

**LAW DEPARTMENT**

**Shauna R. Billingsley, Esq.**  
City Attorney  
Also Licensed in Texas



**HISTORIC  
FRANKLIN  
TENNESSEE**

October 27, 2017

**VIA ELECTRONIC MAIL**  
**Doug.Berry@millermartin.com**

Douglas Berry  
Miller and Martin, PLLC  
401 Commerce Street, Suite 720  
Nashville, TN 37219-2449

**RE: COF Contract No. 2017-0287 Engagement Agreement for Mack Hatcher Condemnation  
Suits Representation**

Dear Mr. Berry:

We are pleased to retain you and your firm as outside counsel. In addition to the following, the terms of representation are contained in the *City of Franklin Law Department Policy and Procedures for Outside Counsel* (the "Policy"), a copy of which is enclosed. Please familiarize yourself with the requirements contained in the *Policy* and ensure that all personnel working on City of Franklin matters are familiar with them as well. By continuing to undertake further representation, you are agreeing to abide by the terms of the *Policy*.

Please identify an individual to serve as a Principal Client Contact as required under the *Policy*. This person will serve as the Law Department's main point of contact for this engagement. It is also important that you keep the City Attorney's office informed regarding all aspects of the work in accordance with the requirements set out in the *Policy*. You are required to submit to our office, via e-mail, a litigation status report every six (6) months. We will provide a form to you electronically at the e-mail address you provide. Please note that all bills should be submitted to my attention. Please send both a detailed bill as well as a bill/invoice summary, which states simply the hours worked, hourly rate, and total amount due. Please use the name of the matter on your bills, and bill each matter separately from any other work you are performing for the City. For all billing inquiries, please provide us with a business office contact.

Please note that current market rates for general municipal work are approximately \$195.00 for Attorneys, \$175.00 for Associates and \$65.00 for a paralegal. Please indicate to us your terms and conditions. Note that the *Policy* requires that you receive recommendation from the City Attorney. While I understand that your work may involve different terms than standard municipal work, please note that any additional terms and conditions you may propose must be separately approved; the City has several standard terms and conditions that are not negotiable. By signing this engagement letter, you are agreeing to the terms contained in this letter and in the *Policy*.

As you may know, the City of Franklin is committed to meeting the goals of the City's Equal Business Opportunity ordinance. During the engagement, we may want to discuss with you how the firm can provide opportunities to minority or women owned firms or minority or female attorneys within the firm.



HISTORIC  
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TENNESSEE

We look forward to working with you on this matter to provide the highest level of legal services to the citizens of the City of Franklin.

Sincerely,

*Shauna R. Billingsley*  
Shauna R. Billingsley  
City Attorney

Enclosures

cc: Eric Stuckey, City Administrator

**PLEASE FILL OUT THE FORM BELOW AND RETURN**

Rates/hour or contract rate		Principal Client Contact Information
Attorney (includes partners)	\$265 / HR	Name: Douglas Berry
Associates	\$175 / HR	Telephone: (615) 744 8620
Paralegals	\$100 / HR	E-mail: doug. berry @ miller martin . com
Copying costs	\$ /	Other information:
Other	\$ /	
Proposed by: DOUGLAS BERRY  <i>Douglas Berry</i> Attorney Signature MILLER + MARTIN PLLC Firm Date: 10/27/17		Accepted by:  _____ Dr. Ken Moore Mayor  Date: _____

# City of Franklin Law Department

Policy and Procedures for  
Outside Legal Counsel



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TENNESSEE

### **Introduction**

The City of Franklin Law Department Policy and Procedures for Outside Counsel ("Policy") is designed to provide law firms engaged by the City Attorney on behalf of the City of Franklin, its departments, boards, agencies, authorities, commissions, and employees (herein, collectively referred to as the "City") with the requirements for such legal representation. This Policy is mandatory for all law firms engaged by the City of Franklin Law Department (the "Law Department" or "Department"). All law firms representing the City are required to adhere to this Policy, and each such law firm shall ensure that all attorneys and support staff working on City matters are familiar with the requirements set forth herein.

The Law Department is committed to providing top quality legal services to the City. The Department recognizes that its vision will not become reality or its mission accomplished without the involvement and expertise of outside counsel on particular matters. This Policy is designed to ensure that the relationship between the Department and the outside firms is well managed and that all interested parties understand the relationship. This Policy also serves to articulate the specific requirements of the relationship.

This Policy sets forth the basis for the retention of outside law firms by the City of Franklin Law Department. When representing the City, your firm is expected to adhere to the requirements. The Policy will be modified from time to time. Changes to the Policy will be communicated to the law firms representing the City at the time of the changes. It is the responsibility of each law firm to ensure it is operating under the most current version of the Policy.

### **General Policy Applicable to All City of Franklin Matters**

The information contained in this section of the Policy pertains to all matters in which law firms are engaged on behalf of the City. Each law firm is responsible to ensure that all attorneys and support staff working on matters for the City are familiar with this Policy. Outside counsel shall act only as an independent contractor; no employer-employee relationship shall be created between the City and outside counsel or outside counsel's employees or agents. Outside counsel and law firms shall abide by the Tennessee Rules of Professional Conduct and failure to abide by these rules will result in a breach of contract with the City.

### **Authority to Engage Outside Counsel**

The City Charter provides that only the Board of Mayor and Aldermen ("BOMA") has the authority to contract and be contracted with. Therefore, it is essential that outside law firms do not perform work on behalf of the City unless the firm has been engaged by the City Attorney, pursuant to an arrangement consistent with this Policy, and unless the representation has been memorialized in an engagement letter sent by the City Attorney to the law firm and signed by BOMA on behalf of the City.

### **Budgets**

Each law firm that is engaged on a legal matter for which it will be compensated in any manner other than a flat fee for the representation must submit to the City Attorney a good-faith estimate of the cost of the work. While it is likely in many engagements that the cost of the matter will be difficult to estimate at the early stages of the representation, the law firm should make a serious effort to estimate fees for the entire matter, or if that is not possible, for a defined portion of the matter as is deemed appropriate. The estimate will be used by the City Attorney to determine what level of funding to seek during the engagement. Each law firm that is engaged by the City will be expected to continuously monitor the extent of fees generated and to inform the City Attorney as soon as possible if the fees are expected to exceed previous estimates. At times, it may be appropriate to estimate the fees according to various aspects of the work and plan to submit supplemental requests for funding. It is expected that, if this method is used, the law firm (through the Principal Client

Contact) will work closely with the City Attorney to anticipate when a particular phase of the work is drawing to a close and additional authority is needed. For litigation matters, please see additional information on budgets included in the section on litigation guidelines.

#### **Firm's Lead Counsel**

When the law firm is first engaged by the City Attorney, the firm will designate a Lead Counsel, who will be responsible for managing the overall relationship between the law firm and the City Attorney. The firm's Lead Counsel is responsible to designate the Client Service Team for every matter for which the firm is engaged, to oversee the billing (including arranging for any alternative billing arrangements), to ensure adherence to this Policy and top quality service, and to interact regularly with the City Attorney and the designated staff within the Law Department and to address with the City Attorney any potential conflicts of interest. The firm's Lead Counsel will be required, from time to time, to engage in a review of the relationship between the law firm and the City and to assess the quality and costs of the service with the City Attorney. The firm's Lead Counsel will be responsible to manage the particular engagement to ensure that the City Attorney is kept informed of developments in the particular matter and that the Client Service Team works closely with the City's Law Department.

#### **City Client Service Team**

Each law firm providing service to the City is required to designate a Client Service Team to coordinate with the Law Department in the representation. The team shall include the following:

1. The firm's Lead Counsel who will be responsible for the particular matter.
2. The Principal Client Contact who will be responsible to assemble the Client Service Team needed to address the particular matter and to work closely with the Responsible Law Department Attorney, other Law Department staff as deemed appropriate, and the business contacts as deemed appropriate.

At the time a matter is assigned to the law firm, the Department will expect the law firm to designate a Client Service Team appropriate to the particular matter. The experience of the team members and the number of attorneys and support staff assigned to each matter will be determined by the law firm in consultation with the City Attorney and will be designed to properly staff the matter in a manner that is appropriate, while being cost effective. Changes to the Client Service Team should not be made unless first reviewed by the law firm with the City Attorney.

#### **City of Franklin Contacts**

It is essential that, when providing legal services to the City of Franklin, the City Attorney and the law firms work closely at all times. The law firm should strive to work with the Law Department in conjunction with the business contacts in the City and not communicate solely with the business contacts. Law firms should not accept work from anyone in the City of Franklin other than the Law Department as no other department has authority to assign work to outside counsel. It is necessary that good communication be established among the law firm, the Law Department and the appropriate City Business Representative (discussed below).

The method used to provide this communication will likely vary according to the nature of the matter. For example, engagement of a firm to do multiple condemnations will require a different type of communication than one involving a single litigation matter. The City Attorney will work with the law firm to determine the type of communication that is expected for the particular matter, and the law firm shall adhere to those requirements. In addition, every firm providing legal service to the City will be expected to provide semi-annual form status reports to the City Attorney.

**City Business Representative**

Frequently, it will be necessary for the Law Department to arrange for the law firm to work directly with City representatives outside of the Law Department. If this type of activity is appropriate, the City Attorney will inform the law firm of the business contacts with whom the attorneys should work. The City Attorney will designate (in conjunction with the department being represented) a City Business Representative, who will serve as the principal business contact for the particular matter. In addition, the City Attorney will inform the firm's Lead Counsel of how the firm should communicate with the City Business Representative and when the Law Department Attorney should be included in those contacts. If in doubt, the law firm should always err on the side of communicating with the Law Department.

**Matter Assignment**

Legal work for the City of Franklin will only be assigned by the Law Department. Law firms performing work for the City should not accept any work outside the scope of the representation previously designated by the Law Department and pursuant to the engagement letter without specific written approval from the City Attorney. Any requests by business contacts to perform legal work should be immediately referred to the City Attorney. Failure to communicate additional work outside of the scope of representation to the City Attorney may result in a denial of fees claimed and any work performed will be considered a free service to the City. Any questions regarding whether a particular matter is within the designated representation for which the firm has been retained should be directed to the City Attorney.

**Procurement of Professional Legal Services by the Law Department**

It is the goal of the Law Department to procure legal services that are tailored to the particular legal need that has been identified. Consideration for such professional services will be at the discretion of the City Attorney, based on whether a firm's qualifications are consistent with the overall goals of the City in providing top quality legal work and opportunities for diverse law firms and attorneys to participate in the City's legal representation.

**Promotion of Diversity**

It is the policy of the Law Department to obtain legal services in a manner that is consistent with the City of Franklin's equal business opportunity policies. All statements of qualifications or proposals sought by the City Attorney for the provision of legal services will include a statement from the proponents on meaningful diversity practices and initiatives. Selection of outside counsel will be reviewed in light to the City's diversity objectives with consideration given to the establishment of co-counsel relationships between minority or female and majority-owned firms, the presence of female and minority partners in majority owned firms, mentor-protégé relationships, and meaningful opportunities for medium, small and sole practitioners to participate in work on behalf of the City.

**Title VI**

Due to federal funds received by the City, the law firm must agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Policy or in the employment practices of the law firm on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. Further, the law firm shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

**Correspondence and Documents**

All correspondence, pleadings and other documents created or transmitted by the law firm in connection with the representation of the City on a particular matter should clearly identify the matter on which the law firm is working.

**Media Inquiries**

Law firms retained by the City Law Department must refrain from responding to media inquiries about the legal work of the City. All requests from the media for comment should immediately be referred to the City Attorney. If the City Attorney is not available, the law firm should contact the City Administrator's office at (615) 791-3217.

**Conflicts of Interest**

All law firms representing the City must be free of conflicts of interests. Any potential conflicts should be disclosed and discussed with the City Attorney, whether they arise when the law firm is first engaged or arise after the relationship has been established. Conflicts will be discussed by the City Attorney and the firm's Lead Counsel and will be resolved in a manner that is consistent with the Tennessee Rules of Professional Conduct and all applicable ethics laws and regulations.

In addition to conflicts of interest that typically arise in law firms when representing private entities, an additional concern will be taken into account by the City Attorney when a determination is made on whether to grant a waiver of a conflict requested by a firm representing the City. If the request for a waiver relates to a matter of particular importance in the City's initiatives, or a particularly important public policy issue facing the City, the City Attorney may not agree to a waiver. The City Attorney recognizes that most law firms will have other clients who interact with the City on many levels and many issues. It is the intent of the City Attorney to address conflict waiver requests in a manner that affords maximum flexibility to the firms in representing other clients. However, law firms agreeing to perform work for the City should recognize that such work may at times create an actual or potential conflict and preclude the firm from representing other clients on certain public issues.

**Training Programs**

At times, law firms may be asked by City Business Representatives to provide training to city employees regarding particular issues of interest. Although the Law Department does not prohibit such training, no training should be undertaken without the prior approval of the City Attorney. Any training materials to be used by the law firm must be reviewed first by the City Attorney's office. Failure to submit such materials and to receive prior approval may result in a denial of fees claimed and any training provided will be considered a free service to the City.

**Professional Liability Insurance**

Unless otherwise requested, law firms represent that it carries professional liability insurance in accordance with the most current Government Tort Liability Act, which can currently be located at Tenn. Code Ann. § 29-20-403. It is the law firm's responsibility to keep informed of the current Government Tort Liability requirements and to adhere to those requirements. The policy shall indicate the attorneys in the firm that are covered and what percentage(s) of their practice are devoted to the area of law upon which they will be providing advice. The policy shall include at least a three (3) year Extended Reporting Provision.

If the above requirements and coverages are not included in the policy at any time during the representation, then the City Attorney may, without notice, terminate the relationship and all amounts due and owing, if any, may be paid within thirty (30) days if not disputed. The Department may request a certificate of insurance to substantiate the above coverages.

**Retention of Records by Law Firms/Open Records Requests**

The law firm should keep records of matters it handles for the City consistent with the Tennessee Rules of Professional Conduct and the City's internal record retention practices. The law firm should consider that some records it has in its possession, if not covered by attorney/client privilege, work

product protection or any other privilege, could be subject to an Open Records request pursuant to Tenn. Code Ann. § 10-7-501 *et seq.* If a law firm receives an Open Records request relating to a City matter, the City Attorney should be contacted immediately. Under no circumstances should a record be released or destroyed until the City Attorney's office concurs that the record is required to be disclosed or destroyed in accordance with the law.

#### **Policy Regarding Litigation**

In addition to the general policy, the following policy applies when a law firm is engaged by the Law Department to represent the City in litigation matters. These rules are supplemental and in addition to the response dates and conferences required by the Tennessee Civil Practice Act and the Federal Rules of Civil Procedure, where applicable.

#### **Early Case Assessment**

The Law Department believes that early evaluation of litigation brought against the City is an important aspect of providing cost-effective legal services. When a litigation matter is assigned to a law firm, the law firm should plan, within the first sixty (60) days after the matter is assigned, to hold a conference (the "Early Case Assessment Conference") with the City Attorney regarding how to handle the case. This early case assessment should include at least the following:

1. Fact evaluation: The law firm should develop the facts of the particular matter as fully as practicable during the first sixty (60) days after the matter is assigned. This factual investigation should include review of the available documents and interviews (in person, if possible) with the key witnesses.
2. Legal authority: The law firm should, during the early case assessment, prepare a summary of the principal legal authority relative to the matter and review this material with the City Attorney.
3. Summary: As part of the Early Case Assessment Conference, the law firm should prepare a written summary of the facts and law to be provided to the City Attorney prior to the Conference.

#### **Litigation Budget**

At the time a law firm is engaged to represent the City in litigation, the law firm is required to prepare a litigation budget, which should include the law firm's best estimate of the cost of litigating the matter, considering the need for expert witnesses, fact witness discovery and potential trial exhibits. The budget should be submitted to the City Attorney within sixty (60) days after the matter is assigned to the firm.

#### **Retention of Experts**

Approval by the City Attorney is required prior to any engagement of an expert by the law firm. The expert is required to submit a budget for his/her services, and approval of the budget must be obtained from the City Attorney prior to the authorization for any services. As litigation proceeds, the law firm is required to ensure that the budget is kept current. Before any written reports or summaries are elicited from an expert, the City Attorney must be contacted to discuss the effect of any such report on the case strategy.

#### **Extensions of Time**

Because lengthy extensions of time to respond to pleadings or provide discovery responses can increase the cost of litigating a matter or delay its resolution, lengthy extensions should not be routinely sought. Prior to authorizing any extension greater than three (3) months, the law firm must discuss the request with the City Attorney.



**Vendors**

Use by the law firm of vendors, such as court reporters, document management companies, or investigators, should be coordinated by the law firm with the City Attorney. The City of Franklin Law Department encourages law firms to seek opportunities to include minority, women and locally-owned business among its vendors, and to include such businesses among those who do work on City matters.

**Alternative Dispute Resolution**

The Law Department recognizes that certain, special matters may be considered for alternative dispute resolution ("ADR"), but as a general rule the City will not agree to such terms. Any law firm engaged to represent the City in a litigation matter should, throughout that representation, seek to identify times when the use of ADR might be an appropriate and cost effective option to resolve the matter. As these opportunities arise, the Lead Counsel should discuss the possibility with the City Attorney, who in conjunction with the law firm, will make a determination as to whether the City will engage in ADR.

**Settlement Authorization**

No case or claim in the City of Franklin may be settled, even by the City Attorney, without the authorization of the BOMA (except as may be previously authorized by the City Budget). Any law firm representing the City should not make any offers of settlement without prior authorization from the City Attorney. All approved offers of settlement should include information about the necessity of gaining authority to settle from the governing authority of the City. The Court and opposing counsel should be informed that any settlement offer communicated is contingent on such approval.

**Strategic Discussions Required**

Strategic, significant pleadings and discovery responses must be discussed with the City Attorney prior to their submittal to the court or opposing counsel. Drafts may be requested by the City Attorney to ensure review prior to the due date. It is recommended that the discussions and drafts be presented with at least one week for review by the Law Department.

**Questions Regarding Litigation**

Any questions regarding the guidelines for handling litigation matters should be directed to the City Attorney or City Administrator.

**Legal Fees and Billing Requirements****Alternative Billing Arrangements**

The Law Department encourages the use of alternative billing arrangements whenever appropriate for work done by outside counsel. Such alternative billing arrangements could include flat fees for certain aspects of the work; blended rates for all personnel working on the matter; discounts associated with certain aspects of the works; standard government rates comparable to those offered the State of Tennessee or other local governments; and similar arrangements.

When the standard hourly billing method is used, the Law Department encourages law firms to consider the nature of public sector representation and adjust their hourly rates to reflect the need to be prudent in the expenditure of public money.

All billing arrangements must be discussed by the Business Representative and the City Attorney at the time the representation begins. The billing arrangement will be included in the engagement letters signed by the City Attorney and the Business Representative.

**Billing Requirements**

All bills for legal services should adhere to the following policy:

1. Bills should be submitted to the City Attorney.
2. The matter name and any relevant file information will be identified in the engagement letter, and this name should be used when the bill is submitted. Multiple matters should be submitted on separate invoices.
3. The preferred billing cycle is monthly. Bills should be submitted monthly covering each month's activity.
4. At the beginning of the representation, the firm's Lead Counsel should provide to the Law Department that name and contact information for the billing manager in the event we need to contact the billing manager regarding an invoice.
5. The bill should be submitted in the form substantially like the one described below; however, in addition to a detailed bill, a bill/invoice summary which states simply the hours worked, hourly rate, and total amount due should be sent as well.
6. Bills should include a record of all timekeepers on the file and the description of the work *should be in sufficient detail* to allow the Law Department and City staff to assess the nature and scope of the work performed, while protecting attorney/client privileged information. Itemize separate tasks on matters so that it is clear how much time was spent on each task; the City reserves the right to challenge the length of time spent on a task if it is not reasonable and customary under the circumstances. A single line entry of multiple tasks will not be approved.

***Example of poor billing entry:***

<u>Hours</u>	<u>Attorney</u>	<u>Matter</u>	<u>Task</u>
4 hours	XYZ	ABC litigation	Met client. Reviewed documents. Researched. Discussed with counsel. Advised. Drafted letter. Billed on TimeSlips.

Total= \$360.00

***Example of good billing entry (using same tasks as above):***

<u>Hours</u>	<u>Attorney</u>	<u>Matter</u>	<u>Task</u>
.50 hours	XYZ	ABC litigation	Met with Mr. Q, Ms. S and City Attorney.
.25 hours	XYZ	ABC litigation	Reviewed contract and exhibits, reviewed letter from Citizen B, reviewed minutes from April 1, 2007 BOMA meeting.
1.0 hours	RST	ABC litigation	Researched employment law in regard to letter from Citizen B.
1.0 hours	RST	ABC litigation	Researched case law on estoppel.
.25 hours	XYZ	ABC litigation	Telephone conference with Mr. Q discussed case law and research.
.50 hours	XYZ	ABC litigation	Met with Mr. Q, Ms. S and City Attorney discussed status and my thoughts on drafting the letter in response to Citizen B's letter.
.50 hours	XYZ	ABC litigation	Drafted letter to Citizen B responding to his breach of contract. (Note: billing time entries <i>disallowed</i> .)

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Total: 4.0 hours

Rates: RST paralegal 2 hours @ \$ 40.00 per hour = \$ 80.00

XYZ attorney 2 hours @ \$140.00 per hour = \$280.00  
\$360.00

**Example of Summary Sheet Invoice to be included:**

*ABC Litigation*

**PROFESSIONAL SERVICES**

<u>Staff</u>	<u>Time</u>	<u>Rate</u>	<u>Total</u>
XYZ	1.5 Hours	\$140.00	\$210.00
RST	1.5 Hours	\$ 60.00	<u>\$ 90.00</u>

**TOTAL FEES THIS INVOICE: \$320.00**

**Travel**

The City will reimburse outside counsel for reasonable travel expenses associated with the legal work performed on behalf of the City, provided the expenses meet all regulations established by the City's current Travel Policy, a copy of the most recently adopted version is attached as Exhibit A. All travel must be pre-approved by the City Attorney, and the law firm representatives should make travel arrangements that are consistent with the prudent use of public funds. Law firms will not be reimbursed for first class air travel, expenses at luxury hotels or similar expenditures. The City also will not pay for time spent traveling unless the attorney was performing work for the City while en route.

**Staffing**

When staffing a matter for the City, care should be taken to ensure that the staffing is appropriate for the matter, with limitations on the number of timekeepers assigned to the file. The number of timekeepers and the experience level of those timekeepers should be consistent with professional standards considering the complexity of the matter and the volume of the work. Staffing should be established at the beginning of the representation, and any changes to that staffing must be reviewed with the City Attorney.

**Expenses and Disbursements**

The City will reimburse law firms for reasonable disbursements. The cost of filing fees, long distance phone calls (telephone and facsimile), messenger and overnight delivery charges will be reimbursed at the actual expense incurred. Copying charges will be reimbursed at the maximum rate approved by BOMA in its records policy, a copy of the most recently adopted version can be found online at [www.franklintrn.gov](http://www.franklintrn.gov). Absent extenuating circumstances, it is expected that the firm will not charge the City for that research in addition to the time spent performing the research by the timekeeper. The City will not pay for secretarial overtime, library services, temporary employees, and similar expenses that should be included in the law firm's overhead (i.e., filing, billing, Westlaw® fees, etc.). Because the City is exempt from all taxes, such a line-item should not be charged. All other fees and charges shall be presumed to be a part of the Outside Counsel's overhead and shall be denied unless specifically authorized by the City Attorney.



401 COMMERCE STREET  
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NASHVILLE, TN 37219-2449  
615-244-9270  
FAX 615-256-8197



Douglas Berry

Direct Dial 615-744-8620  
Direct Fax 615-744-8635  
dberry@millermartin.com

October 26, 2017

Shauna Billingsley  
City Attorney  
City of Franklin  
P.O. Box 305  
Franklin, TN 37064

Re: Legal Representation in Condemnation Suits ("the Litigation")  
to be filed for Mack Hatcher By-Pass, Northwest Quadrant—State Project  
#94092-2216-14; Federal Project #STP/HPP-397(10) ("the Project")

Dear Ms. Billingsley:

I was previously appointed special additional counsel to represent the State of Tennessee in connection with condemnation lawsuits for the above project. (See August 25, 2010 letter from Governor Phil Bredesen, attached). Four suits have been filed pursuant to this authority. Two of those are still pending. During the last two months, I have met with City Administrator, Eric Stuckey, and other City officials concerning this firm's handling additional cases on the Project. I was also informed last week by Deputy Attorney General, George Boyte, that the gubernatorial appointment is still valid and in force for whatever additional actions need to be filed.

The City of Franklin ("City") has agreed with the State to pay the cost of acquiring additional right-of-way, easements, and other property rights necessary for the Project. It is expected that some or all of these costs may be reimbursed in the future. The City has also agreed to compensate this firm for our legal services in connection with this appointment.

This letter will contain the terms of and govern all new cases referred to us for the Litigation.

**Client:** Our client in the Litigation will be the State of Tennessee. However, because the City and State by formal agreement are sharing the costs of design,

construction, and acquisition of right-of-way, the City is also a client. The City has a complete unity of interest with the State in paying only a fair and reasonable amount for right-of-way, easements, and other rights.

**Scope of Engagement:** This engagement is limited to representing the State and City in the Litigation. Because we are neither the City or State's general counsel, our representation is limited to specific matters that either City or State asks us to handle and that we agree in writing to undertake.

**Client Responsibilities:** Litigation often burdens and inconveniences the parties involved. To do our job properly, we need certain commitments from the City: it agrees to be candid with us and to fully, accurately, and timely disclose to us all facts, documents, electronically stored information, and other information that may relate to this matter. The City must preserve all evidence, including documents and electronically stored information, related to the Litigation. It agrees to cooperate with us, to commit resources sufficient to meet its discovery obligations, and to make its officers and employees available to meet with us and to attend trial, depositions, and other proceedings. It agrees to notify us of any material changes in its business, such as an acquisition, merger, or substantial change in ownership, so that we can consider whether they create a conflict of interest with our other clients.

**Payment:** We trust that you understand the importance of timely payment for our work. The Company agrees to pay our fees and expenses, as provided below.

**Fees:** We base our fees primarily on the time spent by our professionals and their hourly billing rates. My hourly rate for these cases will be \$265.00. Other rates range from \$185 for new associates to \$685 for senior partners and from \$185 to \$250 for legal assistants. However, we will not make assignments to any attorney whose hourly rates are greater than mine and will not charge for legal assistants at a rate higher than \$175 per hour. In collecting, processing, and producing electronically stored information, we may use litigation-support personnel at rates ranging from \$175 to \$225 per hour. All rates are subject to change and are usually increased each January. We will bill for, among other things, responding to requests to provide information to auditors, waiting in court or for other proceedings, and time spent in necessary travel.

**Expenses:** Our bills will include expenses we incur in this engagement. These include charges for copying, postage, delivery services, computerized research, travel, long-distance telephone, facsimile or data transmission, and, if our work requires it, secretarial and staff overtime. They also include fees for filing with the court, court reporters, transcripts, process servers, and witnesses. The City has already hired an expert appraiser for these cases. If we believe that additional appraisers or other experts are necessary to represent the State and City's interests, we will make that recommendation

to the City legal staff and State attorney general. The City should expect to pay the fees and expenses of any additional experts directly.

**Bills:** We will send statements, normally each month, showing our services rendered and expenses incurred. Payment is due on receipt. We intend to charge reasonable fees, so please review the bills and, if the City is dissatisfied or unable to pay promptly, contact me to discuss. We may withdraw if the City does not pay within 30 days.

**Estimates:** Litigation is unpredictable; circumstances beyond our control often determine the amount of work. If we estimate or budget an amount of fees, it is only an estimate and not a fixed fee, fee quote, or guaranteed maximum. If anyone at our firm makes a statement about possible outcomes, it is an opinion only, based on information available to him or her at the time, and not a promise or guarantee. The Company agrees to pay us regardless of the outcome.

**End of Engagement:** The City and State may terminate our representation at any time by notifying us in writing. We may withdraw from representation as permitted or required by the lawyers' rules of professional conduct. The City will be obligated to pay for fees and expenses incurred up until termination or withdrawal, including for incomplete work in progress. Unless terminated earlier, our representation will automatically terminate when we send the last statement with descriptions of our services in the matter.

**Files:** During and after this engagement, we may convert paper documents to digital format and retain only the digital copy. We may delete and destroy all records from this representation at the end of the firm's document-retention period, which for client files is currently seven years after conclusion of the matter, without further notice. We will send the City its file if it requests it before then, though we may retain a copy. We may exclude from the file our own files on the matter, which include, for example, firm administrative records, time and expense reports, credit and accounting records, and our lawyers' work-product prepared for our internal use, such as drafts, notes, internal memoranda, and legal and factual research or investigation.

**Post-Engagement:** After the Litigation concludes, the law or circumstances may change, affecting the City's rights and liabilities. Unless the City engages us to provide additional legal advice, we will not have a duty to advise it about future developments. We may send newsletters, email alerts, or otherwise inform it of issues of interest, but these communications do not reinstate the attorney-client relationship or create a duty to represent it in other matters. If we record any judgment, lien, or financing statement, we will not be obligated to renew or refile it unless we agree in writing.

**Consent to Future Conflicts:** Miller & Martin represents many clients in many lines of business. Once we receive final title information on the properties to be condemned, it may be that some of the persons with an interest in the property are existing clients of this firm in unrelated matters. Moreover, during or after this engagement, the City may have a transaction or dispute with one of the firm's other present or future clients. While we are not aware of, or have separately disclosed, any present situations in which the City's interests are directly adverse to another firm client, other than Franklin TN Medical Investors, LLC, we do not know all of the parties with which it does business, and a conflict could arise because another firm client does business or competes with it. Under the rules of professional conduct for lawyers, we cannot represent a client whose interests are directly adverse to the City's without the informed consent of both clients. The City should consult with separate counsel about this paragraph, which asks it to consent, in advance, to our representation of current or future clients whose interests may be adverse to it, as follows: The City agrees that our representation of it in the Litigation will not disqualify us from representing other clients who are opposed to it in other matters, including litigation, if those matters are not substantially related to our representation of the City, and it waives the conflict of interest with respect to those representations. We will not, however, use any proprietary or other confidential information that we obtain from representing the Company to its disadvantage in any litigation or other matter in which we represent another client adverse to it.

If the City disagrees with anything in this letter, please let me know as soon as possible so that we can resolve the differences. Otherwise, please sign below to accept this agreement and return a copy to me. If for any reason we do not receive a signed copy, then the City's acceptance of our services in the Litigation will constitute acceptance of the terms of this letter.

We appreciate the chance to serve and look forward to working with you.

Sincerely,



Douglas Berry

**AGREED TO AND ACCEPTED:**

\_\_\_\_\_  
City of Franklin

By: \_\_\_\_\_

Title: \_\_\_\_\_