CDM Smith will perform hydraulic modeling analysis to determine the infrastructure required to meet the projected demand scenarios established in 2.1. CDM Smith will utilize hydraulic model results to evaluate the least-cost combination of pumping, storage, and transmission improvements to meet the projected demands. In determining improvement recommendations, the following will be considered:

- Reclaimed water storage needs (at both the existing and future WRFs, as well as the reclaimed distribution system)
- Establishing pressure zones to correspond with the potable water system

- Operating protocols
- Water quality
- Balancing the mix of customer uses to reduce peak demand on the system
- Flexibility and redundancy to improve operation and maintenance
- System interconnections and looping
- Maintaining continual flow of water
- Need for system re-chlorination stations at pump/storage locations to maintain water quality
- End of pipe blow-off locations
- Remote flow control valves to manage system and customer delivery
- Additional treatment capacity
- Additional treatment needs

As part of the capital program development, up to three meetings will be held with the COF staff to develop and evaluate potential projects to meet the long-term needs of the system.

Task 2.6 Technical Memorandum of Model Results Tabulating System Improvements

Once conceptual facility improvements associated with each of the scenarios/alternatives are developed, CDM Smith will prepare a technical memorandum describing the analysis protocol, the model results and a list of potential conceptual infrastructure improvement projects. CDM Smith will conduct a meeting that will explain the protocol that developed the conceptual facility improvements. An update meeting will be held to give insight on the identified projects to the COF so decisions on the orderly improvement of the system can be achieved. Cost estimates will be prepared for the primary alternatives developed in conjunction with the COF. The cost evaluation will include both estimated capital costs and operation and maintenance costs for both the treatment facilities and the storage and distribution facilities. To compare among potential alternatives to supply customers, a unit cost per gallon of reclaimed water demand will be calculated.

Task 3 – Master Plan Update Report

Task 3.1 Master Plan Report Development

CDM Smith will prepare a draft report that summarizes the conceptual reclaimed water alternatives and identifies the highest potential primary alternatives based on the analysis conducted under Tasks 2.1 through 2.6. Within the report, CDM Smith will identify preliminary phasing of the recommended reclaimed water system alternatives with respect to current planned projects in the system, future development, and planned WRF expansions and future constructions. The plan will also include regulatory considerations, particularly as it relates to future discharges and potential WRF permitting limitations and capital project improvement costs. Upon review, CDM Smith will update the draft report based on all feedback from the COF and publish a final Reclaimed System Master Plan Report.

Compensation

CDM Smith proposes to complete the work under Tasks 1 through 3 above for a not-to-exceed budget of \$195,500. The details of this cost estimate are shown on the table below and included in the task

breakdown. CDM Smith will bill the project on a monthly basis based on the attached task breakdown and billing rate table. For each monthly invoice, CDM Smith will submit a monthly progress report and update on project status and deliverables.

Project Tasks		Hours	Totals
1	Task 1 – Model Development	600	\$99,000
2	Task 2 - City-Wide Reclaimed Water System Analysis	535	\$75,000
3	Task 3 - Master Plan Update Report	160	\$21,500
Total Tasks 1 - 3		1,295	\$195,500

Labor Category	Billing Rate (\$/hour)
Senior Technical Advisor	\$ 225
Officer	\$ 210
Project Manager	\$ 195
Technical Specialist	\$ 175
Senior Engineer	\$ 155
Engineer II	\$ 135
Engineer	\$ 115
Senior Field Technician	\$ 105
Junior Engineer	\$ 100
GIS/Field Technician	\$ 90
Clerical/Contract Administrator	\$ 75

Client: City of Franklin, TN
 Project: Reclaimed Water Emergency Services and Master Plan Update
 Detail: Scope of Work Fee Estimate

Date: 12/18/17

	Senior Technical Advisor	Officer	Project Manager	Technical Specialist	Senior Engineer	Engineer II	Engineer	Senior Field Technician	Junior Engineer	GIS/Field Technician	Clerical/Contract Administrator					
Task Descriptions	\$225 Hrs	\$210 Hrs	\$195 Hrs	\$175 Hrs	\$155 Hrs	\$135 Hrs	\$115 Hrs	\$105 Hrs	\$100 Hrs	\$90 Hrs	\$75 Hrs		Labor Totals	ODCs Totals	OPs Totals	Task Level Totals
Task 1 - Model Development																
1.1 City Staff Coordination and System Information Gathering	2	2	4	4		32	20				2	66	\$9,120	\$250		\$ 9,370
1.2 Develop Reclaimed System Hydraulic Model		2	2			52	16				2	74	\$9,820			\$ 9,820
1.3 Inspect Effluent Pump Station for Reclamation		2	2		4	4			8	4		24	\$3,130	\$150		\$ 3,280
1.4 Pump Curves and Pump Controls Incorporated into the Model		2	2			12	8					24	\$3,350			\$ 3,350
1.5 System Field Tests	2	2	6	6		40	24	24		60	4	168	\$19,470	\$1,000	\$20,000	\$ 40,470
1.6 Calibrate Model using Field Tests		2	4			40	24					70	\$9,360			\$ 9,360
1.7 Prepare a Model Calibration Report	4	2	4			40	16		16		8	90	\$11,540	\$100		\$ 11,640
1.8 Train City Staff	4	2	2	8		32	24			8	4	84	\$11,210	\$500		\$ 11,710
Task Totals	12	16	26	18	4	252	132	24	24	72	20	600	\$77,000	\$2,000	\$20,000	\$ 99,000
Task 2 - City-Wide Reclaimed Water System Analysis																
2.1 Kickoff and Additional Meetings to Develop System Goals and Demand Scenarios/Alternatives Approach	6	5	7	8		16	12				3	57	\$8,930	\$200		\$ 9,130
2.2 Hydraulic Model Update with Developed Scenarios/Alternatives			2	4		40	24		8			78	\$10,050			\$ 10,050
2.3 Develop Peaking Factors	2	2	2	2		16	4		4	4		36	\$4,990			\$ 4,990
2.4 Evaluation of Hydraulic Model Runs of Developed Scenarios/Alternatives and Developed Peaking Factors	8	4	8	16		50	40		16	4		146	\$20,310			\$ 20,310
2.5 Development of Water Reclamation System to Serve Water Reclamation Demand	8	4	4	10		56	16		4			102	\$14,970			\$ 14,970
2.6 Technical Memorandum of Model Results Tabulating System Improvements	2	2	4	12		40	40		16			116	\$15,350	\$200		\$ 15,550
Task Totals	26	17	27	52		218	136		48	8	3	535	\$74,600	\$400		\$ 75,000
Task 3 - Master Plan Update Report																
3.1 Master Plan Report Development	4	2	8	10		80	40			8	8	160	\$21,350	\$150		\$ 21,500
Task Totals	4	2	8	10		80	40			8	8	160	\$21,350	\$150		\$ 21,500
TOTAL	42	35	61	80	4	550	308		72	88	31	1,295	\$172,950	\$2,550	\$20,000	\$195,500

DRAFT RESOLUTION 2018-13

**A RESOLUTION AUTHORIZING CONDEMNATION FOR THE
ACQUISITION OF PROPERTY FOR THE HOLIDAY COURT PUMP
STATION IMPROVEMENTS PROJECT**

WHEREAS, the City of Franklin (City) has determined that certain improvements are necessary for the existing Holiday Court Pump Station; and

WHEREAS, these improvements are generally described as the construction of a submersible style pump station utilizing two (2) pumps with accompanying valve vault, flow meter and emergency pump connection and force main improvements; and

WHEREAS, it will be necessary for the City to obtain easements from landowners for the construction of the Project; and

WHEREAS, the Franklin Board of Mayor and Aldermen expressly finds that the City has the power of eminent domain to extend public roads, see T.C.A. §29-17-301 *et seq.*, and to acquire Rights-of-Way and Easements necessary for proper completion of the said Project, and that the acquisition of such Rights-of-Way and/or Easements is for a public purpose and for a public use, and that the acquisition of the private property hereinafter described is necessary to accomplish said public use.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, that the City Engineer and /or City Attorney, are authorized to obtain the necessary rights-of-way, permanent easements and/or temporary easements across the properties listed in Exhibit A hereto and may enter into agreements with property owners with respect to the compensation to be paid for the said rights-of-way and easements, so long as such amounts are reasonable, within the project budget and supported by a qualified appraisal.

The City Engineer and City Attorney are authorized to continue negotiating with any landowner for the acquisition of the rights-of-way and/or easements without resort to condemnation. However, if an impasse is reached with a property owner and condemnation is the only alternative, then the City Attorney, or his/her designee, is authorized to commence necessary condemnation proceedings. After condemnation proceedings have commenced, the City Engineer and /or City Attorney, are authorized to enter into settlement agreements with property owners with respect to the compensation to be paid for the said rights-of-way and easements, so long as such amounts are reasonable, within the project budget and supported by a qualified appraisal.

IT IS SO RESOLVED AND DONE on this the ____ day of _____, 2018.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

By: _____
ERIC S. STUCKEY
City Administrator/Recorder

By: _____
DR. KEN MOORE
Mayor

Approved As To Form By:

Shauna R. Billingsley
City Attorney

EXHIBIT A

RESOLUTION 2018-13

Parcels: 079F B 20.00
079F B 12.00



**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2018-0024**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **BOOZER & COMPANY, P.C.** hereinafter referenced as Consultant, who mutually agree as follows:

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

**APPRAISAL SERVICES FOR HOLIDAY COURT PUMP STATION
IMPROVEMENTS PROJECT**

1. SCOPE OF SERVICES. Consultant shall provide appraisal services for the Project in accordance with the Scope of Services (Services) as found in Attachment A which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount of **(THREE THOUSAND AND NO/100 DOLLARS)** (\$3,000.00).

**The Board of Mayor and Aldermen Approved this Agreement on the
 Day of 201 .**

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 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 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.
- 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 Article.
- 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 Agreement 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 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.

6.3 **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.

- 6.4 Should City request changes in the scope, extent, or character of the Project, the fee and 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 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. 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 sixty (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 sub-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 (30) 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**
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 [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, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the 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 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** City and 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 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 City and Consultant.
- 10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** City reserves all rights afforded to local governments under law for all general and implied warranties. 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 this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement 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 Agreement, contract 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.

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to Form;

Shauna R. Billingsley, City Attorney

**BOOZER &
COMPANY, P.C.**

Professional Real Estate Appraisers & Consultants

February 13, 2018

Patricia McNeese, P.E.
Utilities Project Manager
City of Franklin
Water Management Department
124 Lumber Drive
Franklin, TN 37064

RE: Appraisal of Temporary Construction Easements
Holiday Court SPS Replacement
Franklin, Williamson County, Tennessee

- Easement #1: Louis J. Resha, Et Ux
- Easement #2: Robert E. Robeson, Jr., Trustee

Dear Ms. McNeese:

This proposal has been submitted at your request for **Boozer & Company, P.C.** to provide you with appraisal reports for temporary easements proposed for the above-referenced project. The purpose of the appraisal is to assist the City of Franklin in the determination of the amount of just compensation to which the property owners are entitled for property rights acquired.

The scope of service to be provided by our firm will be limited to providing individual appraisal reports prepared in accordance with the Uniform Standards of Professional Appraisal Practice guidelines adopted by the Appraisal Foundation. This proposal does not include any additional costs associated with engineering, surveying, or staking of the project. If these or any other services are required in order to complete the appraisal, all costs will be passed directly to the client.

The appraisals will be completed within **30 days** upon receiving authorization to proceed and receipt of relevant information. The proposed fee for this assignment is **\$1,500 per tract (\$3,000 total)**.

For future court testimony and/or pre-trial conferences and consultation, an additional charge of **\$350 per hour** will be billed.

Thank you for the opportunity to submit a proposal on this project. If we can be of assistance, please let us know.

Respectfully submitted,



Eric L. Boozer, MAI, CCIM
Certified General Real Estate Appraiser, CG389

Engagement Letter Accepted:

_____ Date