

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No 2013-0167**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and Copperhead Environmental Consulting, Inc. hereinafter referenced as Consultant, who mutually agrees as follows:

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

**Indiana Bat Habitat Suitability Survey for Harlinsdale Farm
Multipurpose Trails System and Canoe Access**

1. **SCOPE OF SERVICES.** Consultant shall provide an environmental survey 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. Consultant shall be paid a Fixed Fee of **Two Thousand Six Hundred and No/100 Dollars (\$2,600.00)** upon completion of the habitat assessment based on the detailed scope of work as found in **Attachment A**.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The City Administrator Approved this Agreement on the ____ day of _____ 2013 under the Authority Granted by the Franklin Board of Mayor and Aldermen by Resolution 2012-05.

BY: [Signature]
Consultant's Signature
TITLE: Biologist
Date: 20, September 2013

BY: [Signature]
Eric S. Stuckey
City Administrator
Date: 9-20-2013

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

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

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

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from

engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

- 3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, **SCOPE OF SERVICES**; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, **SCOPE OF SERVICES**.

ARTICLE 4. TERMINATION BY THE CITY. The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate

outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
 - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 5. SCOPE OF SERVICES. Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this 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.

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

ARTICLE 6. SCHEDULE.

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **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 Consultant's services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 7. USE OF DOCUMENTS, DATA.

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.
- 7.1.1 **USE OF DATA SYSTEMS:** Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.
- 7.1.2 **DISCLOSURE OF DOCUMENTS/DATA.** City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.
- 7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.
- 7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or

of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
 - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
 - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

ARTICLE 9. PAYMENT.

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 **TRAVEL; EXPENSES**
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 Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Consultant 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 Consultant 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 Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts

relating to this Project.

10.3 NO THIRD PARTY RIGHTS CREATED. City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

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 Consultant to limit its liability shall be void and unenforceable.

ARTICLE 11. EXTENT OF AGREEMENT:

11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's

choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

- 11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

- 12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to 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.



COPPERHEAD
ENVIRONMENTAL CONSULTING

Anna J. Shuford
Franklin City Parks
P.O. Box 305
Franklin, TN 37065

14 August 2013

Sent via email

Re: Indiana bat habitat suitability survey for the proposed multi-use trails and canoe access point within the Harlinsdale Farm Park in the City of Franklin, Williamson County, Tennessee

Ms. Shuford,

Copperhead Environmental Consulting, Inc. is pleased to submit a proposal for the above referenced project. Our experience in conducting habitat assessments, combined with our knowledge of bat ecology, gives us the qualifications and experience necessary to provide high quality surveys for our clients. If potential Indiana bat habitat is determined to exist within the project boundaries and project plans cannot avoid impacts to the habitat, USFWS may require a presence/absence survey (mist-net/acoustic survey) or require additional avoidance/minimization measures, which are not included in this Scope of Work. If so, Copperhead Consulting has the experience to assist in all aspects of Endangered Species Act compliance.

We hope this proposal provides the detailed information you require for review. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Steve Samoray
Biologist

COPPERHEAD ENVIRONMENTAL CONSULTING, INC.
P.O. BOX 73 17 11641 RICHMOND RD. 18 PAINT LICK, KENTUCKY, 40461
(859) 925-9012 OFFICE (859) 925-9816 FAX
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HABITAT ASSESSMENT

Office Component

Desktop analysis will be conducted to determine landscape characteristics of the proposed site and how they may affect the suitability of the site for Indiana bat roosting and foraging. Distance of the proposed project site from known hibernacula or maternal roosts, nearby land use and habitat availability, and previous and ongoing disturbance in the area will be determined using available maps.

Field Component

An onsite habitat assessment will be conducted at the proposed project site in order to determine the amount (acres) of suitable roosting, foraging and commuting habitat for Indiana bats. Suitable roosting habitat will be assessed by close examination of all forested areas that will be impacted by the proposed project. Species composition, estimated average tree age (e.g. young or mature), average estimated tree diameter at breast height (DBH), density of the stand, and presence of snags or large trees (> 10cm DBH) with exfoliating bark and/or crevices will be considered during this assessment. If it is determined that a stand could provide suitable roosting habitat, the perimeter of the stand will be delineated using a Global Positioning System (GPS) or GIS in order to calculate total acreage.

Suitable foraging habitat will be determined based on stand densities, the presence of open fly-ways, and location of water sources. Even if water sources are not located on the proposed project site, water bodies in close proximity to the site may increase the foraging suitability of some forested areas. Total acreage of suitable foraging habitat will be delineated using a GPS or GIS in order to calculate total acreage.

Reporting

A draft report (electronic) summarizing the results of the habitat assessment will be submitted within 2-4 weeks after completion of the field work (specific timelines will be determined after contract award). Upon review (and subsequent return) of the draft report, comments will be addressed and a final report (hardcopy and electronic) will be submitted. If requested, Copperhead Consulting will submit the final report to USFWS or any other agency as directed.

SCHEDULE

Copperhead proposes the schedule below to complete the scope of services presented above; however, a more aggressive schedule can be negotiated if desired:

Scope of Service Item	Weeks Following Contract Award				
	1	2	3	4	5
Field Assessment					
Data Processing					
Draft Report					
Final Report					

COST ESTIMATE

The estimated cost for the completion of an Indiana bat habitat assessment is **\$2,600.00**, which includes completion of field work, food, mileage, report completion, and standard agency coordination.

QUALIFICATIONS

The staff of Copperhead Environmental Consulting, Inc. (Copperhead) is comprised of professional field biologists with extensive backgrounds in state and federal environmental regulations, wildlife management, terrestrial and aquatic ecology, wetland and soil science, botany, natural resource management, and land-use planning. Our staff includes recognized experts in mammalogy, herpetology, ornithology, ichthyology, botany, wetlands, gastropods (snails), and mussels.

Bats are one of Copperhead's areas of expertise. Copperhead has conducted numerous bat surveys for State, Federal and private clients. We have extensive experience with all of the techniques used to sample and study bats including summer and winter habitat assessments, radio telemetry, mist netting, harp trapping, light tagging, habitat improvements (artificial bark), PIT tagging, and the use of acoustic monitoring equipment (AnaBat and Pettersson) for recording and identifying ultrasonic bat calls. In addition, we conduct winter census surveys for hibernating endangered bats, often under conditions that require technical rope and climbing techniques, e.g., vertical shaft caving. Copperhead Consulting maintains a strong relationship and reputation with state and federal regulatory agencies, which expedites review times and adds ecological credibility to any project on which we are involved.

Biologists listed below have numerous years of experience with habitat assessments, bat research, bat surveys, and the identification of all eastern U.S. bat species, and may participate in the project. Resumes are available upon request.

Mark Gumbert: Mr. Gumbert is the principal biologist/owner of Copperhead Environmental Consulting, Inc. He received his B.S. in Wildlife Biology and a M.S. in Biology from Eastern Kentucky University. Mr. Gumbert has been conducting research and surveys for bats, including Indiana bats, since 1993. He completed his master's thesis work on Indiana bats in the Daniel Boone National Forest where he radio tagged and tracked nearly 100 Indiana bats. Since his thesis work Mr. Gumbert has been interested in the ecology of bats and has extensive experience with all of the techniques used for the study of bats, including radio telemetry, mist-netting, harp trapping, light tagging, Anabat detectors, banding, internal hibernacula counts, PIT tagging, and collection of biological samples. Aside from his consulting experience, Mr. Gumbert is active in the bat research community, and has been a major participant in annual Indiana bat hibernacula counts in Kentucky. During his 16 years experience working with bats, Mr. Gumbert has captured and identified thousands of Indiana bats.

Steve Samoray: Mr. Samoray received both a B.A. and M.S. in biology from Middle Tennessee State University. His undergraduate work focused on amphibian and reptile research. His Master's thesis involved bat acoustic monitoring and habitat use. Mr. Samoray has been conducting biological field research for over 15 years throughout the United States focusing mainly on herps, birds, and bats. His extensive work with cave and forest bat species has given him the opportunity to handle and identify thousands of individuals including the endangered Indiana bat and gray bat. He is proficient in the use of mist nets, harp traps, radio telemetry, acoustic monitoring/analysis, and bat counts using various techniques such as thermal video recording, near infrared video recording, guano measurements, and direct counts. He has participated in hundreds of cave surveys throughout the southeast and Midwest United States. Mr. Samoray has also been active in the bat research community for many years. He is a member of the Southeastern Bat Diversity Network and currently serves on the board of the Tennessee Bat Working Group.

Jeff Schwierjohann: Mr. Schwierjohann has 18 years of experience as a Wildlife Biologist with an emphasis on federal and state listed bat species of the eastern U.S. He has conducted winter and summer habitat assessments, hibernacula surveys, and emergence surveys on caves and mines in Kentucky, Ohio, North Carolina, Tennessee, Pennsylvania, Virginia, and West Virginia; many requiring technical expertise. Listed species monitored include gray, Indiana, Rafinesque's, and Virginia big-eared bats. Non listed species monitored included little brown, big brown, silver-haired, eastern small-footed, pipistrelle, southeastern, and northern long-eared bats. Mr. Schwierjohann has documented new maternity colonies for gray bats, discovered one of the largest known hibernacula for eastern small-footed and northern long-eared bats in the southeast, and created successful artificial roosting structures for Rafinesque's big-eared bats. Mr. Schwierjohann is proficient in the use of various field techniques for conducting bat surveys such as mist nets, harp-trapping, radio telemetry, pit tagging, night vision counts, and photographic counts. Mr. Schwierjohann has also conducted both summer and fall swarming surveys over the past three years documenting WNS (Reichard Wing Scoring and infrared lights) in bats in areas heavily impacted by the disease.

Price Sewell: Mr. Sewell holds a B.A. in Environmental Science and a Minor in Biology from Rollins College. He has extensive experience with the identification of, and survey techniques used to study mammals, reptiles, amphibians, mussels, and fish. Mr. Sewell has 14 years experience conducting bat surveys and research throughout the eastern U.S. Mr. Sewell has capture and handled thousands of Indiana bats and has performed radio telemetry research on Indiana bats, gray bats, evening bats, silver-haired bats, red bats, and big brown bats. His telemetry experience includes both fixed station foraging and roost tree location. In addition, Mr. Sewell is well versed in all methods used to study bats including mist-netting, harp trapping, light tagging, banding, internal hibernacula surveys, Anabat II and Petterson detectors, and collection of biological samples. Mr. Sewell also participates in yearly Indiana bat hibernacula counts in Kentucky and Tennessee.

Chris Leftwich: Mr. Leftwich received his B.S. in Environmental Policy from the University of Tulsa, and a M.S. in Biology from Eastern Kentucky University. Mr. Leftwich is a wildlife biologist with extensive experience in terrestrial ecology and has completed many surveys for various species over a wide geographic area, including snails, bats, birds, and fish. His bat experience includes handling, mist netting and harp trapping, radio tracking, Anabat/Petterson bat detectors, roost tree identification, hair/guano sampling, and spring/autumn/winter cave/mine (hibernacula) surveys. He has served as project manager on numerous surveys for threatened and endangered species and has extensive experience working with agency personnel to develop and implement field studies

Tabulation of Bids*

Purchasing Office Solicitation No.:	2014-006 (tree supply, planting and related contract services)
Notice to Bidders published in the Williamson Herald on:	8/29/13
Number of vendors that were notified of / that responded to this solicitation for bids:	11 / 3
Date and time bids due and publicly opened:	9/24/13 2:00 PM
Present at opening of bids:	Patrick M. Haller of Haller's Landscaping & Lawncare, Justin Stelter of Justin Stelter, Jonathan Sanders of Office of Joel Tomlin, III, LLC; Todd Snackenber of the City of Franklin Parks Department; and Dee Settle, Suzanne Ward and Brian Wilcox of the City of Franklin Purchasing Office
Target meeting of BOMA at which recommendation will be considered:	n/a - value of contract within delegated authority of city administrator

Bids received from:	Bid No.:	Bid description:	Does the bid MOES ¹ ? / If not, how many exceptions do not MOES ¹ ?	Total value of bid based on <u>specified</u> <u>estimated</u> quantities ² and quoted unit prices:	Total value of bid based on <u>recommended</u> quantities ³ and quoted unit prices:	Payment terms:	Estimated time of completion of project after receipt of order:	Bid and associated pricing is valid and may be accepted through:
Haller's Landscaping & Lawncare 370 Taggart Haller Lane Sparta, TN 38583 Patrick M. Haller, Owner 931/261-5885 phaller@blomand.net	1 of 1	tree supply, planting and related contract services	No / 1 (Bidder takes no exceptions. However, CoF notes that bidder did not include in its submittal the required detailed vendor-supplied description of bid products and services.)	\$63,287.54	\$63,287.54	net 30 days	60 days	11/30/13
Justin Stelter 1865 Carters Creek Pike PO Box 565 Franklin, TN 37065 Justin Stelter, Owner 615/596-1696 justinstelter@gmail.com	1 of 1	tree supply, planting and related contract services	Yes (Bidder takes no exceptions.)	\$34,700.00	\$34,700.00	net 30 days	15 days	12/31/13
Office of Joel Tomlin, III, LLC 4115 Mallory Lane, 100C Franklin, TN 37067 Joel Tomlin, III, President 615/445-5694 joel@joeltomlin.com	1 of 1	tree supply, planting and related contract services	Yes (Bidder takes no exceptions.)	\$21,060.00	\$21,060.00	net 30 days	60 days	11/30/13

¹MOES indicates "meet(s) or exceed(s) specifications"

²The estimated quantity for each tree variety was indicated in the specifications and represents the approximate number of trees that the Parks Department anticipated, at the time specifications were released, planting pursuant to this procurement solicitation. These numbers were estimates only and did not represent a guaranteed minimum or maximum. Pursuant to the specifications, for purposes of bid evaluation, the City will use the estimated quantities to determine the total value of each bid.

³The recommended quantities for each tree variety indicated above represents the number of trees that the Parks Department recommends planting pursuant to this procurement solicitation. In accordance with the specifications, the exact quantities of trees to be planted pursuant to this procurement solicitation shall be determined by the City after the bids have been submitted.

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2013-0179)

THIS PROCUREMENT AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee ("CITY"), and Office of Joel Tomlin, III, LLC of Franklin, TN ("VENDOR"), who mutually agree as follows:

1. CITY issued on August 30, 2013 Purchasing Office Solicitation No. 2014-006, a procurement solicitation for bids for tree supply, planting and related contract services ("SOLICITATION"), a copy of which is attached hereto as Attachment No. 1 and hereby incorporated by reference as if fully set forth herein.
2. In response to CITY's SOLICITATION, VENDOR submitted a bid dated September 24, 2013 ("SUBMITTAL"), a copy of which is attached hereto as Attachment No. 2 and hereby incorporated by reference as if fully set forth herein.
3. VENDOR has now also submitted one or more Certificate(s) of Insurance that meet or exceed CITY's Insurance Requirements as specified in SOLICITATION, a copy of which is attached hereto as Attachment No. 3 and hereby incorporated by reference as if fully set forth herein.
4. If and when insurance coverage documented by Certificate of Insurance referenced above expires before the expiration of CITY's term of award pursuant to this AGREEMENT, including any extensions thereto, then VENDOR agrees to provide CITY, prior to said insurance coverage expiration, a replacement Certificate of Insurance that indicates the new date(s) of insurance coverage expiration and that meets or exceeds CITY's Insurance Requirements as specified in SOLICITATION.
5. In the event that insurance coverage documented by Certificate of Insurance referenced above is materially modified or canceled before the expiration of CITY's term of award pursuant to this AGREEMENT, including any extensions thereto, then VENDOR agrees to notify CITY, within three (3) calendar days of knowing or being notified itself, of any such material modification or cancellation.
6. VENDOR has now also submitted CITY's Indemnification Agreement, executed for VENDOR, a copy of which is attached hereto as Attachment No. 4 and hereby incorporated by reference as if fully set forth herein.
7. CITY awarded on _____, 20__ and now desires to retain VENDOR to supply, plant and maintain a total of 108 trees of specified varieties and quantities on the Royal Oaks Blvd. medians between Mack Hatcher Parkway and Oak Meadows Drive at specified locations, all pursuant to SOLICITATION and SUBMITTAL, in the total amount not to exceed \$21,060.
8. In the event of a conflict between CITY's SOLICITATION and VENDOR's SUBMITTAL, CITY's SOLICITATION shall supersede conflicting terms and conditions found in VENDOR's SUBMITTAL, except for any exceptions identified by VENDOR in its SUBMITTAL and accepted at the time of award by CITY.

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2013-0179)

EXECUTED THIS _____ DAY OF _____ 20__.

For VENDOR:

For CITY:

(signature of VENDOR's authorized representative)

(signature of CITY's authorized representative)

TITLE: _____

TITLE: _____ City Administrator

Approved as to Form:

Attorney for City of Franklin

**CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2013-0179)

Attachment No. 1

SOLICITATION

**CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2013-0179)

Attachment No. 2

SUBMITTAL

CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT
(City of Franklin Contract No. 2013-0179)

Attachment No. 3

Certificate(s) of Insurance

**CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2013-0179)

Attachment No. 4

Indemnification Agreement

Tabulation of Bids*

Purchasing Office Solicitation No.:		2014-005 (water distribution system leak detection services)						
Notice to Bidders published in the <i>Williamson Herald</i> on:		8/29/13						
Number of vendors that were notified of / that responded to this solicitation for bids:		8 / 5						
Date and time bids due and publicly opened:		9/24/13 2:00 PM						
Present at opening of bids:		Seth Rye of Rye Engineering PLC; Harvey Smithson and Rick McPeak of the City of Franklin Water Management Department; and Dee Settle, Suzanne Ward and Brian Wilcox of the City of Franklin Purchasing Office						
Target meeting of BOMA at which recommendation will be considered:		n/a - value of contract within delegated authority of city administrator						
Bids received from:	Bid No.:	Bid Description:	Does the bid MOES ¹ ? / If not, how many exceptions does not MOES ¹ ?	Total computed unit pricing, per line-mile, based on quoted number of line-miles for \$20,000 budget:	Total quoted number of line-miles to be surveyed for the budgeted amount of \$20,000:	Payment terms:	Estimated time of completion of project after receipt of order:	Bid and associated pricing is valid through:
Matchpoint, Inc. Street address: 6624 Gordon Rd., Unit H Wilmington, NC 28411 Mailing address: 215 Racine Dr., Suite 201 Wilmington, NC 28403 Simon Wick, VP of Water Asset Management 910/509-7225 simon.wick@matchpointinc.us	1 of 1	water distribution system leak detection services	Yes. (CoF understands exception taken by bidder (to CoF spec. 11.17.2 pertaining to methodology) to MOES ¹ .)	\$198.02	101.00	net 30 days	60 days	12/31/13
M.E. Simpson Co., Inc. 3406 Enterprise Avenue Valparaiso, IN 46383 John H. Van Arsdell, Vice President 800/255-1521 johnnyv@mesimpson.com	1 of 1	water distribution system leak detection services	No / 1 (Bidder takes no exceptions but CoF notes Title VI form omitted from submittal.)	\$165.29	121.00	net 30 days	10-15 days	10/28/13
Rye Engineering PLC 4210 West Main Street Erin, TN 37061 Seth W. Rye, Owner 931/289-2300 srye@ryeengineering.com	1 of 1	water distribution system leak detection services	Yes (Bidder takes no exceptions.)	\$198.02	101.00	net 30 days	21 days	12/30/14
Utility Services Associates, LLC 919 S. 150th Street Suite B Burien, WA 98166 Bruce Rubin, VP Sales & Marketing 877/647-5325 bruce.rubin@usaleaksllc.com	1 of 1	water distribution system leak detection services	No / 2 (CoF understands exception taken by bidder to CoF spec. 11.15.1 pertaining to insurance to MOES ¹ but exception taken by bidder to CoF spec. 11.17.1 pertaining to traffic control does not MOES ¹ and CoF notes CoF specifications revised per Addendum No. 1 omitted from submittal.)	\$198.02	101.00	net 30 days	60 days	11/30/13

¹MOES indicates "meet(s) or exceed(s) specifications"

*Shaded bid is apparent lowest best bid

Tabulation of Bids*

Purchasing Office Solicitation No.:		2014-005 (water distribution system leak detection services)							
Notice to Bidders published in the <i>Williamson Herald</i> on:		8/29/13							
Number of vendors that were notified of / that responded to this solicitation for bids:		8 / 5							
Date and time bids due and publicly opened:		9/24/13 2:00 PM							
Present at opening of bids:		Seth Rye of Rye Engineering PLC; Harvey Smithson and Rick McPeak of the City of Franklin Water Management Department; and Dee Settle, Suzanne Ward and Brian Wilcox of the City of Franklin Purchasing Office							
Target meeting of BOMA at which recommendation will be considered:		n/a - value of contract within delegated authority of city administrator							
Bids received from:	Bid No.:	Bid Description:	Does the bid MOES¹? / If not, how many exceptions do not MOES¹?	Total computed unit pricing, per line-mile, based on quoted number of line-miles for \$20,000 budget:	Total quoted number of line-miles to be surveyed for the budgeted amount of \$20,000:	Payment terms:	Estimated time of completion of project after receipt of order:	Bid and associated pricing is valid through:	
Water Loss Systems, Inc 26409 Aiken Drive Clarksburg, MD 20871 Joseph R. Apolenis, Project Manager 301/253-0040 japolenis@waterlosssystems.com	1 of 1	water distribution system leak detection services	Yes (Bidder takes no exceptions)	\$135.00	148.15	net 30 days	30 days	12/31/13	

¹MOES indicates "meet(s) or exceed(s) specifications"

*Shaded bid is apparent lowest best bid

CITY OF FRANKLIN, TENNESSEE

PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2013-0178)

THIS PROCUREMENT AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee ("CITY"), and Water Loss Systems, Inc. of Clarksburg, MD ("VENDOR"), who mutually agree as follows:

1. CITY issued (a) on August 30, 2013 Purchasing Office Solicitation No. 2014-005, a procurement solicitation for bids for water distribution system leak detection services, and (b) on September 17, 2013 Addendum No. 1 to Purchasing Office Solicitation No. 2014-005 (collectively, "SOLICITATION"), a copy of which is attached hereto as Attachment No. 1 and hereby incorporated by reference as if fully set forth herein.
2. In response to CITY's SOLICITATION, VENDOR submitted a bid dated September 20, 2013 ("SUBMITTAL"), a copy of which is attached hereto as Attachment No. 2 and hereby incorporated by reference as if fully set forth herein.
3. Included in VENDOR's SUBMITTAL is a September 20, 2013 Certificate of Insurance. Because the September 20, 2013 Certificate of Insurance does not meet or exceed CITY's Insurance Requirements as specified in SOLICITATION, VENDOR has now submitted a replacement Certificate of Insurance, dated _____, 2013, that does meet or exceed CITY's Insurance Requirements as specified in SOLICITATION, except with respect to Installation Floater coverage which the City hereby deletes from the types of insurance coverage required for this project, a copy of which latter certificate is attached hereto as Attachment No. 3 and hereby incorporated by reference as if fully set forth herein.
4. If and when insurance coverage documented by Certificate of Insurance referenced above expires before the expiration of CITY's term of award pursuant to this AGREEMENT, including any extensions thereto, then VENDOR agrees to provide CITY, prior to said insurance coverage expiration, a replacement Certificate of Insurance that indicates the new date(s) of insurance coverage expiration and that meets or exceeds CITY's Insurance Requirements as specified in SOLICITATION.
5. In the event that insurance coverage documented by Certificate of Insurance referenced above is materially modified or canceled before the expiration of CITY's term of award pursuant to this AGREEMENT, including any extensions thereto, then VENDOR agrees to notify CITY, within three (3) calendar days of knowing or being notified itself, of any such material modification or cancellation.
6. Included in VENDOR's SUBMITTAL is CITY's Indemnification Agreement, executed for VENDOR.
7. CITY awarded on _____, 20__ and now desires to retain VENDOR for water distribution system leak detection services pursuant to SOLICITATION and SUBMITTAL, in the total amount not to exceed \$20,000 (at the unit price of exactly \$135.00 per line-mile).

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2013-0178)

8. In the event of a conflict between CITY's SOLICITATION and VENDOR's SUBMITTAL, CITY's SOLICITATION shall supersede conflicting terms and conditions found in VENDOR's SUBMITTAL, except for any exceptions identified by VENDOR in its SUBMITTAL and accepted at the time of award by CITY.

EXECUTED THIS _____ DAY OF _____ 20__.

For VENDOR:

For CITY:

(signature of VENDOR's authorized representative)

(signature of CITY's authorized representative)

TITLE: _____

TITLE: _____ City Administrator

Approved as to Form:

Attorney for City of Franklin

CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT
(City of Franklin Contract No. 2013-0178)

Attachment No. 1

SOLICITATION

CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT
(City of Franklin Contract No. 2013-0178)

Attachment No. 2

SUBMITTAL

CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT
(City of Franklin Contract No. 2013-0179)

Attachment No. 3

_____, 2013 Certificate of Insurance



EXHIBIT A

**Bailard Real Estate Investment Trust, Inc.
Subscription Agreement**

Important - Please mail completed forms to: Bailard Real Estate Investment Trust, Inc.
950 Tower Lane, Suite 1900
Foster City, CA 94404-2131
(650) 571-5800

THIS SUBSCRIPTION AGREEMENT is between Bailard Real Estate Investment Trust, Inc. (the "REIT") and the Subscriber executing this Subscription Agreement (the "Subscriber") on the terms and conditions set forth herein and in the Confidential Offering Memorandum dated September 1, 2013, as amended and/or supplemented from time to time (the "Confidential Offering Memorandum"), pertaining to the offering of the shares of common stock of the REIT (the "Shares"). Capitalized terms used herein and not defined in this Subscription Agreement shall have the meanings ascribed to them in the Confidential Offering Memorandum.

1. **Subscription for Shares and Participation in Dividend Reinvestment Plan.** The Subscriber hereby irrevocably agrees:

- (a) to purchase that number of Shares determined by dividing the Subscriber's initial investment amount indicated in the space below by the most recent Net Asset Value per Share, as determined in accordance with the methodology described in the Confidential Offering Memorandum, and to pay the REIT, in cash, therefor the aggregate amount of \$ 400,000;

Method of Payment (please check one):

☒ Wire transfer to the account listed below.

- ☐ FOR SUBSCRIBERS WITH EXISTING INVESTMENT ADVISORY ACCOUNTS WITH BAILARD, INC. ("Bailard") ONLY: Federal Reserve System wire originating from the general investment advisory account listed below and subject to the authorization set forth immediately below:

The undersigned authorizes the designated firm holding the Subscriber's assets in the Subscriber's Bailard-managed general investment advisory account to release funds for the purposes of acquiring Shares pursuant to the terms of this Subscription Agreement and the Confidential Offering Memorandum. Subscriber's Initials: _____

Funds transferred by Federal Reserve System wire will be sent to:

UMB Bank, n.a.
1010 Grand Blvd
Kansas City, MO 64106
ABA 101000695
A/C 9871691624

Fund Name: Bailard Real Estate Investment Trust, Inc.

Subscriber Name: City of Franklin Employees Pension Plan

Subscriber Account Number: 9249

- (b) in the case of a Subscriber who is an existing investment advisory client of Bailard, to purchase such additional Shares as may be necessary to meet from time to time Bailard's real estate allocation guideline applicable to such Subscriber's portfolio; and
- (c) until notice to the contrary is given to the REIT, to participate in and adopt the terms of the Dividend Reinvestment Plan described in the Confidential Offering Memorandum, unless the Subscriber has indicated that the Subscriber elects not to participate in the Dividend Reinvestment Plan by checking the box below. THE ELIGIBILITY OF ANY SUBSCRIBER TO PARTICIPATE IN THE DIVIDEND REINVESTMENT PLAN WILL DEPEND UPON SUCH SUBSCRIBER CONTINUING TO BE AN ACCREDITED INVESTOR (AS DESCRIBED IN SECTION 5 BELOW) OR THE BOARD OF DIRECTORS OF THE REIT OTHERWISE DETERMINING THAT ISSUANCE OF SHARES BY THE REIT TO SUCH SUBSCRIBER FALLS WITHIN AN EXEMPTION FROM REGISTRATION.
- ☐ I/WE CHOOSE NOT TO PARTICIPATE IN THE DIVIDEND REINVESTMENT PLAN. Please mail or wire transfer all cash distributions to my/our (please check one):
- ☐ Primary Mailing Address set forth on page 4 of this Subscription Agreement.
- ☐ Bailard-managed general investment advisory account set forth on page 5 of this Subscription Agreement (for existing Bailard investment management clients only).
- ☐ Other address or investment account (please describe here):

THE SUBSCRIBER MAY SUBSEQUENTLY ELECT TO WITHDRAW FROM THE DIVIDEND REINVESTMENT PLAN BY NOTIFYING THE REIT IN WRITING AT LEAST 10 DAYS PRIOR TO AN ISSUE DATE.

(continued on next page)

Subscriber Information. (Complete all applicable items)

Account Registration Title (please fill out as it should read on the account statement and for registration):

City of Franklin Employees Pension Plan

(a) Type of Account (check appropriate box for federal tax classification):

- ☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company [Enter tax classification (C=C corporation, S=S corporation, P=partnership) _____]
☐ Other _____ ☐ Exempt Payee

(b) Individual's / Co-Subscribers' Form of Ownership (please check one):

- ☐ Individual ☐ IRA (please select an IRA type in (c) below)
☐ Community Property ☐ Joint Tenancy With Right of Survivorship ☐ Tenants in Common
- | | | |
|--------------------|------------|------------------------|
| Name of Individual | Birth Date | Social Security Number |
|--------------------|------------|------------------------|

Name(s) of co-subscribers	Birth Date	Social Security Number
---------------------------	------------	------------------------

(c) IRA Types: (please check the box applicable for the IRA Account):

- ☐ Individual IRA ☐ Rollover IRA ☐ Roth IRA ☐ Conversion IRA ☐ Keogh Plan
☐ Conversion Roth IRA ☐ Transfer IRA ☐ Spousal IRA

If the IRA account uses UMB Bank, n.a. as custodian, a completed IRA Application will need to be attached. For a Spousal IRA, two applications will need to be filled out. A Transfer IRA will require a Bailard IRA Transfer Request. All applications and forms may be requested from Bailard.

(d) Partnership* (Please enclose a copy of the Partnership Agreement or a certificate from a government authority stating the identity and existence of the partnership.)

Name of Partnership	Name of Partner (First, Middle, Last)
---------------------	---------------------------------------

Partner's Birth Date	Partner's Social Security Number
----------------------	----------------------------------

(e) Corporation/Other* (Please enclose certified articles of incorporation, a government-issued business license or other document that reflects the existence of the entity, as well as a corporate resolution or secretary's certificate listing the person(s) authorized to conduct transactions in the account.)

Name of Corporation

Symbol (if publicly traded)	Taxpayer ID Number
-----------------------------	--------------------

Name of Authorized Trader	Birth Date	Social Security Number
---------------------------	------------	------------------------

(f) Trust* (including corporate pension plans)

(Please enclose a copy of the First Page and Signature Page of the Trust Agreement.)

(1) Name of Trustee	Trustee's Birth Date	Trustee's Social Security Number
City of Franklin		62-600290
As Trustee for (Name of Trust)	Date of Trust Instrument	Taxpayer ID Number
City of Franklin Employees Pension Plan		62-1666558
(2) Name of Trustee	Trustee's Birth Date	Trustee's Social Security Number
As Trustee for (Name of Trust)	Date of Trust Instrument	Taxpayer ID Number

* Attach a separate list for additional investors, trustees, authorized traders and general partners of a partnership, including full name, Social security number and date of birth for additional authorized traders is optional.

(g) Gift or Transfer to Minor

Name of Custodian	Custodian's Birth Date	Custodian's Social Security Number
As Custodian for (Minor's Name)	under the (Minor's State of Residence)	
Uniform gift or Transfer to Minor's Act (as applicable in the Minor's state of residence)		

Documents provided in connection with your Subscription Agreement will be used solely to verify your identity. The REIT will have no obligation to enforce or observe the terms of any such document.

2. **Other Subscriber Information and Communications.**

(a) Subscriber's Address (principal business address if an entity):

Number and Street (required; post office boxes are not acceptable):

109 Third Avenue South

City: Franklin State: TN Zip Code: 37064

Mailing Address (if different from above):

Number and Street (required; post office boxes are not acceptable):

City: _____ State: _____ Zip Code: _____

Subscriber's Primary Telephone Number: (615) 791-1457

Subscriber's Business Telephone Number: ()

Subscriber's Facsimile Telephone Number: (615) 550-1955

Subscriber's Email Address: russ.truell@franklintn.gov

If the Subscriber is an individual (or individuals), please fill in the state of residence: _____

If the Subscriber is an entity, please fill in the state of formation or incorporation: TN

Please indicate the manner by which you would like to receive notices and communications in connection with this Subscription Agreement, the offering and, if and when applicable, as a stockholder of the REIT (select one):

- ☒ By post to the Mailing Address provided above
☐ Electronically to the Email Address provided above

(b) Status of Subscriber. Please check one:

- ☐ Investment Advisory Client of Bailard
☐ Employee of Bailard
☐ Relative of an employee of Bailard
☒ Other

(c) Citizenship. Please check the applicable box:

- ☒ U.S.
☐ Resident Alien (must have a U.S. taxpayer ID number and domestic address)
☐ Non-Resident Alien (Country of Citizenship) _____ (for non-resident aliens, a copy of an unexpired government issued photo ID must be included with this Subscription Agreement)

(d) Account Information. If the Subscriber is an existing Bailard investment advisory client, then the Subscriber's Bailard-managed general investment advisory account from which funds may be withdrawn pursuant to Section 1 and other provisions of this Subscription Agreement is as follows:

Bank Name: _____
ABA#: _____
Firm Name (if any): _____
Firm Number (if any): _____
Client Account Name: _____
Client Account Number: _____

(e) Duplicate Statements Authorization. I/we authorize the REIT and its transfer agent, UMB Bank, n.a, to send duplicate statements to the entity listed below:

Name: Bob Hewston
Title: Account Manager
Firm: U.S. Bank
Address: 2204 Lakeshore Drive #302
Birmingham, AL 35209
Telephone: (205) 802-5519

3. **Taxpayer Information – Form W-9 or Appropriate Form W-8.** Subscribers who are U.S. persons must complete IRS Form W-9 attached as Appendix A. For U.S. federal tax purposes, a U.S. person is:
- (a) An individual who is a U.S. citizen or U.S. resident alien;
 - (b) A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
 - (c) An estate (other than a foreign estate); or
 - (d) A domestic trust.

Subscribers who are not U.S. persons must complete the appropriate IRS Form W-8, available at <http://www.irs.gov>.

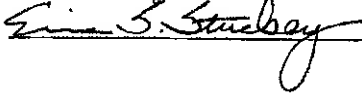
4. **Taxpayer Information – Certificate of Non-Foreign Status.** Under the Internal Revenue Code of 1986, as amended (the "Code"), the REIT must withhold tax with respect to certain transfers of property if a Stockholder in the REIT is a foreign person. To inform the REIT that no withholding is required with respect to your interest in it, the undersigned Subscriber hereby certifies as follows:
- (i) the prospective Stockholder is not a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust or a foreign estate for purposes of United States income taxation;
 - (ii) the Subscriber's identifying number is as set forth above in "Subscriber Information"; and
 - (iii) the Subscriber's state of residence (if an individual or individuals) or state of formation or incorporation and principal business address (if an entity) is as set forth above in "Other Subscriber Information."

The Subscriber hereby agrees to inform the REIT promptly if such Subscriber becomes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust or a foreign estate for purposes of United States income taxation. The Subscriber understands that this certification may be disclosed to the IRS by the REIT and that any false statement the Subscriber has made hereunder could be punished by fine, imprisonment, or both. Under penalties of perjury, the undersigned, by executing this Subscription Agreement, declares that the undersigned has examined this certification and to the best knowledge and belief of the undersigned it is true, correct and complete, and, if the Subscriber is not an individual, further declares that the person executing and delivering this Subscription Agreement on behalf of the Subscriber is duly authorized to act for the Subscriber in subscribing for the Shares.

Print Name of Subscriber:

City of Franklin Employees Pension Plan

Authorized Signature:



Print Name of Subscriber:

Authorized Signature:

5. **Certain Representations of Subscriber as to Status as an Accredited Investor.** The Subscriber hereby represents and warrants to the REIT that the Subscriber is an "Accredited Investor" (as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act")) on the basis that the Subscriber is described in and has checked the applicable box or boxes below:

- ☐ a natural person whose individual net worth (determined by subtracting total liabilities from total assets), or joint net worth with his or her spouse, is in excess of \$1 million (in calculating net worth of such person, (a) the value of the primary residence of such person shall be excluded as an asset, (b) the outstanding indebtedness secured by the primary residence of such person up to the fair market value of such primary residence at the time of investment shall be excluded as a liability, provided, however, that if the amount of such outstanding indebtedness at the time of investment exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability, and (c) the outstanding indebtedness secured by the primary residence in excess of the fair market value of such primary residence at the time of investment shall be included as a liability)
- ☐ a natural person whose individual income (without including any income of the Subscriber's spouse) was in excess of \$200,000, or joint income with the Subscriber's spouse was in excess of \$300,000, in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year
- ☐ a trust, not formed for the specific purpose of acquiring Shares, with total assets in excess of \$5 million and whose purchase is directed by a person with such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment
- ☐ a bank (as defined under Section 3(a)(2) of the Securities Act) or a savings and loan association or other institution (as defined in Section 3(a)(5)(A) of the Securities Act) whether acting in its individual or fiduciary capacity
- ☐ a broker dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended
- ☐ an insurance company as defined in Section 2(13) of the Securities Act
- ☐ an investment company registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"), or a business development company as defined in Section 2(a)(48) of the Investment Company Act
- ☐ a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended
- ☒ a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, with total assets in excess of \$5 million
- ☐ an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended (hereafter "ERISA"):
 - (a) whose decision to invest in the REIT is being made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser, or
 - (b) with total assets in excess of \$5 million, or
 - (c) that is "self-directed" solely by person(s) who are "Accredited Investors"
- ☐ a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended
- ☐ an organization described in Section 501(c)(3) of the Code, a corporation, a Massachusetts or similar business trust, or a partnership not formed for the specific purpose of acquiring Shares, with total assets in excess of \$5 million
- ☐ a revocable trust (including a revocable trust formed for the specific purpose of acquiring Shares) and the grantor and settlor of such trust is an Accredited Investor
- ☐ an entity (e.g., a private company, partnership or limited liability company) in which all of the equity owners are Accredited Investors
- ☐ Other, as provided in Rule 501 of Regulation D as promulgated under the Securities Act

Please describe: _____

The Subscriber hereby agrees to provide such information or documentation as may be requested from time to time by the REIT or its agents to verify Subscriber's status as an "Accredited Investor" as described above (including information regarding the Subscriber's spouse, if applicable). The Subscriber represents and warrants that any information or documents that the Subscriber so provides to the REIT shall be true, complete and correct in all respects, and shall disclose all liabilities necessary to make a determination of net worth if the Subscriber has checked the first box above.

6. **Closings.** On each Issue Date on which the Subscriber purchases Shares, the Subscriber or Bailard, as the case may be, shall transfer funds to the REIT in accordance with Section 1 hereof. Once such funds are duly transferred and received by the REIT, the REIT shall record, or cause to be recorded on its behalf, the Subscriber as a Stockholder of the REIT. The Subscriber shall have no rights with respect to any Shares subscribed for hereunder until such time as the Subscriber shall become a Stockholder in accordance with the foregoing.
7. **Manner and Amount of Payment.**
 - (a) Subscribers who have existing investment advisory accounts with Bailard: On each appropriate Issue Date, Bailard shall transfer funds from such Subscriber's investment advisory account to and for the account of the REIT in an amount equal to that portion of the specified dollar amount subscribed for herein and such further amounts as needed to meet Bailard's real estate asset allocation guideline applicable to such Subscriber.
 - (b) Other Subscribers: Subscribers who do not have existing investment advisory accounts with Bailard shall deliver [a check or] wire transfer funds payable to Bailard Real Estate Investment Trust, Inc. on the Issue Date and such Stockholder will be admitted as a Stockholder in an amount equal to the specified dollar amount subscribed for herein and on any other applicable issue Date.
8. **Restrictions on Transfer or Assignment of Shares.** The Shares of the REIT to be issued hereunder are subject to the restrictions on transfer and ownership and the REIT's rights of redemption set forth and described in the Confidential Offering Memorandum and the REIT's Articles of Incorporation, as amended from time to time (the "Charter").
9. **Acknowledgments of Subscriber.** The Subscriber hereby acknowledges that:
 - (a) This subscription is irrevocable until termination of the offering and shall constitute a binding commitment thereafter if accepted by the REIT on or before such date. The Subscriber understands and agrees that the REIT will, at any time prior to acceptance, have the right to accept or reject (for any reason or no reason at all) this Subscription Agreement, in whole or in part; that the same shall be deemed to be accepted by the REIT only when it has been signed by the REIT; and that the REIT shall have the right to accept or reject subscriptions in any order it shall determine. The Subscriber further understands that any future subscription to purchase Shares (pursuant to the Dividend Reinvestment Plan or otherwise) shall be subject to the acceptance and approval of the REIT at the time of such subscription. The Subscriber acknowledges that the REIT may terminate the offering at any time. In the event that the offering is terminated or this Subscription Agreement is rejected by the REIT for any reason, the Subscriber shall have no claim against the REIT, or its directors, officers, employees, affiliates, agents or representatives, of any kind or nature whatsoever.
 - (b) The REIT will be organized and operated so as to be exempt from registration under the Investment Company Act, and from the provisions of that statute designed to protect investors.
 - (c) Due to the restrictions on transfer and assignment of this Subscription Agreement and the Shares issued hereunder, the Subscriber may be required to bear the economic risk of an investment in the Shares purchased hereunder for an indefinite period of time.
 - (d) If at the time of subscription (i) the Subscriber is a client or employee of Bailard (or a relative of an employee of Bailard) and thereafter ceases to hold such status or (ii) the Subscriber qualifies as an "Accredited Investor" and thereafter ceases to so qualify, the REIT may upon notice redeem such Subscriber's Shares at any time thereafter in accordance with the Charter.
 - (e) The value of the Shares of the REIT determined in accordance with the portfolio valuation mechanism described in Section IV of the Confidential Offering Memorandum is inexact and may not reflect the actual

value of the REIT's underlying assets. To the extent that the REIT chooses in its sole discretion to redeem the Subscriber's Shares at the request of the Subscriber or as described in Section 8(d), such Shares shall be redeemed at the price per share most recently determined pursuant to valuation procedures established by the REIT's Board of Directors in its sole and absolute discretion, which may not reflect the actual net asset value per Share for the Shares or the actual value of the REIT's underlying assets.

- (f) Delivery to the Subscriber of the Confidential Offering Memorandum and other information relating to the REIT and the Shares, prior to the determination by the REIT of the suitability of the Subscriber as a Stockholder, does not constitute an offer of Shares until such determination of suitability has been made.
 - (g) The Shares are being sold in a transaction which is exempt from the registration requirements of the Securities Act, and of state securities laws, and the Shares will be subject to transfer restrictions under the Securities Act and applicable state securities laws (in addition to certain transfer restrictions under the Charter) and may not be transferred (i) except as permitted under the Charter and (ii) unless subsequently registered under the Securities Act and applicable state securities laws or unless there is delivered to the REIT an opinion of counsel satisfactory to the REIT that such registration is not required. The REIT does not have any obligation or intention to, and the Subscriber has no right to require the REIT to, register the Shares for sale under the Securities Act or any state securities laws.
 - (h) The Subscriber understands that the REIT is relying upon the representations, warranties, agreements, undertakings and acknowledgments made by the Subscriber in this Subscription Agreement in determining the Subscriber's suitability as a Stockholder and as a basis for the exemption from registration of the Shares.
10. **Covenants of the Subscriber.** The Subscriber hereby covenants and agrees that:
- (a) So long as the Subscriber holds Shares or has the right to acquire such Shares, the Subscriber shall disclose to the REIT in writing such information with respect to direct and indirect ownership of Shares of the REIT as the REIT may deem necessary to ascertain and to establish compliance with provisions of the Code applicable to the REIT or to comply with requirements of any other appropriate taxing authority.
 - (b) Only to the extent provided by applicable law, the Subscriber shall indemnify and hold the REIT and its affiliates harmless from and against any and all loss, cost, damage or liability due to or arising out of a breach of any representation, warranty, covenant or agreement of the Subscriber in this Subscription Agreement or any other document furnished by such Subscriber to the REIT.
 - (c) The Subscriber will immediately provide the REIT with corrected information in the event any information given in this Subscription Agreement or in any documentation provided by the Subscriber at the request of the REIT was incorrect.
 - (d) The Subscriber will promptly notify the REIT (and, in particular, prior to the acquisition of additional Shares by the Subscriber pursuant to the Dividend Reinvestment Plan or otherwise) of any changes in the information given in this Subscription Agreement or in any documentation provided by the Subscriber at the request of the REIT, including, without limitation, any changes in such Subscriber's status as an "Accredited Investor" and any changes to the information provided in "Other Subscriber Information and Communications." So long as the Subscriber holds Shares or has the right to acquire such Shares, the Subscriber agrees to provide written confirmation of any information included in this Subscription Agreement as may be requested from time to time by the REIT.
11. **General Representations of Subscriber.** The Subscriber hereby represents and warrants to, and covenants with, the REIT as of the date of this Subscription Agreement and as of each applicable Issue Date that:
- (a) The Shares being subscribed for by the Subscriber will be acquired for the account of the Subscriber for investment only and not with a view to, or with any intention of, a distribution or resale thereof, in whole or in part, or the grant of any participation therein.
 - (b) The Subscriber has received and has reviewed the Confidential Offering Memorandum, including, without limitation, Section V thereof relating to the risks associated with the offering and the information regarding the investment management fee to be paid by the REIT to Bailard, and all Appendices, Exhibits and Supplements (if any) thereto (collectively, the "Disclosure Documents"). The Subscriber has had an opportunity to (i) discuss questions concerning the contents of the Disclosure Documents and this offering with representatives of the REIT and (ii) obtain any additional information necessary to verify the accuracy of

information furnished in connection therewith which the REIT possesses or can acquire without unreasonable effort or expense. The Subscriber is not relying upon any forward-looking statements contained in the Disclosure Documents as the basis for an investment in the Shares.

- (c) The Subscriber is able to bear the economic risk of an investment in the Shares, has adequate means of providing for the Subscriber's current needs and personal contingencies, and has no need for liquidity in connection with an investment in the Shares. The Subscriber's overall commitment to investments that are not readily marketable is not disproportionate to the net worth of the Subscriber, and the Subscriber's investment in the Shares will not cause such overall commitment to become excessive.
- (d) The Subscriber, either alone or with the Subscriber's designated purchaser representative, has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of an investment in the Shares. The Subscriber, either alone or with the Subscriber's designated purchaser representative, has evaluated such merits and risks and has determined that the Shares are a suitable investment for the Subscriber.
- (e) If the Subscriber is a plan subject to ERISA or Section 4975 of the Code, the undersigned represents that the investment of the undersigned in the Shares satisfies the diversification requirements of ERISA, is prudent in light of the facts and circumstances (including possible limitations on the marketability of the Shares), provides the plan with sufficient liquidity, is an investment the fiduciary or fiduciaries are authorized to make under the appropriate governing instrument and investment policies of the plan, is otherwise in accordance with the documents and instruments governing the plan, and would not result in a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code.
- (f) If the Subscriber is a corporation, partnership, trust or other form of business entity, the Subscriber agrees, warrants and represents that (i) the Subscriber is authorized and otherwise duly qualified to subscribe for the Shares, (ii) the Subscriber has been duly organized and is validly existing under the laws of its jurisdiction of organization with full power and authority to execute this Subscription Agreement and perform its obligations hereunder, and (iii) upon execution and delivery by the Subscriber, this Subscription Agreement will constitute the valid, binding and enforceable obligation of the Subscriber. If the Subscriber is one of the aforementioned entities, it hereby agrees to supply any additional written information concerning the representations and certifications in this Subscription Agreement that the REIT may reasonably require.
- (g) If the Subscriber is a corporation, partnership, trust or other form of business entity, the execution and delivery of this Subscription Agreement and any other documents executed and delivered by the undersigned in connection herewith do not, and the performance and consummation of the terms and transactions set forth or contemplated herein will not, contravene or result in a default under any provision of existing law or regulations to which the undersigned is subject, the provisions of the trust instrument, charter, by-laws or other governing documents of the undersigned or any indenture, mortgage or other agreement or instrument to which the undersigned is a party or by which it is bound and does not require on the part of the undersigned any approval, authorization, license, or filing from or with any foreign, federal, state or municipal board or agency which has not been obtained or duly made.
- (h) The Subscriber has not relied in any way on any information with respect to the proposed investment in the REIT or the REIT generally other than the Disclosure Documents. The Subscriber expressly acknowledges that such Subscriber has not relied upon any prior materials, information or communications from or on behalf of the REIT in making such Subscriber's investment decision. The Subscriber acknowledges that the REIT is not rendering any advice or making any recommendation to invest in the REIT.
- (i) The Subscriber, if a resident of a foreign jurisdiction, has considered the effect of the securities laws of such jurisdiction on his, her or its potential purchase of the Shares and such laws do not in any way prohibit, otherwise conflict with, or impose any substantive or procedural limitations on, such potential purchase.

12. **Restriction on Assignment of Subscription Agreement.** Neither this Subscription Agreement nor any rights or interest herein may be assigned by the Subscriber, nor may the obligations of the Subscriber be assumed or performed by another, without the express prior written consent of the REIT. The REIT may withhold consent in its sole and absolute discretion.

13. **Notices.** The address of each Subscriber for all purposes shall be as set forth above in "Other Subscriber Information and Communications." A Subscriber may change any address for purposes hereof by sending written notice of such change of address to the REIT in accordance with the provisions hereof. Any notice to be given by the Subscriber under this Subscription Agreement shall be made in writing and, unless otherwise herein provided, shall be deemed to be given when sent by certified or registered mail, return receipt requested, to the REIT. Any notice or communication to be given by the REIT under this Subscription Agreement shall be made in writing and, unless otherwise herein provided, shall be deemed to be given when sent to the Subscriber by the method provided above in "Other Subscriber Information and Communications."
14. **Counterparts.** This Subscription Agreement may be executed through the use of separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.
15. **Binding Effect.** Except as otherwise provided herein, this Subscription Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and assigns.
16. **Integration.** This Subscription Agreement constitutes the entire agreement among the parties pertaining to the subject matter contained in this Subscription Agreement and supersedes all prior understandings of the parties.
17. **Survival.** The representations, warranties, covenants and agreements set forth in this Subscription Agreement shall survive the acceptance of this Subscription Agreement by the REIT.
18. **Notices to Investor.** The undersigned has read all of the investor notices set forth on pages (i) – (iii) of the Confidential Offering Memorandum.
19. **Certification.** By my signature below, I certify, on my own behalf or on behalf of the undersigned entity which I am authorized to represent, that:
 - (a) The Subscriber is not involved, directly or indirectly, in any money laundering activities and the funds used to make the investment which is the subject of this Subscription Agreement are not derived from any criminal or otherwise unlawful activities; and
 - (b) The information provided by the Subscriber in this Subscription Agreement is true and correct and any documents provided herewith are genuine.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Subscription Agreement has been duly executed by the Subscriber as of the date of the Subscriber's signature set forth below and, if accepted by the REIT, has become a Subscription Agreement binding on the REIT as of the date of the signature acceptance set forth below.

INDIVIDUALS:

Signature of Natural Person

Printed Name of Natural Person

Date: _____

(Signature of Co-Investor, if any)

(Printed Name of Co-Investor)

Date: _____

ENTITIES:

Name of Corporation, Trust or other Entity
(Please Print):

City of Franklin Employees Pension Plan

By: Eric S. Stuckey
(signature)

Name: Eric S. Stuckey

Title: City Administrator

Date: 9/19/2013

Co-Signature (if any): _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED TO:
BAILARD REAL ESTATE INVESTMENT TRUST, INC.

By: _____
Duly Authorized Officer

Date: _____