



A BETTER PLAN. A BETTER PARTNER. A BETTER RETIREMENT.

RETIREMENT PLAN ADMINISTRATION AND CONSULTING AGREEMENT

THIS RETIREMENT PLAN ADMINISTRATION AND CONSULTING AGREEMENT is by and between Acuff & Associates, Inc. ("Acuff") and City of Franklin ("Plan Sponsor"), with respect to the City of Franklin Employees' Pension Plan (the "Plan"),

WITNESSETH:

WHEREAS, Plan Sponsor and Acuff have executed that certain Retirement Plan Administration and Consulting Agreement dated September 17, 1997 and changes to that agreement are needed in connection with the Plan's operation; and

WHEREAS, Plan Sponsor wishes to continue to retain Acuff to assist it in administering and maintaining the Plan through use of Acuff's services, pursuant to the terms and conditions stated in this Agreement (the "Agreement"),

WHEREAS, this Agreement shall supersede the parties' prior agreement as of the effective date stated below,

NOW, THEREFORE, the parties agree as follows, effective April 1, 2016 (the "Effective Date") for the Plan year beginning January 1, 2016:

1. **Acuff's Role.** Acuff will perform the services of consultant, technical advisor, third party administrator, and/or actuary with respect to the Plan. **Acuff does not assume the responsibilities of the Plan Sponsor or Plan Administrator as those terms are defined under Section 3(16) of ERISA, nor does Acuff assume the responsibilities of Trustee, investment advisor, or broker with respect to the Plan. Acuff does not offer a platform of investment options or similar investment mechanism to the Plan.** Acuff shall not have any authority or control with respect to the Plan's assets or any discretionary authority regarding the management of the Plan.

2. **Plan Sponsor's Role.** The Plan Sponsor shall act as the Plan Administrator, as stated in the Plan Document, and is a named fiduciary of the Plan. As such, the Plan Sponsor is responsible for directing the Plan's policies, interpretations, and procedures. The Plan Sponsor is responsible for filing reporting requirements with the State of Tennessee ("State"), Internal Revenue Service ("IRS"), U.S. Department of Labor ("DOL"), and the Pension Benefit Guaranty Corporation ("PBGC"), as required by law. All User Fees, Premiums, Fees, and Penalty Charges or Sanctions levied by the State, IRS, DOL, or PBGC are the responsibility of the Plan Sponsor. Documents and forms prepared by Acuff are intended to help provide administrative compliance with ERISA and the Internal Revenue Code (the "Code"). **They are not intended to serve as tax or legal advice** and are not to be relied upon as such. The Plan Administrator agrees to contact its attorney on all legal matters as required for its particular situation regardless of any general information on Plan matters provided by Acuff.

3. **Plans Covered.** Services under this Agreement shall be provided only to the Plan. Acuff does not assume responsibility for any required benefits or contributions to the subject Plan. If the Plan Sponsor maintains any plan(s) not covered by this Agreement, Acuff does not assume responsibility for any aspect of administration for the other plan(s).

4. **Authorization to Contact Prior Service Providers.** The Plan Sponsor hereby authorizes Acuff to contact any other service providers for the Plan to obtain information required to perform its services.

5. **Controlled Group Issues Not Covered.** If the Plan Sponsor is a division or subsidiary of another entity or a member of a controlled group, group of trades or businesses under common control, affiliated service group, or other group of

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employers that is treated as a single employer, Acuff will not monitor compliance for employees, subsidiaries, or divisions not covered by the Plan unless Plan Sponsor specifically requests, and Acuff specifically consents, in writing. Additional fees shall be payable if Acuff consents to provide such controlled group compliance services. Examples of special compliance services that may be provided for the controlled group include testing for the coverage requirements of Code § 410(b), the minimum participation requirements of Code § 401(a)(26), impermissible discrimination under Code § 401(a)(4), or application of the Separate Lines of Business Rules of Code § 414(r). Absent a special agreement to provide compliance services on behalf of the controlled group, Acuff will only include in the required testing those employees of the Plan Sponsor that are reported on the year-end Data Collection Document. If a controlled group exists, testing that includes less than all of the employees of the controlled group likely will not satisfy the above testing requirements.

6. **Recurring Plan Services.** Acuff will provide the recurring services listed in Schedule B.

7. **Plan Services Fees.** The basic transition/installation and recurring plan services fees payable to Acuff are listed in Schedule C.

8. **Receipt of Data & Turnaround Response.**

(a) The Plan Sponsor shall provide Acuff with all data necessary to enable Acuff to fulfill its obligations under this Agreement in a timely fashion. All such data shall be accurate, and the nature, format, content, timing, and appearance thereof shall be acceptable to Acuff, as determined by Acuff, in good faith. Acuff will rely on information provided by the Plan Sponsor or the Plan Sponsor's attorney, accountant, agent, or financial advisor. Inaccurate information could result in significant penalties or disqualification of the Plan.

(b) The Plan Sponsor agrees to provide the data requested in Schedule A in a timely manner.

(c) Acuff will deliver to the Plan Sponsor the reports required under this Agreement within a reasonable time after receipt of complete data.

9. **Limitation of Liability.**

(a) Acuff is under no obligation to provide timely reports if necessary information is received less than 20 business days prior to the government required filing deadline. The Plan Sponsor is solely responsible for missed filing deadlines, including any penalties, fines, or sanctions.

(b) Acuff is not liable for errors in the data received from the Plan Sponsor, Trustee, or financial institutions and shall have no obligation to examine documents other than those provided by the Plan Sponsor, Trustee, the Plan's tax, financial, legal advisors, or insurance agent.

(c) Acuff shall not be liable for losses resulting from causes over which it does not have direct control and with respect to which it cannot make reasonable arrangements to mitigate. This includes, but is not limited to, any failure of electronic or mechanical equipment; communication lines, telephone, or other interconnect problems; or unauthorized access.

(d) Acuff is not responsible for the failure of the Plan Sponsor's other advisors to perform their duties.

(e) Acuff shall have no responsibility for the data until it is actually received by Acuff.

~~(f) Acuff's liability regarding data processing errors shall be limited to, and the Plan Sponsor's sole remedy shall be, the correction of such errors that are caused by Acuff's gross negligence for which the Plan Sponsor shall request a correction within 90 days of occurrence. Further, Acuff shall be entitled to rely upon the instructions of the Plan Sponsor or any authorized representative of the Plan Sponsor with respect to distributions, withdrawals, transfers, loans, loan payments and renewals, census information, and asset information. Acuff shall in no event have any liability for any losses incurred by the Plan or a participant (including without limitation any indirect, general, special, or consequential damages) arising out of any breach of this Agreement.~~

~~10. **Hold Harmless & Indemnity.** The Employer, Plan Sponsor, Plan Administrator, Plan and Trustee shall indemnify, defend, and hold Acuff harmless from and against all claims, demands, liabilities, expenses, and causes of action arising out of or in any way relating to any aspect of the Plan or the Plan's administration at any time prior to September 17, 1997, and all claims, demands, liabilities, expenses, and causes of action arising out of or in any way relating to any aspect of the Plan or the Plan's administration at any time after the date of the parties' original agreement that are not caused by Acuff's gross negligence (collectively, "Claims"). The Claims for which Acuff shall be indemnified and held harmless from include, but are not limited to, fees, expenses, and penalties incurred due to the disqualification of the Plan; the failure to timely file any and all tax, disclosure, and/or reporting forms required by any government agency in connection with the Plan; and the failure to timely amend the Plan and its trust to conform to the requirements of the law within the time limits set by government regulations. Acuff shall not be deemed to have been grossly negligent for actions taken in good faith at the direction of the Plan Sponsor as a result of inadequate or inaccurate data supplied by the Plan Sponsor; Trustee; Plan Sponsor's or Plan's attorney, accountant, insurance agent, financial advisor, or other service provider; or from their failure to submit required data and reports in a timely manner.~~

11. **Confidentiality.** Acuff agrees not to disclose to any third parties (other than its attorneys) any data that it receives pursuant to this Agreement and in the course of preparing our work, except as may be required by law or regulation. The Plan Sponsor shall be responsible for retaining duplicate copies of data or material sent to Acuff, the PBGC, the DOL, and the IRS. In the event that transmitted data is lost or destroyed, the Plan Sponsor agrees to pay charges for reprocessing data.

12. **Termination of Agreement for Services.** This Agreement shall continue in effect from year to year unless terminated as provided below. Plan Sponsor may terminate this Agreement upon thirty days written notice to Acuff, payment of all invoices received, payment of all routine charges not previously invoiced, and payment of estimated termination charges. However, in the event of a termination of this Agreement by the Plan Sponsor prior to the completion of any service, no amount previously paid will be returned. Acuff may also terminate this Agreement with thirty days written notice to Plan Sponsor. In no event shall this Agreement continue for more than five (5) years.

13. **Billing Practices.**

(a) **Acuff will bill the Plan Sponsor in advance on a quarterly basis unless the Plan Sponsor directs otherwise. See Schedule D.** Any additional charges and reconciled annual participant charges will be billed as incurred. **Acuff reserves the right to apply "rush" surcharges if the data is submitted less than two weeks from a requested deadline.**

(b) All invoices are due and payable upon receipt. Invoice amounts that are outstanding for more than thirty days will accrue interest at the rate of 1.5% per month. Payments will be applied to decrease the amount of any outstanding interest charges before being applied to the principal.

(c) **If an invoice is not paid within 60 days, Acuff reserves the right to cease all work on the Plan until all outstanding invoices are paid in full.**

(d) Upon termination of this agreement, Acuff shall have a reasonable amount of time to transfer account records. **Any costs incurred as a result of that termination shall be billed to the Plan Sponsor as additional services, the payment of which will be required in advance.**

(e) If it is necessary for Acuff to enforce payment of any amounts due under this Agreement, through an attorney or by suit, the Plan Sponsor shall pay reasonable attorney's fees, court and other costs, and all costs of collection. **The Employer, Plan Sponsor, Plan Administrator, and the Plan are jointly and severally liable for all amounts due under this Agreement.**

14. **Merger or Consolidation.** In the event of merger or consolidation involving the Plan Sponsor or other circumstances whereby a successor person, firm, or association shall continue to carry on all or a substantial part of the Plan Sponsor's business and such successor shall elect to carry on the provisions of the Plan as therein provided, such entity shall be substituted for the Plan Sponsor and shall be liable for any ongoing services provided by Acuff under this Agreement.

15. **Waiver.** No waiver of any breach of this Agreement shall constitute a waiver of any other breach, whether of the same or any other covenant, term, or condition. The subsequent performance of any of the terms, covenants, and conditions of this Agreement shall not constitute a waiver of any preceding breach, nor shall any delay or omission of any party's exercise of any right arising from any default affect or impair the party's right as to the same or future default.

16. **Severability.** In case any provisions of this Agreement shall be held to be or shall become invalid or unenforceable in certain circumstances, the validity and enforceability of the remaining provisions, or of such provisions in other circumstances shall not in any way be affected or impaired.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, and assigns.

18. **Applicable Law.** This Agreement shall be governed by and construed under the laws of the state of Tennessee.

19. **Entire Agreement.** This Agreement and Attachments contain the entire understanding between the parties relating to the subject matter contained herein. The terms of this Agreement will prevail over the terms of any other agreement, written or oral, between the parties in the event of a conflict between this Agreement and any such other agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully expressed herein. This Agreement may be changed only by an agreement in writing signed by all of the parties hereto.

20. **Absence of Signed Agreement.** Payment of any fees related to services outlined in this Agreement not accompanied by an executed copy of the Agreement constitutes acceptance of the terms of this Agreement as written. If this Agreement is not executed within six months from its Effective Date, Acuff reserves the right to revise the terms.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and date written below.

ACUFF & ASSOCIATES, INC.



BY: TRINA D. GROSS, CHIEF EXECUTIVE OFFICER

DATE: **APRIL 1, 2016**

CITY OF FRANKLIN (EMPLOYER)

BY: _____

TITLE: _____

DATE: _____

CITY OF FRANKLIN EMPLOYEES' PENSION PLAN (PLAN)

BY: _____

TITLE: **PLAN ADMINISTRATOR**

DATE: _____

This instrument may be executed in one or more counterparts, each of which shall be deemed to be original.

SCHEDULE A
Items Furnished by the Plan Sponsor

The following are to be timely provided on an annual basis:

- The Acuff Annual Plan Questionnaire completed and signed
- A census of all employees with their hire dates, birth dates, and termination dates updated as requested annually, which also includes a list of all officers, ownership percentages, and information on certain working family members of owners
- The amount and date of contributions to the trust by the Plan Sponsor
- Financial information necessary to prepare an asset and liabilities schedule and income and disbursements statement for the Plan
- Financial information necessary to complete required annual government reporting forms
- Plan amendments and any document changes during the previous calendar year

SCHEDULE B
Basic Annual Administration Services-Defined Benefit

- Actuarial valuation report, which will provide all of the calculations required by applicable state and federal laws
 - Recommended employer contributions
 - Exhibits required to meet the requirements of the Legislative Council on Pension and Insurance TCA Sec. 3-9-203
 - Government Accounting Standards Board Statement 67 and 68 disclosures
 - Disclosure of assumptions and other information meeting the standards of the American Academy of Actuaries
- Reconciliation of trust assets
- Census and data reconciliation
- Participant statements
- Five hours of general consulting and/or administration assistance during the plan year
- Attend quarterly meeting of the pension committee
- Attend one meeting with the City's staff to discuss a draft the of the annual actuarial valuation report

Additional Administration Services

- Calculation of distributions for terminated participants (including required minimum distributions)
- Special studies as required by the Funding Policy (upon request)
- Actuarial experience studies or other studies (upon request)

**SCHEDULE C
DIRECT COMPENSATION-DEFINED BENEFIT**

Basic Annual Administration Fees-Traditional or Prototype Plan

Basic Charges	Fee
Annual Base Charge	\$ 14,000
Annual Participant Charge *	\$ 10
Participant Statements	\$ 7

**Participant count is determined each year based on the total participant count in the prior year valuation.*

Additional Administration Fees

Additional Charges (if necessary or requested by Plan Sponsor)	Fee
Benefit Calculations for Terminated Vested or Retirees	\$ 225 per calculation
Benefit Calculations for Return of Employee Contribution Only	\$ 125 per calculation
Conversion Calculations from 401(a) Plan	\$ 225 per calculation
Manual Input of Demographic Data	\$ 75 per hour
Reconciliation of Trust Assets or Data in Excess of 5 hours	\$ 75 per hour
Corrections, Refunds, or Interest Calculations for Compliance Issues	\$ 75-200 per hour
Assistance under IRS or DOL Correction Programs	\$ 75-200 per hour
Consulting and Research in Excess of 5 hours not Described Above	\$ 75-200 per hour
Special Studies as requested]	Quoted Separately

FEE EXPLANATION AND BILLING PROCESS

Our fees are based on the assumption that these fees will be billed throughout the plan year and that you will pay those fees within 30 days of receiving the invoice. We refer to this process as budget billing. It allows you to budget your retirement plan expenses during the plan year. With budget billing, you will receive an invoice for 25% of the estimated annual services fee at the beginning of each calendar quarter (January, April, July, and October).