

September 8, 2017

Mr. Andrew Orr
Principal Planner
109 Third Avenue, Suite 125
Franklin, Tennessee 37604

728 Wild Berry Court
Marvin, NC 28173
704-243-5900

www.city-explained.com

RE: Land Suitability Analysis Using CommunityViz Software
Franklin, TN

Dear Mr. Orr:

City Explained, Inc. ("the Consultant") is pleased to provide this letter agreement (the "Agreement") to the City of Franklin, Tennessee (the "Client") for general on-call scenario planning services using CommunityViz software. A project understanding, scope of services, schedule and fee estimate are provided below.

PROJECT UNDERSTANDING

The Planning and Sustainability Department relies on CommunityViz software to complete certain plans and studies for the City's planning area. The most recent application of the software was for the Envision Franklin Land Use Plan. The City would now like to update portions of the land suitability analysis described in the Land Use Plan to reflect new data available for a portion of the planning area. The City generally relies on consulting services to complete this type of work using CommunityViz software.

The Consultant will be available as an extension of City staff to provide general guidance related to scenario planning and CommunityViz software. The Client will provide input data and model files for the CommunityViz model developed for the Envision Franklin Land Use Plan, and the Consultant will use this information to rebuild the land suitability analysis module in a new model to incorporate new input data provided by the Client. The new CommunityViz model will be developed using ArcGIS v. 10.4 and CommunityViz v. 5.1 software, and will be delivered to the Client for their future use independent of the Consultant (if desirable).

Coordination between the Client and Consultant may occur at regular intervals, set milestones, or on an as-needed basis to meet project assignments. Coordination may take place via e-mail, conference call, or on-site meeting depending on the complexity of the issue, stakeholders involved and the Client's wishes.

SCOPE OF SERVICES

Task 1: General Advisory Services

A representative for City Explained, Inc. will be available to provide general guidance related to scenario planning, development impact analysis, performance-tracking, or decision tool integration using

CommunityViz software. Specific assignments that might exceed four hours of effort will be detailed in a specific scope of services and fee estimate before work begins. The Client will approve major assignments (those exceeding four hours in length) in writing before the Consultant begins work. An email authorization from the Client's project manager is acceptable for meeting this requirement.

Task 2: Land Suitability Analysis Modifications

The first assignment for the Consultant under this Agreement will be to rebuild the CommunityViz model used for the Envision Franklin Land Use Plan (built via a previously hired consultant) to incorporate new input data provided by the Client (i.e., the potential addition of a new fire station, pending improvements to TN 96E, and potential sewer service availability). The model architecture, key assumptions and variable definitions for the new model will match those summarized in Appendix C of the Envision Franklin Land Use Plan. The Consultant will recommend modifications to the structure, data, weightings or other inputs to the land suitability analysis module (as deemed appropriate by the Consultant) for Client consideration.

The Consultant will deliver a new CommunityViz model for the City's Urban Growth Boundary Area using the input data provided by the Client, as well as ten maps that summarize new results for a smaller study area (boundary to be provided by the Client via shapefile) that follows the intent and format of maps previously included in the Envision Franklin Land Use Plan.

SCHEDULE

The Consultant will complete the work described in the Scope of Services as expeditiously as practicable to meet a mutually agreed upon schedule. A specific schedule for major assignments requested under Task 1 (those anticipated to exceed four hours of effort) will be established before work begins. The work described in Task 2 will be delivered to the Client on or before September 19, 2017.

FEE AND BILLING

The Consultant will perform the work described in the Scope of Services on a labor fee basis plus expense basis using a loaded hourly rate of \$100.00 per hour for Ian Varley, \$150.00 per hour for Amy DeBay, and \$165.00 per hour for Matt Noonkester. Specific assignments under Task 1 that might exceed four hours of effort will be detailed in a specific scope of services and fee estimate before work begins. The Client will approve major assignments in Task 1 (those exceeding four hours in length) in writing before the Consultant begins work. An email authorization from the Client's project manager is acceptable for meeting this requirement.

The Consultant will not exceed a total budget of \$1,000.00 for Task 2 in the Scope of Services without written authorization from the Client. Fees and expenses will be invoiced monthly based upon the actual services performed for the billing period. Payment will be due within thirty (30) days of the date of the invoice.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Contract Provisions, which are incorporated herein by

reference. As used in the Standard Provisions, the term "the Consultant" shall refer to **City Explained, Inc.**, and the term "the Client" shall refer to the **City of Franklin, Tennessee**.

If you concur with all the foregoing and wish to direct us to proceed with these services, please have authorized persons execute two copies of the Agreement in the spaces provided below, retain one copy, and return the other to us.

We appreciate the opportunity to provide these professional services to you. Please contact me at 919-606-1620 or matt.noonkester@city-explained.com if you have any questions.

Sincerely,

CITY EXPLAINED, INC.

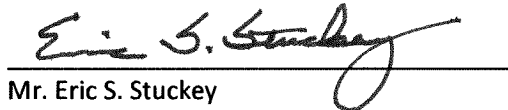


Matt D. Noonkester, AICP
President/Principal

Attachment – Standard Provisions

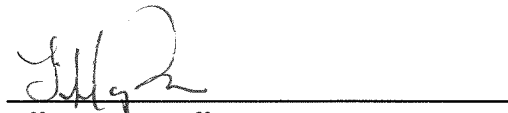
Agreed to this 11TH day of SEPTEMBER, 2017.

By: **CITY OF FRANKLIN, TENNESSEE**



Mr. Eric S. Stuckey
City Administrator

Approved as to Form by:



Tiffani Pope, Staff Attorney

**CITY EXPLAINED, INC.
CONTRACT PROVISIONS**

(1) Consultant's Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing.

(2) Client's Responsibilities. In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion to complete the services identified under this Agreement.
- (d) Arrange for access to private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (g) Bear all costs incidental to the responsibilities of the Client.

(3) Period of Services. Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) Method of Payment. Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 30 days of receipt.
- (d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) Use of Documents. All documents, including but not limited to drawings, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. Any modifications made by the Client to any of the Consultant's documents without written authorization will be at the Client's sole risk. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(7) **Insurance.** The Consultant carries professional liability insurance and general liability insurance.

(8) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(10) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(11) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Tennessee with the choice of forum and venue solely in Williamson County, Tennessee. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(12) **Indemnification.** The Consultant, as its own expense, shall indemnify, defend, and hold the Client, its officers, employees, agents, directors, and officials harmless of any and all costs, losses, damages, claims, suits or any liability whatsoever, including attorney's fees, resulting from injury including death, to person or damage to property arising out of, or in any manner connected with the Consultant's use of the City of Franklin, Tennessee property and from any violation of any applicable law or regulation arising out of or relating to this Agreement.