

**CITY OF FRANKLIN, TENNESSEE
EXPERT SERVICES AGREEMENT
COF Contract No. 2017-0108**

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 Expert, who mutually agree as follows:

DECLARATIONS. City desires to retain Expert to provide professional expert appraisal and opinion services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**Professional Services Related to Litigation for *Phillips v. City of Franklin*
Case No. 2016-470**

1. SCOPE OF SERVICES. Expert shall provide Professional Services and related technical services for the Project in accordance with the Scope of Work. The Scope of Work as found in **Attachment A** shall be considered as an integral part hereof.
2. Expert shall be paid for services as proposed in **Attachment A**, in an amount not to exceed Twenty Five Thousand Dollars and No/100 (\$25,000.00).
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Expert will:

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

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

- 2.1 Provide Expert with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Designate, in writing, the sole Project representative to coordinate with and direct the Expert, including all contact information.
- 2.3 Guarantee to Expert that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Expert's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Expert, 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.
- 3.3 Neither City nor Expert may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Expert from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Expert's cost.
- 3.5 INDEMNIFICATION. Expert 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 Expert'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 Expert 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.

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 Expert, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Expert specifying when termination becomes effective. The Expert 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 Expert shall stop work when such termination becomes effective. The Expert shall also terminate outstanding orders and subcontracts for the affected work. The Expert shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Expert to assign the Expert's right, title and interest under termination orders or subcontracts to the City or its designee. The Expert 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 Expert has in its possession or control. When terminated for convenience, the Expert shall be compensated as follows:
 - (1) The Expert 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 Expert fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Expert the amount the City deems the Expert is due.
 - (2) The City and the Expert may agree to the compensation, if any, due to the Expert hereunder.
 - (3) Absent agreement to the amount due to the Expert, the City shall pay the Expert 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 Expert'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 Expert 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 Expert 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 Expert 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 Expert or others, may terminate the performance of the Expert, 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 Expert 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 Expert. Otherwise, the Expert 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 Expert 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. Expert shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

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

ARTICLE 6. SCHEDULE.

- 6.1 TIME OF THE ESSENCE. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
- 6.2 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.3 Should City request changes in the scope, extent, or character of the Project, the fee and the time of performance of Expert'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 Expert pursuant to this Agreement are instruments of service in respect to the Project. Expert shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Expert) 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 Expert do not extend to the data created by or supplied to Expert 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 Expert if a request for data or documents has been made and shall give Expert a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Expert 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, Expert 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 Expert representation that materials supplied by Expert (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Expert and Expert assumes control over that claim.
- 7.2 City-furnished data that may be relied upon by Expert is limited to the printed copies that are delivered to the Expert pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Expert only for the Project as described herein. City's posting or publication of such documents created by Expert for City shall constitute fair use and shall not constitute an infringement of Expert'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 Expert. Files in electronic media format of text, data, graphics, or of other types that are furnished by Expert to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Expert 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, Expert 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, Expert 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 Expert, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Expert or to Expert's Experts.
- 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 Expert to further compensation at rates to be agreed upon by City and Expert.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Expert shall maintain professional liability insurance.
- 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, Expert, 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 Expert for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Expert'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 Expert shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Expert's services exceeding the original Scope Of Services.
- 9.3 TRAVEL; EXPENSES
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Expert shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Expert will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Expert shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Expert shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Expert shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD PARTY RIGHTS CREATED. City and Expert 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 Expert. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Expert.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Expert 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 Expert 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 Expert.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

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

ARTICLE 13. SURVIVAL.

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

BOOZER & COMPANY, P.C.

BY: Eric Booser
Eric Booser
TITLE: President
Date: 5/30/2017

CITY OF FRANKLIN

BY: Eric S. Stuckey
Eric S. Stuckey
City Administrator
Date: 6/02/17

Approved as to form by:

Kristen L. Corn
Kristen L. Corn, Assistant City Attorney

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

Professional Real Estate Appraisers & Consultants

May 15, 2017

Ms. Kristen Corn, Assistant City Attorney
City of Franklin, Law Department
109 3rd Avenue South
Franklin, TN 37064

**RE: Appraisal Report – Inverse Condemnation Claim
Kendra Phillips & John R. Phillips
1308 Lewisburg Pike
Franklin, Tennessee 37064**

Dear Ms. Corn:

This letter will confirm your request for Eric L. Boozer, MAI of **Boozer & Company, P.C.** to provide you with an Appraisal Report of the above-referenced property. The purpose of the appraisal is to estimate the amount of "compensation due owner" attributed to an alleged diminution in value caused by the installation of a center median along Lewisburg Pike in front of the subject property. This median results in the subject property having only "right-in/right-out" access, as opposed to two directional access movements, which was the previous ingress/egress situation. This will be a two-phase assignment. The first phase will consist of the following:

1. a complete on-site inspection of the subject property;
2. detailed review of zoning regulations, setbacks, restrictions, encumbrances, etc.;
3. meetings/discussions with planning and zoning officials, if necessary;
4. an investigation of the market for comparable sales data with and without right-in/right-out access;
5. interviews with market participants and brokers;
6. comprehensive comparative analysis of available market data;
7. Determination as to whether any compensation is due to the property owner, and if so, how much. These results will be reported "verbally" to the client and comprise the first phase of this assignment.

The fee for the first phase of the assignment will be **\$3,500**. "Verbal reports" will be delivered three to four weeks after receipt of notification to proceed, assuming we receive relevant information in a timely manner. The second phase of the assignment will consist of the preparation of narrative summary appraisal reports, which will conform to the current requirements prescribed by the Uniform Standards of Professional Appraisal Practice. The fee for the second phase of the assignment will be **\$2,500**, resulting in a total fee of **\$6,000**. For subsequent court testimony, depositions, pre-trial meetings, court testimony, etc. an additional charge of **\$350 per hour** will be billed.

The intended use of the appraisal is to provide the client a basis from which to make internal financial decisions concerning this case. It is understood that the client and intended user is the **City of Franklin**. **Boozer & Company, P.C.** will not be responsible for unauthorized use of the report.

If the terms are agreeable, please sign below. We will commence with the assignment upon receipt of an executed copy of this letter. If you have any questions, please let me know.

Sincerely,



Eric L. Boozer, MAI, CCIM
TN State Certified RE Appraiser, CG-389

Engagement Letter Accepted:

Date: