MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
February 25, 2021

PRAYER

Mr. Ronnie Martin

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEM

Proclamation: Jason Ayers

Consent Agenda

1. Community Investment Program Funds Transfer (Finance)
2. Purchase of Security Services for Citywide Network Infrastructure (Information Technology)
3. Asphalt and Concrete Purchase Report (Street)
4. Purchase of Rock Salt (Street)
5. TDOT Salem Hwy – Contract Supplements – Revisions (Water Resources)
6. Purchase of Sodium Hypochlorite Generator Cell Purchase (Water Resources)

Minutes

7. Approval of City Council Minutes May 7, 2020 – July 30, 2020 (City Recorder)

Old Business

Ordinance

8. Ordinance 20-O-28: Amending the Sign Ordinance (2nd and final reading) (Building Codes)

New Business

Resolution

9. Resolution 21-R-07: Community Investment Study Group (Administration)

Land Use matters

10. Planning Commission Recommendations to Schedule Public Hearings (Planning)

On Motion

11. BluLynx Contract for Management and Administrative Services (Community Development)
12. Old Fire Station 4 ADA Restroom Construction Contract (Project Development)
13. Recruitment for City Recorder and City Treasurer (Human Resources)

14. Approval to Purchase PC Equipment (Information Technology)
15. School Technology Purchase (Schools)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Community Investment Program Funds Transfer

Department: Finance

Presented by: Melissa Wright

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☐
Direction	☐
Information	☒

Summary

Notification to Council of City Manager approved Community Investment Program (CIP) funds transfer.

Background Information

Funding for capital improvement projects is provided through borrowing. Funds are allocated to projects in the CIP that is approved annually by Council. Reallocation of these funds sometimes becomes necessary when circumstances change. Requests for CIP Funds Transfers are submitted to the City Manager for approval and then placed on the Consent Agenda to serve as notification to Council. The following CIP Funds Transfer has been approved:

New Salem Highway Phase I

Transfer $237,000 from Robert Rose Right Turn Lane to New Salem Highway Phase 1.

Council Priorities Served

Responsible budgeting

CIP Fund Transfers reallocate available resources in an efficient manner after receiving City Manager approval.

Fiscal Impact

The transfer within the CIP Funds will have no effect on the CIP Funds balance.

Attachments

CIP Funds Transfer Request – 2019 Loan

City of MURFREESBORO TENNESSEE

. . . creating a better quality of life

CIP Funds Transfer Request

Mr. Tindall:

Submitted for your approval is the following request to transfer CIP funds.

CIP Loan 2019 Loan

Transfer CIP funds from:		Transfer CIP funds to:	
Robert Rose RightTurn Lane	$ (237,000.00)	New Salem Hwy Phase 1	$ 237,000.00
TOTAL TRANSFER	$ (237,000.00)	TOTAL TRANSFER	$ 237,000.00

Explanation: Work has begun on the new Thornton's entrance which is part of the New Salem Hwy Phase 1 project. It has been requested that funds be transferred to this project from the Robert Rose Right Turn Lane project. Transferring $237,000 from the Robert Rose Right Turn Lane project will leave $67,401.02 which is enough to finish it.

Budget Director Signature — Date: 2-8-21

Reviewed by Finance — Date

Approved ☑

Declined ☐

City Manager

Date: 2.9.21

Please send the original to Vicki Massey, Finance & Tax Dept., once all signatures have been obtained.

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Security services for City Network Infrastructure

Department: Information Technology Department

Presented by: Chris Lilly

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Purchase of security services for citywide network infrastructure.

Staff Recommendation

Approve of the purchase of the proposed cybersecurity service.

Background Information

In November of 2019, Council approved the purchase of an updated cybersecurity services solution. This solution has proven to be effective against potential cyberattacks. This solution is a hybrid service/application that monitors and prevents malicious computer and network attacks inside and outside of our network. *(For security purposes, the vendor and software name are protected.)*

Council Priorities Served

Excellent Services with a Focus on Customer Service

Fiscal Impacts

The pricing is based off the TN State Contract with the NASPO ValuePoint Purchasing Cooperative. Funding for the purchase is $59,361 per year for the next 3 years. Funding of $30,000 will come from the IT Department's budget and the remaining will be funded from the MWRD budget.

Attachments

1. CDWG Quote
2. Authorization to Issue Purchase Order

PEOPLE WHO GET IT

CITY OF MURFREESBORO

Prepared For :
Customer # : 1612291
Attention : Matt Byrnes
Date : 10/4/2019

Griffin Curcio
Senior Account Manager
877-635-6656
grifcur@cdwg.com

Proposal I

PAYMENT TERMS ANNUAL

Qty.	Part #	Year 1	Price	Extended Price
110	Confidential	Confidential	$141.06	$15,516.60
110			$133.81	$14,719.10
1100			$23.02	$25,322.00
1			$3,803.03	$3,803.03
Qty.	**Part #**	**Year 2**		**Extended Price**
110	Confidential	Confidential	$141.06	$15,516.60
110			$133.81	$14,719.10
1100			$23.02	$25,322.00
1			$3,803.03	$3,803.03
Qty.	**Part #**	**Year 3**		**Extended Price**
110	Confidential	Confidential	$141.06	$15,516.60
110			$133.81	$14,719.10
1100			$23.02	$25,322.00
1			$3,803.03	$3,803.03
Qty.	**Part #**	**Year 4**		**Extended Price**
110	Confidential	Confidential	$141.06	$15,516.60
110			$133.81	$14,719.10
1100			$23.02	$25,322.00
1			$3,803.03	$3,803.03
Qty.	**Part #**	**Year 5**		**Extended Price**
110	Confidential	Confidential	$141.06	$15,516.60
110			$133.81	$14,719.10
1100			$23.02	$25,322.00
1			$3,803.03	$3,803.03
		5 YEAR TOTAL COST	**$296,803.65**	

Authorization to Issue City Purchase Order to

[redacted]

Pursuant to

NASPO ValuePoint Cooperative Purchasing Organization

Data Communications Products and Services 14-19

Master Price Agreement Number [redacted]

As Amended by State of Tennessee Master Contract Number [redacted]

The undersigned hereby certify that at its regular meeting on February 25, 2021, the Murfreesboro City Council approved the purchase of certain data communications equipment and services pursuant to the NASPO ValuePoint Purchasing Cooperative Program Contract, Contract Number [redacted] for Data Communications Products and Services 14-19 with [redacted] ("Master Agreement"), as amended by the State of Tennessee Participating Addendum Master Contract No. [redacted] ("Tennessee Addendum"), and further authorized the City Manager and Purchasing Director to issue a Purchase Order in the amount of

$59,361.00 to [redacted] to initiate such purchase, such purchase order incorporating by reference and made subject to the terms and conditions set forth in the Master Agreement and Tennessee Addendum.

By:_____ _____

Shane McFarland, Mayor City Recorder

Date:_____

I certify that this method of purchase is permitted under Tennessee Code § 12-3-1201 and the Murfreesboro City Code § 2-10(E)(2)(A) and approve both Master Agreement and Tennessee Addendum as to form and legality.

_____

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Asphalt and Concrete Purchase Report

Department: Street

Presented by: Raymond Hillis

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☐
Direction	☐
Information	☒

Summary

Report of asphalt and concrete purchases.

Staff Recommendation

The asphalt and concrete purchase report, consistent with purchases associated as perishable, fuel-based commodity is provided as information only.

Background Information

Purchases of asphalt and concrete are made throughout the month and reported with Street Department construction projects. The attached report is provided pursuant to City Code, § 2-10(E)(7) in compliance with this reporting requirement.

Pursuant to the City Code, § 2-10(E)(7) A purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. §6-56-304(7).

Council Priorities Served

Responsible budgeting

Proper procurement ensures best cost savings to the Department and our customers.

Maintain public safety

Maintaining the functionality and safe drivability of roadways focuses on public safety and customer service.

Fiscal Impacts

Purchases are within with the amount listed in FY21 Budget. Asphalt purchases are budgeted at $55,000 and concrete purchases are budgeted at $25,000 for FY21.

Attachments

Asphalt and Concrete Purchases Report

STREET DEPARTMENT ASPHALT PURCHASES FY 21

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/17/2020	Hawkins	307A 64/22	$ 55.38	1.16	$ 64.24	$ 64.24
7/21/2020	Hawkins	Fine Binder Mix	$ 61.57	2.15	$ 132.38	$ 196.62
7/22/2020	Hawkins	411E Mix	$ 64.45	0.98	$ 63.16	$ 259.78
7/23/2020	Hawkins	411E Mix	$ 64.45	1.39	$ 89.59	$ 349.37
9/4/2020	Hawkins	411E 64/22	$ 64.19	0.91	$ 58.41	$ 407.78
10/20/2020	Hawkins	411E 64/22	$ 64.04	13.00	$ 832.52	$ 1,240.30
10/27/2020	Hawkins	Fine Binder Mix	$ 61.20	8.95	$ 547.74	$ 1,788.04
11/2/2020	Hawkins	411E 64/22	$ 63.85	17.96	$ 1,146.75	$ 2,934.79
11/12/2020	Hawkins	307BM 64/22	$ 59.48	1.00	$ 59.48	$ 2,994.27
12/21/2020	Hawkins	411E 64/22	$ 63.56	2.13	$ 135.38	$ 3,129.65
1/6/2021	Hawkins	Binder Mix 64-22	$ 59.42	10.07	$ 598.36	$ 3,728.01

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/31/2020	Blue Water	E Mix 64-22	$ 78.00	2.03	$ 158.34	$ 158.34
8/14/2020	Blue Water	E Mix 64-22RP	$ 75.00	7.27	$ 545.25	$ 703.59
8/18/2020	Blue Water	E Mix 64-22RP	$ 75.00	2.22	$ 166.50	$ 870.09
8/21/2020	Blue Water	E Mix 64-22	$ 78.00	18.21	$ 1,420.38	$ 2,290.47
8/25/2020	Blue Water	D 64-22RP	$ 83.00	5.16	$ 428.28	$ 2,718.75
8/26/2020	Blue Water	E Mix 64-22	$ 78.00	8.28	$ 645.84	$ 3,364.59
8/26/2020	Blue Water	E Mix 64-22	$ 78.00	5.19	$ 404.82	$ 3,769.41
9/3/2020	Blue Water	E Mix 64-22	$ 78.00	7.74	$ 603.72	$ 4,373.13
10/16/2020	Blue Water	E Mix 64-22	$ 78.00	7.19	$ 560.82	$ 4,933.95
11/18/2020	Blue Water	BM Mix 64-22RP	$ 65.00	5.09	$ 330.85	$ 5,264.80
11/23/2020	Blue Water	BM Mix 64-22RP	$ 65.00	3.63	$ 235.95	$ 5,500.75
11/24/2020	Blue Water	E Mix 64-22 RP	$ 75.00	2.26	$ 169.50	$ 5,670.25
11/25/2020	Blue Water	E Mix 64-22 RP	$ 75.00	2.58	$ 193.50	$ 5,863.75
11/25/2020	Blue Water	E Mix 64-22 RP	$ 75.00	13.43	$ 1,007.25	$ 6,871.00
12/14/2020	Blue Water	E Mix 64-22	$ 78.00	7.03	$ 548.34	$ 7,419.34

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/7/2020	Vulcan	411E PG 64-22	$ 65.30	2.00	$ 130.60	$ 130.60
7/13/2020	Vulcan	411E PG 64-22	$ 65.30	1.23	$ 80.32	$ 210.92
7/14/2020	Vulcan	411E PG 64-22	$ 65.30	1.54	$ 100.56	$ 311.48
7/15/2020	Vulcan	411E PG 64-22	$ 65.30	1.08	$ 70.52	$ 382.00
7/16/2020	Vulcan	411E PG 64-22	$ 65.30	1.10	$ 71.83	$ 453.83
7/20/2020	Vulcan	411E PG 64-22	$ 65.30	1.16	$ 75.75	$ 529.58
7/29/2020	Vulcan	411E PG 64-22	$ 65.30	12.37	$ 807.77	$ 1,337.35
7/30/2020	Vulcan	411E PG 64-22	$ 65.30	4.83	$ 315.40	$ 1,652.75
8/5/2020	Vulcan	307BM PG 64-22	$ 56.80	12.48	$ 708.86	$ 2,361.61
8/6/2020	Vulcan	411E PG 64-22	$ 65.23	13.42	$ 875.39	$ 3,237.00
8/7/2020	Vulcan	411E PG 64-22	$ 65.23	9.13	$ 595.55	$ 3,832.55
8/24/2020	Vulcan	411E PG 64-22	$ 65.23	6.70	$ 437.04	$ 4,269.59
8/26/2020	Vulcan	411E PG 64-22	$ 65.23	9.05	$ 590.34	$ 4,859.93
9/23/2020	Vulcan	411E PG 64-22	$ 65.05	2.23	$ 145.07	$ 5,005.00
10/14/2020	Vulcan	307BM PG 64-22	$ 56.56	17.94	$ 1,014.69	$ 6,019.69
10/14/2020	Vulcan	307BM PG 64-22	$ 56.56	18.06	$ 1,021.47	$ 7,041.16
10/14/2020	Vulcan	411E PG 64-22	$ 64.91	2.03	$ 131.77	$ 7,172.93
10/19/2020	Vulcan	307BM PG 64-22	$ 56.56	8.00	$ 452.48	$ 7,625.41
10/20/2020	Vulcan	411E PG 64-22	$ 64.91	18.03	$ 1,170.33	$ 8,795.74
10/26/2020	Vulcan	411E PG 64-22	$ 64.91	7.01	$ 455.02	$ 9,250.76
10/30/2020	Vulcan	411E PG 64-22	$ 64.91	7.06	$ 458.26	$ 9,709.02
11/3/2020	Vulcan	307BM PG 64-22	$ 56.56	13.44	$ 760.17	$ 10,469.19
11/3/2020	Vulcan	307BM PG 64-22	$ 56.56	2.07	$ 117.08	$ 10,586.27
11/3/2020	Vulcan	307BM PG 64-22	$ 56.56	18.13	$ 1,025.43	$ 11,611.70
11/10/2020	Vulcan	411E PG 64-22	$ 64.72	1.06	$ 68.60	$ 11,680.30
11/13/2020	Vulcan	411E PG 64-22	$ 64.72	1.06	$ 68.60	$ 11,748.90
11/17/2020	Vulcan	411E PG 64-22	$ 64.72	3.09	$ 199.99	$ 11,948.89
11/20/2020	Vulcan	411E PG 64-22	$ 64.72	3.10	$ 200.63	$ 12,149.52
12/2/2020	Vulcan	411E PG 64-22	$ 64.44	5.00	$ 322.20	$ 12,471.72
12/2/2020	Vulcan	411E PG 64-22	$ 64.44	3.95	$ 254.54	$ 12,726.26
12/3/2020	Vulcan	411E PG 64-22	$ 64.44	2.18	$ 140.48	$ 12,866.74
12/3/2020	Vulcan	411E PG 64-22	$ 64.44	2.31	$ 148.86	$ 13,015.59
12/11/2020	Vulcan	411E PG 64-22	$ 64.44	10.21	$ 657.93	$ 13,673.53
12/18/2020	Vulcan	411E PG 64-22	$ 64.44	1.45	$ 93.44	$ 13,766.96

STREET DEPARTMENT CONCRETE PURCHASES FY 21

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/2/2020	Nashville Ready Mix	3000 PSI	$ 150.00	2		$ 300.00	$ 300.00
7/14/2020	Nashville Ready Mix	3000 PSI	$ 104.00	1.5		$ 156.00	$ 456.00
7/15/2020	Nashville Ready Mix	3000 PSI	$ 104.00	1.5		$ 156.00	$ 612.00
7/16/2020	Nashville Ready Mix	3000 PSI	$ 104.00	2		$ 208.00	$ 820.00
7/20/2020	Nashville Ready Mix	3000 PSI	$ 105.00	3		$ 315.00	$ 1,135.00
7/21/2020	Nashville Ready Mix	3000 PSI	$ 105.00	2		$ 210.00	$ 1,345.00
7/22/2020	Nashville Ready Mix	3500 PSI	$ 106.00	2		$ 212.00	$ 1,557.00
7/23/2020	Nashville Ready Mix	3500 PSI	$ 104.00	2.5		$ 260.00	$ 1,817.00
7/24/2020	Nashville Ready Mix	3000 PSI	$ 104.00	2		$ 208.00	$ 2,025.00
7/27/2020	Nashville Ready Mix	3500 PSI	$ 107.00	4.25		$ 454.75	$ 2,479.75
7/28/2020	Nashville Ready Mix	3500 PSI	$ 107.00	1.5		$ 160.50	$ 2,640.25
8/3/2020	Nashville Ready Mix	3000 PSI	$ 105.00	1		$ 105.00	$ 2,745.25
8/10/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2		$ 214.00	$ 2,959.25
8/12/2020	Nashville Ready Mix	3500 PSI	$ 107.00	4		$ 428.00	$ 3,387.25
8/14/2020	Nashville Ready Mix	3500 PSI	$ 107.00	3		$ 321.00	$ 3,708.25
8/18/2020	Nashville Ready Mix	3500 PSI	$ 107.00	1		$ 107.00	$ 3,815.25
8/27/2020	Nashville Ready Mix	3500 PSI	$ 107.00	3		$ 321.00	$ 4,136.25
8/19/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2		$ 214.00	$ 4,350.25
8/31/2020	Nashville Ready Mix	3000 PSI	$ 105.00	1.5		$ 157.50	$ 4,507.75
9/2/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2		$ 214.00	$ 4,721.75
9/3/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2.5		$ 267.50	$ 4,989.25
9/16/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2		$ 214.00	$ 5,203.25
9/17/2020	Nashville Ready Mix	3500 PSI	$ 107.00	1.5		$ 160.50	$ 5,363.75
9/18/2020	Nashville Ready Mix	3500 PSI	$ 107.00	2.5		$ 267.50	$ 5,631.25
9/23/2020	Nashville Ready Mix	3500 PSI	$ 107.00	1		$ 107.00	$ 5,738.25
10/2/2020	Nashville Ready Mix	3500 PSI	$ 102.00	3		$ 306.00	$ 6,044.25
10/5/2020	Nashville Ready Mix	3500 PSI	$ 107.00	3		$ 321.00	$ 6,365.25

10/6/2020	Nashville Ready Mix	3500 PSI	$ 107.00	3		$ 321.00	$ 6,686.25
10/7/2020	Nashville Ready Mix	3500 PSI	$ 107.00	4.5		$ 481.50	$ 7,167.75
10/8/2020	Nashville Ready Mix	3500 PSI	$ 107.00	4		$ 428.00	$ 7,595.75
10/12/2020	Nashville Ready Mix	3500 PSI	$ 107.00	4.25		$ 454.75	$ 8,050.50
11/4/2020	Nashville Ready Mix	3500 PSI	$ 107.00	1		$ 107.00	$ 8,157.50
11/5/2020	Nashville Ready Mix	3500 PSI	$ 107.00	3		$ 321.00	$ 8,478.50
11/23/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 118.00	2		$ 236.00	$ 8,714.50
12/7/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 118.00	3		$ 354.00	$ 9,068.50
12/8/2020	Nashville Ready Mix	35000 PSI w/ accel	$ 118.00	1		$ 118.00	$ 9,186.50
12/17/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 111.00	1.5		$ 166.50	$ 9,353.00
12/21/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 111.00	1		$ 111.00	$ 9,464.00
12/22/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 118.00	2		$ 236.00	$ 9,700.00
12/29/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 111.00	4		$ 444.00	$ 10,144.00
12/30/2020	Nashville Ready Mix	3500 PSI w/ accel	$ 110.00	1		$ 110.00	$ 10,254.00
1/5/2021	Nashville Ready Mix	3500 PSI w/ accel	$ 111.00	2.5		$ 277.50	$ 10,531.50

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
11/16/2020	Orgain Ready Mix	Flowable fill	$ 102.00	8		$ 816.00	$ 816.00
11/19/2020	Orgain Ready Mix	3500 PSI w/ accel	$ 113.00	2		$ 226.00	$ 1,042.00

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/2/2020	Smyrna Ready Mix	Flowable Fill	$ 94.00	8	$ 20.00	$ 772.00	$ 772.00
7/31/2020	Smyrna Ready Mix	3500 PSI	$ 107.00	2	$ 105.00	$ 319.00	$ 1,091.00
8/4/2020	Smyrna Ready Mix	3500 PSI	$ 111.00	2		$ 222.00	$ 1,313.00
9/10/2020	Smyrna Ready Mix	3000 PSI	$ 105.00	1		$ 105.00	$ 1,418.00
10/29/2020	Smyrna Ready Mix	3500 PSI	$ 108.00	1		$ 108.00	$ 1,526.00
11/5/2020	Smyrna Ready Mix	Flowable Fill	$ 94.00	2.5		$ 235.00	$ 1,761.00

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Purchase of Rock Salt

Department: Purchasing/Streets

Presented by: Cathy Smith/Raymond Hillis

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☐
Direction	☐
Information	☒

Summary

Notification of emergency purchase of 500 tons of Rock Salt under the State Contract.

Background Information

Due to recent severe weather, it was necessary for the City to purchase 500 tons of rock salt on a TDOT contract with Morton Salt in the amount of $40,830 under the provision for emergency purchases under the City's Purchasing Code. City Council was informed of the need to make this purchase via email from the City Manager on February 16, 2021. The purchase was necessary to replenish our stock and to maintain supplies for ongoing and future weather events.

The purchase of rock salt enables the City to be better remove of snow and ice from roadways during the winter season. This purchase will replenish the salt that was used for snow removal so far this winter. T.C.A. § 12-3-1201(b) enables this purchase without competitive bidding, under the provisions of contracts or price agreements entered into by the Tennessee Department of General Services, Central Procurement Office. Furthermore, Murfreesboro City Code § 2-10(a)(3) authorizes purchases without competitive bidding as permitted under T.C.A. §12-3-1201.

Rock Salt is available for purchase pursuant to T.C.A. § 12-3-1201(b) under the State of Tennessee's Statewide Contract with Morton Salt, Inc. (SWC No. 66848).

The Emergency Purchases provision of the City Code allows for the City Manager to approve such emergency purchases, provided that a report of the purchase is made to Council at the next regular Council meeting.

Council Priorities Served

Responsible budgeting

Proper procurement ensures best cost savings to the Department and our customers.

Maintain public safety

Maintaining the functionality and safe drivability of roadways focuses on public safety and customer service.

Fiscal Impacts

This Department's current budget can absorb the $40,830.

Attachments

- State Contract 66848

STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE

Statewide Multi-Year Contract Issued to:

Morton Salt Inc
444 W Lake St Ste 3000
Chicago, IL 60606

Vendor ID: 0000115284

Contract Number: 00000000000000000000066848

Title: SWC 507 Rock Salt

Start Date: June 01, 2020
End Date: May 31, 2023
Two, 1-year renewal options remain

Is this contract available to local government agencies in addition to State agencies?: Yes

Authorized Users. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);

b. Tennessee local governmental agencies;

c. members of the University of Tennessee or Tennessee Board of Regents systems;

d. any private nonprofit institution of higher education chartered in Tennessee; and,

e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

Note: If "no", attach exemption request addressed to the Central Procurement Officer.

Contract Contact Information:

State of Tennessee
Department of General Services, Central Procurement Office
Contract Administrator: Parker Birt
3rd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Phone: 615-291-5948
Fax: 615-741-0684
Email: Parker.Birt@tn.gov

Line Information

Line 1
Item ID: 1000177330
Rock Salt, TDOT Region 2, All Locations
Unit of Measure: NS
Vendor Item/Part #: MOR-2
Manufacturer Item #:
Unit Price: $ 87.53

Line 2
Item ID: 1000177331
Rock Salt, TDOT Region3, All Locations
Unit of Measure: NS
Vendor Item/Part #: MOR-3
Manufacturer Item #:
Unit Price: $ 75.6

Line 3
Item ID: 1000177332
Rock Salt, Non-TDOT, Region 2, Super District 4, Clay County
Unit of Measure: NS
Vendor Item/Part #: MOR-4
Manufacturer Item #:
Unit Price: $ 83.44

Line 4
Item ID: 1000177333
Rock Salt, Non-TDOT, Region 2, Super District 4, Cumberland County
Unit of Measure: NS
Vendor Item/Part #: MOR-5
Manufacturer Item #:
Unit Price: $ 89.73

Line 5
Item ID: 1000177334
Rock Salt, Non-TDOT, Region 2, Super District 4, DeKalb County
Unit of Measure: NS
Vendor Item/Part #: MOR-6
Manufacturer Item #:
Unit Price: $ 87.25

Line 6
Item ID: 1000177335
Rock Salt, Non-TDOT, Region 2, Super District 4, Fentress County
Unit of Measure: NS
Vendor Item/Part #: MOR-7
Manufacturer Item #:
Unit Price: $ 93.11
Line 7
Item ID: 1000177336
Rock Salt, Non-TDOT, Region 2, Super District 4, Jackson County
Unit of Measure: NS
Vendor Item/Part #: MOR-8
Manufacturer Item #:
Unit Price: $ 84.38
Line 8
Item ID: 1000177338
Rock Salt, Non-TDOT, Region 2, Super District 4, Pickett County
Unit of Measure: NS
Vendor Item/Part #: MOR-10
Manufacturer Item #:
Unit Price: $ 88.95
Line 9
Item ID: 1000177339
Rock Salt, Non-TDOT, Region 2, Super District 4, Putnam County
Unit of Measure: NS
Vendor Item/Part #: MOR-11
Manufacturer Item #:
Unit Price: $ 86.04
Line 10
Item ID: 1000177340
Rock Salt, Non-TDOT, Region 2, Super District 4, White County
Unit of Measure: NS
Vendor Item/Part #: MOR-12
Manufacturer Item #:
Unit Price: $ 87.39
Line 11
Item ID: 1000177341
Rock Salt, Non-TDOT, Region 2, Super District 5, Bledsoe County
Unit of Measure: NS
Vendor Item/Part #: MOR-13
Manufacturer Item #:
Unit Price: $ 93.83
Line 12
Item ID: 1000177342
Rock Salt, Non-TDOT, Region 2, Super District 5, Cannon County
Unit of Measure: NS
Vendor Item/Part #: MOR-14
Manufacturer Item #:
Unit Price: $ 83.63
Line 13
Item ID: 1000177343
Rock Salt, Non-TDOT, Region 2, Super District 5, Coffee County
Unit of Measure: NS
Vendor Item/Part #: MOR-15
Manufacturer Item #:
Unit Price: $ 83.47

Line 14
Item ID: 1000177344
Rock Salt, Non-TDOT, Region 2, Super District 5, Franklin County
Unit of Measure: NS
Vendor Item/Part #: MOR-16
Manufacturer Item #:
Unit Price: $ 84.34
Line 15
Item ID: 1000177345
Rock Salt, Non-TDOT, Region 2, Super District 5, Grundy County
Unit of Measure: NS
Vendor Item/Part #: MOR-17
Manufacturer Item #:
Unit Price: $ 87.95
Line 16
Item ID: 1000177346
Rock Salt, Non-TDOT, Region 2, Super District 5, Marion County
Unit of Measure: NS
Vendor Item/Part #: MOR-18
Manufacturer Item #:
Unit Price: $ 86.865
Line 17
Item ID: 1000177347
Rock Salt, Non-TDOT, Region 2, Super District 5, Sequatchie County
Unit of Measure: NS
Vendor Item/Part #: MOR-19
Manufacturer Item #:
Unit Price: $ 91.53
Line 18
Item ID: 1000177348
Rock Salt, Non-TDOT, Region 2, Super District 5, Van Buren County
Unit of Measure: NS
Vendor Item/Part #: MOR-20
Manufacturer Item #:
Unit Price: $ 88.77
Line 19
Item ID: 1000177349
Rock Salt, Non-TDOT, Region 2, Super District 5, Warren
Unit of Measure: NS
Vendor Item/Part #: MOR-21
Manufacturer Item #:
Unit Price: $ 83.44
Line 20
Item ID: 1000177350
Rock Salt, Non-TDOT, Region 2, Super District 6, Bradley County
Unit of Measure: NS
Vendor Item/Part #: MOR-22
Manufacturer Item #:
Unit Price: $ 97
Line 21
Item ID: 1000177352
Rock Salt, Non-TDOT, Region 2, Super District 6, McMinn County
Unit of Measure: NS
Vendor Item/Part #: MOR-24
Manufacturer Item #:
Unit Price: $ 95.14

Line 22
Item ID: 1000177353
Rock Salt, Non-TDOT, Region 2, Super District 6, Meigs County
Unit of Measure: NS
Vendor Item/Part #: MOR-25
Manufacturer Item #:
Unit Price: $ 100
Line 23
Item ID: 1000177354
Rock Salt, Non-TDOT, Region 2, Super District 6, Polk County
Unit of Measure: NS
Vendor Item/Part #: MOR-26
Manufacturer Item #:
Unit Price: $ 100.27
Line 24
Item ID: 1000177355
Rock Salt, Non-TDOT, Region 2, Super District 6, Rhea County
Unit of Measure: NS
Vendor Item/Part #: MOR-27
Manufacturer Item #:
Unit Price: $ 97
Line 25
Item ID: 1000177356
Rock Salt, Non-TDOT, Region 3, Super District 7, Davidson County
Unit of Measure: NS
Vendor Item/Part #: MOR-28
Manufacturer Item #:
Unit Price: $ 74.31
Line 26
Item ID: 1000177357
Rock Salt, Non-TDOT, Region 3, Super District 7, Macon County
Unit of Measure: NS
Vendor Item/Part #: MOR-29
Manufacturer Item #:
Unit Price: $ 79.09
Line 27
Item ID: 1000177358
Rock Salt, Non-TDOT, Region 3, Super District 7, Smith County
Unit of Measure: NS
Vendor Item/Part #: MOR-30
Manufacturer Item #:
Unit Price: $ 77.91
Line 28
Item ID: 1000177359
Rock Salt, Non-TDOT, Region 3, Super District 7, Sumner County
Unit of Measure: NS
Vendor Item/Part #: MOR-31
Manufacturer Item #:
Unit Price: $ 75.77
Line 29
Item ID: 1000177360
Rock Salt, Non-TDOT, Region 3, Super District 7, Trousdale County
Unit of Measure: NS
Vendor Item/Part #: MOR-32
Manufacturer Item #:
Unit Price: $ 75.29

Line 30
Item ID: 1000177361
Rock Salt, Non-TDOT, Region 3, Super District 7, Williamson County
Unit of Measure: NS
Vendor Item/Part #: MOR-33
Manufacturer Item #:
Unit Price: $ 74.46
Line 31
Item ID: 1000177362
Rock Salt, Non-TDOT, Region 3, Super District 7, Wilson County
Unit of Measure: NS
Vendor Item/Part #: MOR-34
Manufacturer Item #:
Unit Price: $ 76.55
Line 32
Item ID: 1000177363
Rock Salt, Non-TDOT, Region 3, Super District 8, Cheatham County
Unit of Measure: NS
Vendor Item/Part #: MOR-35
Manufacturer Item #:
Unit Price: $ 73.68
Line 33
Item ID: 1000177364
Rock Salt, Non-TDOT, Region 3, Super District 8, Dickson County
Unit of Measure: NS
Vendor Item/Part #: MOR-36
Manufacturer Item #:
Unit Price: $ 77.73
Line 34
Item ID: 1000177365
Rock Salt, Non-TDOT, Region 3, Super District 8, Hickman County
Unit of Measure: NS
Vendor Item/Part #: MOR-37
Manufacturer Item #:
Unit Price: $ 75.77
Line 35
Item ID: 1000177366
Rock Salt, Non-TDOT, Region 3, Super District 8, Houston County
Unit of Measure: NS
Vendor Item/Part #: MOR-38
Manufacturer Item #:
Unit Price: $ 81
Line 36
Item ID: 1000177367
Rock Salt, Non-TDOT, Region 3, Super District 8, Humphrey County
Unit of Measure: NS
Vendor Item/Part #: MOR-39
Manufacturer Item #:
Unit Price: $ 81
Line 37
Item ID: 1000177368
Rock Salt, Non-TDOT, Region 3, Super District 8, Maury County
Unit of Measure: NS
Vendor Item/Part #: MOR-40
Manufacturer Item #:
Unit Price: $ 77.55

Line 38
Item ID: 1000177369
Rock Salt, Non-TDOT, Region 3, Super District 8, Montgomery County
Unit of Measure: NS
Vendor Item/Part #: MOR-41
Manufacturer Item #:
Unit Price: $ 75.95
Line 39
Item ID: 1000177370
Rock Salt, Non-TDOT, Region 3, Super District 8, Robertson County
Unit of Measure: NS
Vendor Item/Part #: MOR-42
Manufacturer Item #:
Unit Price: $ 77.81
Line 40
Item ID: 1000177371
Rock Salt, Non-TDOT, Region 3, Super District 8, Stewart County
Unit of Measure: NS
Vendor Item/Part #: MOR-43
Manufacturer Item #:
Unit Price: $ 77.55
Line 41
Item ID: 1000177372
Rock Salt, Non-TDOT, Region 3, Super District 9, Bedford County
Unit of Measure: NS
Vendor Item/Part #: MOR-44
Manufacturer Item #:
Unit Price: $ 82.77
Line 42
Item ID: 1000177373
Rock Salt, Non-TDOT, Region 3, Super District 9, Giles County
Unit of Measure: NS
Vendor Item/Part #: MOR-45
Manufacturer Item #:
Unit Price: $ 85.44
Line 43
Item ID: 1000177374
Rock Salt, Non-TDOT, Region 3, Super District 9, Lawrence County
Unit of Measure: NS
Vendor Item/Part #: MOR-46
Manufacturer Item #:
Unit Price: $ 82.44
Line 44
Item ID: 1000177375
Rock Salt, Non-TDOT, Region 3, Super District 9, Lewis County
Unit of Measure: NS
Vendor Item/Part #: MOR-47
Manufacturer Item #:
Unit Price: $ 80.55
Line 45
Item ID: 1000177376
Rock Salt, Non-TDOT, Region 3, Super District 9, Lincoln County
Unit of Measure: NS
Vendor Item/Part #: MOR-48
Manufacturer Item #:
Unit Price: $ 81.48

Line 46
Item ID: 1000177377
Rock Salt, Non-TDOT, Region 3, Super District 9, Marshall County
Unit of Measure: NS
Vendor Item/Part #: MOR-49
Manufacturer Item #:
Unit Price: $ 78.63
Line 47
Item ID: 1000177378
Rock Salt, Non-TDOT, Region 3, Super District 9, Moore County
Unit of Measure: NS
Vendor Item/Part #: MOR-50
Manufacturer Item #:
Unit Price: $ 78.63
Line 48
Item ID: 1000177379
Rock Salt, Non-TDOT, Region 3, Super District 9, Perry County
Unit of Measure: NS
Vendor Item/Part #: MOR-51
Manufacturer Item #:
Unit Price: $ 83.38
Line 49
Item ID: 1000177380
Rock Salt, Non-TDOT, Region 3, Super District 9, Rutherford County
Unit of Measure: NS
Vendor Item/Part #: MOR-52
Manufacturer Item #:
Unit Price: $ 81.66
Line 50
Item ID: 1000177381
Rock Salt, Non-TDOT, Region 3, Super District 9, Wayne County
Unit of Measure: NS
Vendor Item/Part #: MOR-53
Manufacturer Item #:
Unit Price: $ 82.44

APPROVED: Michael F. Perry Digitally signed by Michael F. Perry DN: cn=Michael F. Perry, o=State of Tennessee, ou=Central Procurement Office, email=mike.perry@tn.gov, c=US Date: 2020.05.22 11:27:14 -05'00'
CHIEF PROCUREMENT OFFICER

BY: Parker Birt Digitally signed by Parker Birt DN: cn=Parker Birt, o=General Services, ou=CPO, email=parker.birt@tn.gov, c=US Date: 2020.05.22 11:11:28 -05'00'
PURCHASING AGENT

DATE

TN Department of General Services

MEMO

SWC #507 Rock Salt
Contract Information and Usage Instructions

Contract Period:
Start Date – June 1, 2020
End Date – May 31, 2023, with 2 one-year renewal options remaining.

Summary/Background Information:
This contract includes product and delivery of Rock Salt for all State agencies, local governmental units, higher education institutions, and eligible 501(c)(3) tax-exempt corporations. It should be noted that purchases fewer than 150 tons may utilize this contract but are not required to. All orders of 150 tons or larger are required to use this contract.

State Contract Administrator:
Parker Birt
Category Specialist
Central Procurement Office
(615) 291-5948
Parker.Birt@tn.gov

Contractor Contact Information:

Cargill Inc.
Edison Contract Number: 66844
Vendor Number: 582
Deseree Carver
(800) 600-7258
customercareroadsafety@cargill.com
24950 Country Club Blvd., Suite 450
North Olmstead, OH 44070

Compass Minerals America, Inc
Edison Contract Number: 66866
Vendor Number: 685
Austin Welch
(800) 323-1641
highwaygroup@compassminerals.com
9900 W 109th St. Suite 100
Overland Park, KS 66210

Detroit Salt Company LLC
Edison Contract Number: 66847
Vendor Number: 186980
Richelle Labut
(313) 841-5144 ext. 7112
sales@detroitsalt.com
12841 Sanders St.
Detroit, MI 48217

Morton Salt Inc.
Edison Contract Number: 66848
Vendor Number: 115284
Andrew Lorenzini
(312) 807-2859
alorenzini@mortonsalt.com
444 W Lake St. Ste. 3000
Chicago, IL 60606

Usage Instructions:

1. **Specific Ordering Information:**
   - Locate the Contractor that is appropriate for your county/bin location through the "SWC 507 Rock Salt TDOT and County Pricing Sheet" listed on the following website; https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/state-agencies-/statewide-contract-instruction--swc-.html
   - Contact the appropriate Contractor and submit a purchase order for your needs.
   - Please see the contract line items for pricing information

2. **General Delivery Information:**
   - Pick up is not allowed on this contract. All salt must be delivered directly to the purchasing agency by the Contractor.
   - Deliveries must be completed during regular State business hours (Monday - Friday, 8:00 AM – 4:30 PM, excluding authorized State holidays), unless otherwise requested by the purchasing agency.

3. **Minimum Order Requirements:**
   Individual orders for less than 150 tons are exempt from purchase from this contract. User agencies will purchase by applicable purchasing procedures.

4. **Local Government/Non-TDOT Usage Instructions:**
   - Non-TDOT entities will purchase salt using the Non-TDOT pricing that is outlined in the "SWC 507 Rock Salt TDOT and County Pricing Sheet."

   - Non-TDOT entities must have an *estimated* quantity in to the Contractor by October 1; however, this notice does not commit any user entity to any purchase.

   - If a Non-TDOT entity informs their Contractor of their intent to purchase by October 1 of each contract year the Contractor will be obligated to provide service to that respective Non-TDOT entity. However, if a Non-TDOT entity fails to make this notification it will be left to the discretion of the Contractor as to whether they will

service the requesting Non-TDOT entity.

- Non-TDOT purchases will be capped at 120%. After a Non-TDOT entity purchases 120% of their total estimate, it becomes the discretion of the Contractor as to whether they can meet the additional requests. Contractors should make every effort to service Non-TDOT entities that have additional requests and should not deny requests if they have the capacity to service them.

Region and Super District Breakdown for SWC #507: Rock Salt

REGION 1

Super District 1
Carter
Greene
Hamblen
Hancock
Hawkins
Johnson
Sullivan
Unicoi
Washington

Super District 2
Anderson
Cocke
Grainger
Jefferson
Knox
Sevier
Union

Super District 3
Blount
Campbell
Claiborne
Loudon
Monroe
Morgan
Roane
Scott

REGION 2

Super District 4
Clay
Cumberland
DeKalb
Fentress
Jackson
Overton
Pickett
Putnam
White

Super District 5
Bledsoe
Cannon
Coffee
Franklin
Grundy
Marion
Sequatchie
Van Buren
Warren

Super District 6
Bradley
Hamilton
McMinn
Meigs
Polk
Rhea

REGION 3

Super District 7
Davidson
Macon
Smith
Sumner
Trousdale
Williamson
Wilson

Super District 8
Cheatham
Dickson
Hickman
Houston
Humphrey
Maury
Montgomery
Robertson
Stewart

Super District 9
Bedford
Giles
Lawrence
Lewis
Lincoln
Marshall
Moore
Perry
Rutherford
Wayne

REGION 4

Super District 10
Benton
Carroll
Dyer
Gibson
Henry
Lake
Obion
Weakley

Super District 11
Chester
Crockett
Decatur
Hardeman
Hardin
Henderson
Madison
McNairy
Haywood

Super District 12
Fayette
Lauderdale
Shelby
Tipton

Invitation to Bid (ITB)
For SWC 507 Rock Salt
Event # 32110-11462

1. Section 1 -- Background Information

1.1. The purpose of this solicitation is for the State of Tennessee to secure a statewide contract ("SWC") for Rock Salt across the State. This contract will be available for use for all Tennessee State Agencies and other Authorized Users across the State. While the total purchases of any individual item on the contract are not known, the Central Procurement Office has attempted to give an accurate estimate of probable purchases and projected estimates for the new contract period. The Central Procurement Office does not guarantee that the State will buy any or all estimated amounts. The historical State spend from June 1, 2017 to January 13, 2020 was $15,185,000.

1.2. **Statewide Contract**. The purpose of this Invitation to Bid is to establish a source or sources of supply for all Tennessee State Agencies, Tennessee local governmental entities, the board of trustees of the University of Tennessee system, the Tennessee board of regents system or the state university boards, and the nonprofit entities identified in Tenn. Code Ann. § 33-2-1001.

1.3. **Pre-response Conference Notification**. The Central Procurement Office will hold a pre-response conference for this solicitation at the date, time, and location specified below:

Date/Time: March 18, 2020 at 10:30 am CST
Location: No in-person location available
Join via WebEx at:
https://tngov.webex.com/tngov/j.php?MTID=me0541e95887a632a706d2b8f22e599d2
Call-in Option: 415-655-0003
Meeting Access Code: 643 639 940
Meeting Password: pgMQpBET523

Prospective respondents are encouraged to attend this pre-response conference; however, attendance is not mandatory in order to submit a response. The Central Procurement Office conducts pre-response conferences to discuss and answer questions prior to response due date. The pre-response conference is for informational purposes only. Nothing stated at the pre-response conference shall change the solicitation unless the change is reflected in writing and disseminated to all prospective respondents that attended the pre-response conference.

1.4. **Accommodation for People with Disabilities**. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.

1.5. **Questions**. Respondents may submit written questions about this ITB to the Solicitation Coordinator. All questions must be submitted no later than March 24, 2020.

1.6. **Responses Due**. The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

2. Award Criteria

2.1 **Option to Award by Line Items or Grouped Lines.** The State may award a single contract for all line items or group of line items to the respondent whose response meets the requirements and criteria in this ITB at the lowest cost. Alternatively, the State may award separate contracts for each line items or group of line items using the following methods:

Award by Line Items: The State may award a single contract or separate contracts to the respondent whose response meets the requirements and criteria in this ITB at the lowest cost. Each award will be made by the following method: Award by Line Item.

To determine the respondent with the lowest cost per line item, line item totals shall be calculated by adding the unit price and delivery charge price, in accordance with the Evaluation Model.

Award by Grouped Lines: In the event a Respondent is awarded all Line Items within a group, then contracts may be awarded by Grouped Lines according to the following method:

Group 1 – TDOT Locations, Each County
Group 1 – TDOT Locations, Each Super District
Group 1 – TDOT Locations, Each Region
Group 2 – Non-TDOT Locations, Each County
Group 2 – Non-TDOT Locations, Each Super District
Group 2 – Non-TDOT Locations, Each Region

3. Standard Terms of the Solicitation

3.1. **Respondent Registration**. Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.

3.3. **Quality of Workmanship and Materials**. Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.

3.4. **Performance**. The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.

3.5. **Clarifications**. The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.

3.6. **Negotiations**. The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

3.7. **Response Cancellation and Rejection**. The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except

pursuant to target pricing or best and final offer negotiations as specified in this ITB.

3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Parker Birt
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-291-5948
Parker.Birt@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

3.9. **Responses Submitted by Mail**. If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

3.10. **Models Included in Response**. All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

3.11. **Respondent Certification**. By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.

3.12. **Exceptions or New Terms or Conditions**. Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.

3.13. **Conflict of Interest**. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:

a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.14. **Specifications Govern**. Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.

3.15. **Firm Offer**. The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.

3.16. **F.O.B. Destination**. Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.

3.17. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful

respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

3.18. **Prompt Pay Discount**. Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.

3.19. **Fixed Discount or Surcharge**. The percent discount or surcharge per line item must be fixed for the contract's term.

3.20. **On-site Inspection**. All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.

3.21. **Used Equipment**. When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.

3.22. **Tennessee Contractor License**. Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, *et seq.* in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.

3.23. **Purchase of Materials for Highways or Roadways**. Respondents must comply with Tenn. Code Ann. § 54-5-135 when purchasing materials used for highway or road construction, resurfacing, or maintenance.

3.24. **Energy Star Products**. Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.

3.25. **Safety of Chemical Products**. All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.

3.26. **Professional Licensure**. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

3.27. **Department of Revenue Registration**. Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: https://tntap.tn.gov/eservices/_/#1

3.28. **Prohibition of Illegal Immigrants**. Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

3.29. **Inspection of Procurement File**. All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

3.30. **Protest by Respondent**. Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: https://www.tn.gov/generalservices/procurement.html. If a written protest and a protest bond are not received by the end of the seven-day period to protest, then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation
The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)
Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)
"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)
"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

"Disabled Business Enterprise (DSBE)
"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:
https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html

Instructions
As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:
https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215
directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ( )	Email:
Does the Respondent qualify as the diversity business enterprise? ___ Yes ___ No If yes, which designation does the Respondent qualify? ___MBE ___WBE ___DSBE___SDVBE __SBE Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	**% of Contract**	**Estimated Amount**	**MBE/ WBE/ SDVBE/ SBE / DSBE Designation**	**Currently Certified (Yes or No)**
Business Name: Contact Name: Contact Phone:				
Business Name: Contact Name: Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:
https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810
We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____ Date: _____

Printed Name and Title of Signatory _____

4. SCOPE:

4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

4.2. **Warranty Clauses:**

4.2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

4.2.2. **Warranty for Resale of Goods.** For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

4.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

5. TERM OF CONTRACT:

5.1. **Term of Contract.** This Contract shall be effective on June 01, 2020 ("Effective Date") and extend for a period of 36 months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

5.2. **Renewal Options**. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to 2 renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

5.3. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

6. PAYMENT TERMS AND CONDITIONS:

6.1. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be $30,000,000 ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

6.2. **Price Changes.** Prices identified in the Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source, shall remain firm for 365 days ("Firm Price Period").

a) Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

b) Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall: include independently verifiable documentation that supports Contractor's request for a price increase; not constitute an increase in Contractor profit; and reflect a price increase that is applicable to all of Contractor's customers.

c) Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

6.3. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

6.4. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

6.5. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

6.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.

6.7. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

6.8. **Prerequisite Documentation**. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

7. MANDATORY TERMS AND CONDITIONS:

7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.

7.2. **Minimum Order.** Individual orders for less than 150 tons are exempt from purchase from this contract. User agencies will purchase by applicable purchasing procedures.

7.3. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.

7.4. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.

7.5. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

7.6. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor
Contractor's Contact Name & Title
Address
Email Address
Telephone Number

State of Tennessee:

Parker Birt
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-291-5948
Parker.Birt@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

7.7. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.

7.8. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

7.9. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

7.10. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

7.11. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

7.12. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an

employee of the State of Tennessee.

7.13. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

7.14. **Equal Opportunity.** During the performance of this Contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

1. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
2. Layoff or termination;
3. Rates of pay or other forms of compensation; and
4. Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c) If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

7.15. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation

that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

7.16. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

7.17. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

7.18. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

7.19. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

7.20. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting

entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

7.21. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

7.22. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

7.23. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

7.24. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and

provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

7.25. **Statewide Contract Reports.** All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

a) Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. Edison contract number
2. Contract line item number
3. Invoice date
4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency, Other Governmental Body or not-for-profit entity
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

b) Diversity Business and Subcontractor Usage Reports: The Contractor shall submit monthly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, persons with disabilities, and Tennessee service-disabled veterans. Such reports shall be submitted to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810.

c) Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

7.26. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health

Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable requirements in the course of this Contract.

b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

7.27. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

7.28. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.

7.29. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

7.30. **Force Majeure**. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

7.31. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

7.32. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.

7.33. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.

7.34. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

7.35. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

7.36. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;

b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);

c) any clarifications of or addenda to the Contractor's response seeking this Contract;

d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;

e) any technical specifications provided to respondents during the procurement process to award this Contract; and,

f) the Contractor's response seeking this Contract.

7.37. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

7.38. **Insurance Requirements:**

7.38.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to

represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

7.38.2. **Workers' Compensation and Employer Liability Insurance.**

a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

c) In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

1. The Contractor employees fewer than five (5) employees;

2. The Contractor is a sole proprietor;

3. The Contractor is in the construction business or trades with no employees;

4. The Contractor is in the coal mining industry with no employees;

5. The Contractor is a state or local government; or

6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

7.38.3. **Commercial General Liability Insurance.**

a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

7.38.4. **Automobile Liability Insurance**

a) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

b) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

7.38.5. **Pollution/Environment Liability Coverage**

a) Coverage would respond to claims from 3rd parties for bodily injury, property loss or property damage resulting from any unexpected release of pollutants or hazardous waste exposure during the contractor's performance of duties under the contract. This type of coverage would also cover clean-up costs caused by contamination and associated with the release of toxic waste materials.

b) The Contractor shall maintain Pollution/Environment Liability Coverage with a minimum of one million dollars ($1,000,000) per occurrence with an aggregate limit of at least one million dollars ($1,000,000).

7.39. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

7.40. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal

law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

8. **SPECIAL TERMS AND CONDITIONS:**

8.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

8.2. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

8.3. **Authorized Users -- Statewide Contract.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies.

The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

a) all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);

b) Tennessee local governmental agencies;

c) the board of trustees of the University of Tennessee system, the Tennessee board of regents system, or the State university boards;

d) any private nonprofit institution of higher education chartered in Tennessee; and,

e) any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and

Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

8.4. **State of Tennessee Administrative Fee.** A one percent (1%) administrative fee will be included in the cost of all goods and/or services purchased under this Contract for non-TDOT locations. This one percent (1%) administrative fee will be rebated back to the State of Tennessee based on quarterly contract usage of all Authorized Users. The administrative fee is due to the State no later than forty-five (45) days after the end of the specified reporting period, as detailed below:

Calendar Quarter 1 (Jan 1-Mar 31)
Calendar Quarter 2 (Apr 1-June 30)
Calendar Quarter 3 (July 1-Sep 30)
Calendar Quarter 4 (Oct 1-Dec 31)

Contractor shall submit payments to:
Ron Plumb, Director of Financial Management
Department of General Services
22nd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Contract usage reports shall be submitted to:
Contract Administrator
Department of General Services
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Email: CPO.SWC@tn.gov

8.5. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.

a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:

1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
2. Any pricing related to the new lines, items, or options;
3. The expected effective date for the availability of the new lines, items, or options; and
4. Any additional information requested by the State.

b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.

c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.

d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

8.6. **Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: TDOT Salem Hwy – Contract Supplements - Revisions

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Additional revisions to the water contract (i.e., supplement) provided by TDOT related to the Salem Hwy Widening Phase 2, from Old Fort Parkway to I-24. The water contract has water main installations that are considered as "betterment " and are not covered by the TDOT Chapter 86 regulations.

Staff Recommendation

Approval of the TDOT revised water contract supplement.

Background Information

Recent revisions to the water and sewer construction cost estimates required TDOT to prepare Supplements to the original contracts.

This project is a Chapter 86 project, which means that TDOT will reimburse the Department up to $1.75M for water relocation costs and $1.75M for sewer relocation costs. The current construction estimates, including engineering, are $1,270,375 and $155,326 for water and sewer respectively. What Wiser didn't account for was that $86,750 of the water construction was considered "betterment". We upsized a short portion of existing 8" water main to proposed 16". TDOT will not cover this additional expense under the Chapter 86 rules.

Therefore, the Department will be funding $86,750 for the upgrade and the Supplement to the TDOT Contract has been revised, yet again, to include this revision.

Council Priorities Served

Expand infrastructure

The relocation of the water and sewer mains are a necessity for the widening/expansion of Salem Hwy and at the same time, the City will receive new infrastructure that will last 50+ years at very little expense.

Fiscal Impact

Other impacts from this project, other than Engineering in the amount of $30,450 and the upgrade of a portion of water main mentioned above estimated at $86,750, will be the necessity to purchase easements for the water main to be installed outside of TDOT right of way. There are 14-15 easements to acquire. Proposals for appraisals have been approved. There are adequate reserves to fund this amount.

Attachments

TDOT Water Contract Supplement

STP-99(29) / 75013-2240-14

TN TDOT Department of Transportation

Contract No. 8095

SUPPLEMENT TO UTILITY RELOCATION CONTRACT

THIS SUPPLEMENT **#1** to Contract No. **8095** made and entered into by and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **City of Murfreesboro, on behalf of the Murfreesboro Water Resources Department, an enterprise fund of the City (Water),** hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT and the Utility entered into Contract No. **8095,** dated the **15th day of May, 2018**, in which the parties agreed to certain matters concerning the relocation of utilities on PIN No**. 104004.02, SR-99 (New Salem Highway), I-24 to SR-96 (Old Fort Parkway) in Murfreesboro**, located in **Rutherford** County, Tennessee; and

WHEREAS, it is desired by the parties that the hereinafter mentioned changes be made in said original contract;

NOW, THEREFORE, for a valuable consideration it is agreed by and between the parties as follows:

To change the paragraph,

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **$546,977.14**, including the amount of **$30,967.14** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **11/17/2009**; including the amount of **$0.00** for the cost of inspection provided by the Utility; including the amount of **$0.00** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **$0.00** for deposit for the utility work in the State contract, and of which **0** percent represents the pro-rata share to which the Utility is entitled to reimbursement for relocation of utility facilities located on private utility right-of-way, and **100** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way, reimbursement being for the cost of construction, engineering and inspection, excluding betterment and the cost over the maximum TDOT reimbursement amount; and

To the following,

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **$1,285,355.23**, including the amount of **$30,967.13** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **11/17/2009**; including the amount of **$0.00** for the cost of inspection provided by the Utility; including the amount of **$86,749.96** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **$86,749.96** for deposit for the utility work in the State contract, and of which **0** percent represents the pro-rata share to which the Utility is entitled to reimbursement for relocation of utility facilities located on private utility right-of-way, and **100** percent represents the pro-rata share for relocation of utility facilities located on public highway right-

of-way, reimbursement being for the cost of construction, engineering and inspection, excluding betterment and the cost over the maximum TDOT reimbursement amount; and

It is understood that the above are the only changes made in said contract.

IN WITNESS WHEREOF, the parties have EXECUTED this agreement

UTILITY

City of Murfreesboro, on behalf of the Murfreesboro Water Resources Department, an enterprise fund of the City (Water)

BY: _____

TITLE: _____

DATE: _____

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: _____
Clay Bright
Commissioner

DATE: _____

APPROVED AS TO FORM:

BY: _____
John H. Reinbold
General Counsel

Buy America

Rev. 12-23-2013

The Tennessee Department of Transportation (TDOT) in compliance with Federal Highway Administration (FHWA) directive **Effective February 29, 2016**
All utility and railroad relocation construction must comply with
23 U.S.C. 313 and 23 CFR 635.410 **Buy America requirements**

All Utility / Railroad invoices submitted to TDOT for Payment
MUST ATTACH THIS CERTIFICATION.

_____
Utility / Railroad Name

_____
Street Address

_____ _____ _____
City State Zip

Certification: All products used in the relocation construction and identified in the attached invoice that are manufactured of steel or iron for permanent installation meet or exceed the requirements set forth in 23 USC 313 and 23 CFR 635.410 Buy America requirements.

Certification documentation is available for review that includes but is not limited to, if available, the Mill Test Report (MTR) for ALL steel products that have the certification statement (or similar) that the steel/iron was "melted and manufactured in the United States." All manufacturing processes and coatings applied thereon have occurred in the United States.

Per the Utility / Railroad Relocation Contract:

The Utility / Railroad agrees to comply with all current, applicable provisions of 23 CFR 645A / 23 CFR 140 and 23 CFR 646.

The Utility acknowledges possession of 23 CFR 645A / The Railroad acknowledges possession of 23 CFR 140 and 23 CFR 646.

The Utility / Railroad is subject to audit for a period of three (3) full years after final payment has been received.

The Utility / Railroad shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The Utility / Railroad agrees that remedies for non-compliance are set out in the applicable regulations and the Contract.

I have reviewed the material provided herein and attached and hereby certify ALL material on the attached invoice is in compliance with Buy America requirements.

_____ _____ _____
Signature of representative Authorized for financial obligations Title Date

Code of Federal Regulations

Title 23 United States Code, Section 313

§ 313. Buy America

(a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds--

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

[(4) Redesignated (3)]

(c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

(e) Intentional violations.--If it has been determined by a court or Federal agency that any person intentionally--

(1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or

(2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;

that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(f) Limitation on applicability of waivers to products produced in certain foreign countries.--If the Secretary, in consultation with the United States Trade Representative, determines that--

(1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and

(2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,

the provisions of subsection (b) shall not apply to products produced in that foreign country.

[(g) Redesignated (f)]

Updated: 04/07/2011

The following link is the current FHWA site for Buy America compliance and shall be reviewed:

http://www.fhwa.dot.gov/construction/cqit/buyam.cfm

Code of Federal Regulations

Title 23 – Highways

Volume: 1
Date: 2001-04-01
Original Date: 2001-04-01
Title: Section 635.410 - Buy America requirements.
Context: Title 23 - Highways.
CHAPTER I - FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION.
SUBCHAPTER F - TRANSPORTATION INFRASTRUCTURE MANAGEMENT.
PART 635 - CONSTRUCTION AND MAINTENANCE.
Subpart D - General Material Requirements.

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if;

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the **Federal Register** for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]

Editorial Note:For a waiver document affecting § 635.410, see 60 FR 15478, Mar. 24, 1995.
Updated: 04/26/2012

TN TDOT Department of Transportation

Revised Water PIN 104004.02

Project No: 75013-3251-14
County: Rutherford
Date: January 25, 2021

****Submittal and completion of this form is required for consideration of reimbursement on this project.****

Primary Contact:	Valerie Smith		
E-mail:	vsmith@murfreesborotn.gov	**Phone:**	615-890-0862
Secondary Contact:	Darren Gore, P.E.		
E-mail:	dgore@murfreesborotn.gov	**Phone:**	615-890-0862
Utility Name:	Murfreesboro Water Resources Department		
Address:	300 Northwest Broad Street		
City, State:	Murfreesboro	**Zip:**	37130

Percent On Private:	0%	Private ROW - #Poles / Length of facility:	0
Percent On Public:	100%	Public ROW - #Poles / Length of facility:	4530
Total Percentage:	100%	Total #Poles / Length of facility:	4530

Is Utility Chapter 86 Certified (Obtained from Certification Sheet)? Y

(If project does not qualify for Chapter 86 Reimbursement, then "Percent on Private" will be used to calculate total amount due to Utility)

NO COST / NO REIMBURSEMENT (STOP HERE, REMAINDER OF FORM IS NOT REQUIRED) ☐

TDOT USE ONLY

RG Approval and Date:	IAZ. Egh 1/29/2020
Consult Appr. Date:	/ /
Amount Approved:	$ -
HQ Approval and Date:	mc 2/2/2021
CH86 (Y) / N	**PIN#:** 104004.02
LET: 5 / 7 /2021	**Contract #:** 8095 Sup2
Easement Contract #	

	CHAPTER 86		NON-CHAPTER 86	
REIMBURSEMENT	MOVE PRIOR	☐	% Private / Public Relocation	☐
REQUESTED	MOVE IN State Contract	X	% Private / Public MOVE IN State Contract	☐
(Please check ONE)	Other	☐	Utility Replacement Easement Reimbursement	☐

ENGINEERING

Description			Amount
Pre-Construction		$	24,811.62
Construction		$	6,155.51
Construction Inspection	Private	$	-
Construction Inspection	Public	$	-
Reimbursable Expenses		$	-
ENGINEERING COST:		$	~~30,967.14~~ $30,967.13 ✓

CONSTRUCTION (LABOR & MATERIAL)

Description		Amount
Installation Labor	$	-
Installation Materials	$	1,254,388.10
Removal Labor	$	-
Site Costs	$	-
Material Provided to State	$	-
Salvage Materials	$	-
Non-Usable Materials	$	-
ESTIMATED CONSTRUCTION COST:	$	**1,254,388.10**

BETTERMENT

Description		Amount
Installation Labor	$	-
Installation Materials	$	86,749.96
ESTIMATED UTILITY BETTERMENT COST:	$	**86,749.96** ✓
ESTIMATED REPLACEMENT EASEMENT COST:	$	-

If cost is listed above, separate Easement Contract is needed

ESTIMATED TOTAL CONSTRUCTION COST: $ ~~1,285,355.24~~ $1,285,365.23 ✓

UTILITY REIMBURSEMENT

CHAPTER 86 MOVE-IN CONTRACT:	$ ~~30,967.14~~ $30,967.13
CHAPTER 86 MOVE PRIOR:	$ -
NON-CHAPTER 86 MOVE-IN CONTRACT:	$ -
NON-CHAPTER 86 % PUBLIC/PRIVATE:	$ -

Does Estimate Exceed $1.75M Cap? - N
Does Estimate Require 75% Cap? - N

UTLITY DEPOSIT (IF APPLICABLE)

RELOCATION EXCEEDS $1.75M CAP:	$0.00
AMOUNT OVER 75% REIMBURSEMENT:	$0.00
ESTIMATED UTILITY BETTERMENT COST:	$86,749.96
NON-CHAPTER 86 MOVE-IN CONS'T COST:	$0.00
TOTAL UTILITY DEPOSIT:	**$86,749.96**

The Utility will reference the page number where designated on the form when other Detail Cost Estimate sheets are attached.

EXHIBIT A

Chapter 86 Certification

In accordance with Tennessee Department of Transportation policy number 340-07, the following information is provided with regards to required compliance documentation for utility relocation reimbursement in accordance with TCA 54-5-804 and TCA 54-5-854.

PROJECT #/S: 75013-3251-14 **COUNTY/S:** Rutherford

FEDERAL: STP/HIP-M-99(64) **PIN:** 104004.02

1. The utility is seeking reimbursement under provisions of TCA 54-5-804 as ameneded by Public Acts 2003, Chapter number 86.
2. To the best of my knowledge the utility is in compliance with TCA § 54-5-804(a)(1) and this policy in that the utility has returned its relocation plan, schedule, and cost estimate to the Department within 120 days after receipt of the Department's project plans, or within such additional time as may be allowed in accordance with TCA § 54-5-854(b).
3. To the best of my knowledge the utility is in compliance with TCA 54-5-804(b) in that the utility has a valid permit to locate its utility facility on the public highway right-of-way.
4. The utility is eligible for reimbursement in accordance with the Limitation provisions of the TDOT Policy 340-07 in that it is:

Municipally Owned [X] Utility District [ ] Utility Cooperative [ ]

5. The utility is considered to be a specific utility category listed in accordance with the Limitation provisions of the TDOT Policy 340-07:

- [x] Water
- [ ] Waste Water
- [ ] Gas [ ] Distribution [ ] Transmission
- [ ] Electric [ ] Distribution [ ] Transmission
- [ ] Communication [ ] CATV [ ] Phone [ ] Fiberoptic [ ] Broadband
- [ ] Street Lighting
- [ ] Other _____

Signature indicates this individual has the legal authority to sign contracts and agreements to obligate the utility.

Signature: Valerie H. Smith **Date:** 1/27/21

Print Name: Valerie Smith

Title: Assistant Director of Engineering

Utility Name: Murfreesboro Water Resources Department

Utility Address: 300 Northwest Broad Street

City, State, Zip: Murfreesboro, TN 37130

Phone Number: 615-890-0862

Fax Number: 615-896-4259

Email Address: vsmith@murfreesborotn.gov

Certification Contract Obligation

Date: 10/29/2020 TDOT Region 3 (Region) Construction Office

Attn: _____ ,Project Engineer

Address: _____

_____
(information is provided on the Utility Begin Work Authorization letter)

PROJECT #/S: _____ **COUNTY/S:** Rutherford

_____

FEDERAL: 75013-3251-14 **PIN:** 104004.02

DESCRIPTION: New Salem Highway SR-99 (From I-24 to SR-96)

UTILITY CONTRACT #: _____

The Utility completed their utility relocation on _____ (date of completion) in accordance with the approved relocation plans for the above referenced project number prior to the date specified and in accordance with the executed contract referenced.

NOTE EXCEPTIONS:
Maintaining services to business and/or residences is attached.

Signature indicates this individual has the legal authority to sign contracts and agreements to obligate the utility.

Signed: Valerie H Smith Date: 1/27/21

Print Name: Valerie Smith

Title: Assistant Director of Engineering

Utility Name: Murfreesboro Water Resources Department

Address: 300 Northwest Broad Street

City, State, Zip: Murfreesboro, TN 37130

Phone No: 615-890-0862

Fax No: 615-896-4259

Email: vsmith@mufreesborotn.gov

- ☑ Water
- ☐ Telephone
- ☐ Sewer
- ☐ CATV
- ☐ Power
- ☐ Other:
- ☐ Gas

TDOT USE ONLY:

- ☐ **This Certification Letter is accepted.**
- ☐ **This Certification Letter is accepted pending Final Verification by project staking.**
- ☐ **This Certification is not accepted. Reason:** _____

_____

_____

Signed: _____ Date: _____
TDOT Construction office representative

CC: TDOT Construction Project File
TDOT Regional Utility Office

Declaration of Scheduled Calendar Days

Project Number: 75013-3251-14 **Date:** December 7, 2020

Description: New Salem Highway SR-99 (From I-24 to SR-96)

County: Rutherford

Utility Name: Murfreesboro Water Resources Department

Address: 300 Northwest Broad Street

City, State: Murfreesboro **Zip Code:** 37130

Phone Number: 615-890-0862 **Fax Number:** 615-896-4259

Type of Facilities: ☑ Water ☐ Sewer ☐ Gas ☐ Telephone ☐ Electric
☐ CATV ☐ Fiberoptic ☐ Other

Required Period services cannot be interrupted:

All estimated days should be expresses in "Calendar" days to complete installation, relocation or adjustment of the utility facilities on the above referenced project. The utility can as an option submit an "On or Before" date all work will be completed. In accordance with provisions set forth in TCA 54-5-854.

Task	Days to Complete	Special Conditions
Stock Pile Material (Including ordering material)		
Mobilize Work Force (including Bidding process if Required)	60	
Complete Relocation	300	
Total Days To Complete	360	

Special Conditions:

Valerie H. Smith 12/7/20
Signature of submitting Utility Representative — Date

IΔZ. Eglin — 12/13/2020
Signature of submitting State Representative — Date

Subject to provisions of the TDOT Utility Office Maintenance of Traffic Procedures.

TDOT Utility Office Maintenance of Traffic Procedures.

Except in emergencies, no lane closures will be permitted on any state routes with 30,000 or greater Average Daily traffic or any interstate routes, without the explicit consent of the TDOT Project Engineer. On projects where work is required in traffic lane(s) or where a lane closure is necessary for public safety, the Utility must submit a request to the Department at least seven (7) working days prior to the date of the anticipated lane closure(s). All requests for lane closure(s) must list the exact location, the time that the closure will begin, the estimated duration and reasons for the proposed lane closure(s).
If all lanes in one or both directions on an interstate route are to be closed for any length of time, the Utility must submit their request at least fourteen (14) calendar days before the anticipated event.
No lane closures or traffic restrictions will be allowed on the following days

Good Friday

Easter
After 6:00 pm on the Thursday preceding Good Friday through and including Easter Sunday
Memorial Day
After 12:00 noon on the preceding Friday through Memorial Day
July 4
The observed holiday and preceding day plus weekend days either preceding or following these two days
Labor Day
After 12:00 noon on the preceding Friday through Labor Day
Thanksgiving
After 12:00 noon on Wednesday before Thanksgiving through Sunday following Thanksgiving
Christmas/New year's Day
December 24 through January 1 and any preceding and/or following days that fall on a weekend

Offroad work will be allowed but only to the extent that NO impact will be caused to the highway users.

During any suspension of work, the Utility shall make passable and shall open to traffic such portions of the project and temporary roadways or portions thereof as may be directed by the TDOT Project Engineer for the temporary accommodation of necessary traffic during the anticipated period of suspension. Thereafter, and until issuance of an order for the resumption of construction operations, the maintenance of the temporary route or line of travel will be by the Utility. When work is resumed, the Utility will replace or renew any work or materials lost or damaged because of such temporary use of the project; shall remove, to the extent directed by the TDOT Project Engineer, any work or materials used in the temporary maintenance, and shall complete the project in every respect as though its prosecution had been continuous.

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Sodium Hypochlorite Generator Cell Purchase

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Purchase two sodium hypochlorite generator cells from De Nora who is the manufacturer and sole source provider of the equipment.

Staff Recommendation

Approve the purchase of two sodium hypochlorite generator cells from De Nora in accordance with their proposal. Pending approval by Legal and Purchasing.

Background Information

The water treatment plant has two Chlortec generators capable of producing up to 900 pounds of chlorine per day. Both generators were placed into service on December 18, 2008. Between 400 and 500 pounds per day of chlorine is required for the treatment process. Each Chlortec generator can produce up to 450 pounds of chlorine per day. One generator consists of two cells and both cells must be operational for the generator to operate. If one cell is out, the entire generator is out of service.

Recently, a leak was noticed on an existing cell. MWRD inspected the cell and found a horizontal crack in it. MWRD subsequently requested a quote for two cells. One to put in use now, and one for standby. De Nora has agreed to not start the warranty on the standby cell until it is placed into operation. This will significantly help with the 7-9-week lead time for a future repair.

Council Priorities Served

Maintain public safety

Failure to conduct this work will negatively impact water quality for the customer and lifespan of the asset.

MWRD ensures that equipment is properly maintained to provide quality water to customers.

Fiscal Impact

The cost for purchasing the two CT6-0450E-1 cell assembly is $46,177 each or $93,354 total. If approved, funding will come from rate funded capital reserves.

Attachments

De Nora Quote

QUOTATION	NUMBER 20020128	DATE 01/29/2021	Page 1 of 2
CUSTOMER REFERENCE		CURRENCY USD	

DE NORA

SHIPPING METHOD COURIER	**END OF VALIDITY** 03/30/2021	
PAYMENT TERMS Net 30 days	**SHIPPING POINT ADDRESS** DE NORA WATER TECH LLC. 1110 Industrial Boulevard Sugar Land, TX 77478 USA	**PACKAGING** Included
INCOTERMS EXW - Ex Works		

DE NORA CONTACT
Herbert Barbee
ph: +12812748464
mail: Herbert.Barbee@denora.com

SOLD TO PARTY **30002329**

MURFREESBORO WATER AND

P O BOX 1477
MURFREESBORO, TN 37133-1477
USA

SHIP TO PARTY **30002329**

ITEM / CODE / DESCRIPTION	U.M	QTY	PRICE	CURRENCY	AMOUNT
10 47000329 CELL, ASSEMBLY, CT450, DRINKING/NSF, Legacy Part Number: CT6-0450E-1	PC	2	46,044.60	USD	**92,089.20**
20 40000523 Crate, CT450, Tube Assembly Legacy Part Number: 5607-145	PC	2	132.61	USD	**265.22**

CUSTOMER'S ACCEPTANCE OF THIS QUOTATION IS EVIDENCED BY THE SIGNATURE APPLIED HERETO AND CONSTITUTES A CONTRACT TO PURCHASE SUBJECT ONLY TO THE TERMS AND CONDITIONS PROVIDED HEREWITH. ANY CONFLICTING TERMS AND CONDITIONS PROVIDED BY BUYER ARE EXPRESSLY DISCLAIMED.

SIGNATURE: _____ DATE: _____

* Country of Origin: USA
* Sch B: 8421.99.0040
*ECCN: NLR- EAR99
**Freight Not Included in Quote*
* Estimated Lead Time: 7-9 Weeks ARO.
* EXWORKS, our crating company, Houston, TX

If you wish to order the part, please sign the attached quote and provide your PO number and Bill and ship to address to avoid approval delays.
Availability is subject to prior sale
Minimum order of $50.00 required
Standard documentation and packaging are provided. We cannot pack to military specifications nor do we offer bar-coding

TAX BASE	SALES TAX AMOUNT	TOTAL PRODUCT	TOTAL SALES TAX	TOTAL
92,354.42 USD	0.00 USD	**92,354.42 USD**	**0.00 USD**	**92,354.42 USD**

services.
$50.00 charge per Certificate of
Conformance. If the request is received
After the order is shipped the charge
Will increase to $100.00.
Seller may freely assign any order issued by Buyer to any of Seller's affiliates, and shall notify the Buyer of same, at its option.
Seller reserves the right to manufacture, or to have manufactured at an affiliated facility worldwide, any of the Products, in whole or in part, associated with an order issued hereunder.
In the event that the performance of a contractual obligation hereunder by either party hereto is prevented, restricted, hindered, delayed or interfered with directly or indirectly in connection with the COVID-19 ("Coronavirus") pandemic or similar pandemic or epidemy and/or any measures introduced by any government authority to address such pandemics/epidemies, the party so affected shall be excused from such performance to the extent and for the duration of such prevention, restriction, hindrance, delay or interference, and shall not be liable for any costs or damages.
Each party shall exercise reasonable efforts to resolve any impediment, however, neither Party shall be obligated to incur additional costs of more than 5% of the order value. The party affected should give notice to the other party as soon as practicable of the prevention, restriction, hindrance, delay or interference with its performance.
Per attached De Nora Water Technologies Texas LLC Terms and Conditions
EXW (Ex-Works): Sugar Land, Texas 77478 U.S.A.

De Nora and Customer agree that the General Terms and Conditions of Sale set forth at http://www.denora.com/products.html (the “Terms”) shall exclusively govern the transactions described or contemplated in this Purchase Order or Proposal, as applicable, and any other sales or related transaction between the parties herein, and such Terms are expressly incorporated by reference herein and to any related agreements between the parties. Any additional or different terms or conditions which may appear in any communication from Customer, including, without limitation, in any printed form provided, are hereby expressly objected to and rejected in full and shall not be effective or binding in any capacity unless expressly accepted in an authorized writing by De Nora, regardless of, and fully notwithstanding, De Nora’s supply of any goods and services or the execution of any document or acceptance by any person other than an officer or authorized agent of De Nora.

TAX BASE	SALES TAX AMOUNT	TOTAL PRODUCT	TOTAL SALES TAX	TOTAL
92,354.42 USD	0.00 USD	**92,354.42 USD**	**0.00 USD**	**92,354.42 USD**

DE NORA WATER TECHNOLOGIES INC.
DE NORA WATER TECHNOLOGIES TEXAS, LLC
DE NORA TECH, LLC
MIOX CORPORATION
DE NORA MIOX, INC.

GENERAL TERMS AND CONDITIONS OF SALE

1. APPLICABLE TERMS

The sale of products, goods, or components (the "Product(s)) and/or the provision of services ("Services") by any one of the De Nora legal entities listed above (in each case, "Seller") to the party from whom Seller is selling the Products or Services ("Purchaser", and with Seller, each a "Party" and collectively the "Parties") is limited to and made expressly conditional on Purchaser's acceptance of these General Terms and Conditions of Sale (these "General Conditions") which, along with any and all associated purchase orders, quotations, proposals, special conditions or other contract documents (including any expressly incorporated specifications or drawings) ("Seller's Documentation" and, collectively with these General Conditions, the "Contract"). These General Conditions shall control over any inconsistent or additional terms or conditions proposed or issued by Purchaser or Seller, including any additional or different terms contained in any purchase order, acknowledgement, proposal or other communication, written or otherwise, unless specifically agreed to in writing by both Parties. These General Conditions shall not be varied and no conditions contained in any quotations, letters, advice notes, invoices or other communications issued by Seller or Purchaser shall annul or vary them, unless expressly agreed by both Parties in writing.

Purchaser's acceptance of delivery or the full or partial payment of the purchase price hereunder shall constitute Purchaser's express and unconditional acceptance of all the General Conditions, notwithstanding any other inconsistent terms, documents, prior dealings, or usage of trade.

2. PRICES AND PAYMENT TERMS

Purchaser shall pay the full purchase price as set forth in Seller's Documentation without any deduction by way of set-off, counterclaim, discount or otherwise in strict accordance with Seller's Documentation. All prices and payments shall be in U.S. currency unless otherwise expressly noted in Seller's Documentation. Unless specifically noted otherwise in Seller's Documentation, prices are exclusive of any and all sales, use, excise, ad valorem, property or other taxes, duties or levies of any kind due or applicable to this transaction. Purchaser shall pay directly or reimburse Seller immediately upon demand for any and all such taxes. Payment terms are net 30 calendar days from date of invoice.

Where payment is made by letter of credit (to the extent permitted by Seller's Documentation), the applicable instructions as communicated in writing by Seller to Purchaser shall determine the terms of payment thereunder. Where payment on credit terms is expressly approved, payment terms are net thirty (30) calendar days from date of invoice. Any payments delayed beyond thirty (30) days from the specified due date shall be subject to interest on the unpaid balance at the rate of [one and one-half (1-1/2%) percent] per month or the maximum rate permitted by applicable law, whichever is less. If advances, progress payments, or milestone payments are included in the Seller's Documentation, such payments shall be required to be made in strict accordance with the Seller's Documentation. Seller reserves the right, among other remedies, to suspend further deliveries in the event Purchaser fails to pay for any one shipment when payment becomes due. All Contracts are subject to credit approval. Should Purchaser's financial condition become unsatisfactory or insecure, in Seller's discretion, Seller shall have the right, at its option, to require from Purchaser payment in advance, cash payment upon delivery, or satisfactory security.

If Purchaser is required by applicable law to withhold any amounts paid or payable to Seller for tax purposes, (a) the amount paid or payable shall be increased by the amount that it would have received had not taxes been withheld and (b) Purchaser shall forward proof of such legally required withholding to Seller as soon as reasonably practicable.

Purchaser hereby irrevocably grants Seller a security interest in the Products until such time as Purchaser makes full payment of the purchase price. Purchaser agrees, if requested, to execute a financing statement or such other documentation as may be necessary or advisable to perfect and maintain such security interest including the execution and delivery to Seller of a UCC-1 financing statement.

3. DELIVERY AND RISK OF LOSS

Delivery dates set forth in Seller's Documentation are approximate and Seller will make commercially reasonable efforts to meet same. Timely delivery is subject to prompt and timely receipt from Purchaser of accurate and complete technical and shipping information. Seller reserves the right to make partial shipments, invoices for which shall be due and payable in accordance with the payment terms specified above. Where payment is due in advance or by letter of credit, timely delivery is further subject to timely receipt of such payment or issuance of such letter of credit. All shipping and handling costs are to be paid by Purchaser. Purchaser is liable for compliance with all laws and regulations governing the unloading, storage, importation, handling and use of all Products.

Whether or not installation Services are performed by Seller, title and risk of loss shall pass to Purchaser in accordance with the stated shipping terms under Incoterms 2010. Unless otherwise agreed and specified in Seller's Documentation, shipping terms are Ex Works Seller's facility. Seller will notify Purchaser when Products are available for shipment. Purchaser must provide Seller with specific written instructions as to Purchaser's preferred method of shipment or common carrier. If Purchaser does not arrange for a freight carrier or freight forwarder to collect the Products within seven (7) calendar days following notification that the Products are available, Seller may, at its own discretion and at Purchaser's cost, arrange for Products to be collected by a freight carrier or freight forwarder for shipment to Purchaser. Alternatively, Seller may choose to store the Products and may charge Purchaser all incurred storage and handling expenses and fees.

In the event Purchaser requests a postponement of delivery beyond the date specified in Seller's Documentation, Seller may invoice the Purchaser and title and risk of loss shall pass to Purchaser at such time as Products are made available for shipment but in no event earlier than the delivery date specified in Seller's Documentation. If delivery is postponed by Purchaser, Seller shall endeavor but shall not have the obligation to either store the Products or secure a storage location at Purchaser's expense and based upon General Conditions agreeable to the Parties.

Prior to installation, Products must be stored by Purchaser in accordance with the storage instructions that may be a part of Seller's instructions or other documentation for Product installation, maintenance, and care. In the absence of specific instructions in the Seller's Documentation, Products must be stored prior to their installation in an enclosed space affording protection from weather, dust and physical damage and providing appropriate temperature, humidity and ventilation conditions to prevent deterioration. Purchaser's failure to follow Seller's storage instructions may cause damage to the Products and will void the warranties provided hereunder. Seller shall have the right to inspect Products stored by Purchaser prior to installation. If Products are stored by Purchaser for a period of 60 days or more, Purchaser shall reimburse Seller for all reasonable costs of such inspection.

4. PERMITS, REGISTRATIONS AND LAWS

Purchaser is responsible for obtaining and maintain all permits and registrations and for compliance with local laws concerning permitting, registration, installation and use of the Products or the provision of Services. Purchaser shall indemnify and hold harmless Seller from any and all costs, damages, fines and penalties resulting from Purchaser's failure to comply with any and all applicable laws, permits and regulations. Purchaser shall strictly comply with and refrain from exporting or re-exporting the Products in violation of all applicable laws, rules, and regulations affecting Seller regarding trade restrictions, import-export compliance, money laundering, anti-bribery protections, and embargoes, as such laws, rules, and regulations may be amended from time to time. Unless otherwise agreed according to the specified Incoterms governing shipment of the Products, Seller shall have no obligation or liability for export clearance, customs clearance or import duties of any kind. Purchaser shall provide to Seller any and all documentation requested by Seller to evidence Purchaser's compliance with such applicable import-export laws and regulations.

Seller may provide reimbursement to Purchaser or Purchaser's representative, either directly or indirectly through intermediaries, for their reasonable and bona fide travel and lodging expenses in connection with Purchaser's purchase of Products or Services hereunder. Any such reimbursement is NOT a payment, gift, offer or promise of anything of value, but is rather provided to Purchaser for the sole purpose of reimbursing Purchaser's reasonable travel and lodging expenses related to the promotion, demonstration or explanation of the Products or Services being offered by Seller to Purchaser. Should Seller discover that a violation of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, or other applicable law, rule, or regulation has occurred or is likely to occur, Seller shall have the right to unilaterally terminate the Contract.

5. PRODUCT ACCEPTANCE

Except for Products that are not assembled at Seller's facility, Purchaser has the right to inspect Products at Seller's facility prior to shipment provided that advance written arrangements are made by Purchaser and are confirmed in writing by Seller. Any and all costs associated with inspection and testing requested by Purchaser at Seller's facility will be paid solely by Purchaser. Purchaser shall inspect the Products within a reasonable period of time following receipt at the point of destination and prior to conducting any Acceptance Test (as defined below) to determine if the Products are damaged, incomplete or do not otherwise conform to Purchaser's express specifications. If Purchaser receives Products with visible or suspected damage or loss, including damages to the packaging, or with discrepancies in specification, Purchaser shall make relevant notes in receiving documents and notify Seller in writing immediately. Such notice shall be reasonably detailed and shall specify the damage or discrepancy. Purchaser's failure to inspect the Products and/or give written notice to Seller of any alleged defects or non-conformity within a reasonable period of time after receipt at the point of destination shall waive Purchaser's right to reject the Products and return them to Seller for credit and Purchaser's sole remedy for non-conforming or defective Products shall be warranty claims made in accordance with Article 8 herein.

For purposes of this Article 5, "reasonable period of time" means a period of time that is not immoderate or excessive, in accordance with prevailing industry standards at the time of delay.

If Seller's Documentation expressly provides that the Products are subject to specific acceptance testing (the "Acceptance Test") in order to verify Product performance in accordance with specifications set forth in Seller's Documentation, the Products shall be deemed fully accepted when they have satisfied the requirements of the Acceptance Test. Purchaser's remedy for Products that have failed an Acceptance Test or are within the warranty period shall be limited, at Seller's sole discretion, to the repair or replacement of such Products.

Notwithstanding any right conferred upon the Purchaser to inspect or test the Products prior to acceptance, any use, repair, modification, or alteration of the Products by Purchaser, its agents, employees or licensees, for any purpose after delivery thereof, shall constitute Purchaser's irrevocable and unconditional acceptance of the Products. Accordingly, in the event of any discovery by Purchaser of a non-conformity or defect following such acceptance of the Products, Purchaser's sole recourse is a warranty claim pursuant to the warranty provisions stated in Article 8 herein.

6. INSTALLATION AND/OR START UP SERVICES

If Seller's Documentation includes the provision of Services (including installation supervision, on-site assembly, or start-up services), Purchaser will confirm to Seller at least two (2) weeks (or such shorter term set forth in Seller's Documentation) prior to the date Seller's personnel will be required on site to perform such Services that Purchaser has fully completed all work necessary for such Services in accordance with Seller's Documentation. In the event that the completion of such Services is delayed for any reason not the fault of Seller, Purchaser shall pay for any additional costs resulting from the delay. Seller shall not be responsible for the means and methods selected for such Services, or for the manner in which such Services are performed, including the efficiency, adequacy and safety of same. Seller makes no warranty, express or implied, with respect to such Services, except that the Seller shall be responsible for any claims or damages resulting from its own negligence.

7. SUSPENSION AND CANCELLATION

Unless otherwise provided in Seller's Documentation, if Purchaser suspends, cancels or partially cancels a Contract, Purchaser shall promptly pay Seller for all Products delivered to date, work performed on account of the Products, and all Services completed or in process prior to such suspension and/or cancellation, plus any other reasonable costs incurred by Seller as a result of such suspension and/or cancellation including, if applicable, an appropriate restocking fee.

8. WARRANTY

Subject to the conditions stated below, Seller warrants the Products (excluding spare parts and Services) against defects in materials and workmanship for a period of [eighteen (18)] months from the date in which title has passed to Purchaser or [twelve (12)] months from the date of installation of the Products, whichever occurs first. Seller shall, at its option, repair or replace any Products or components thereof that prove upon examination to the satisfaction of Seller to be defective. In addition, any part or component that has been repaired or replaced shall be warranted for a period equal to the longer of (i) the remaining warranty period hereunder; or (ii) one year from the date of such repair or replacement. Spare parts are warranted against defects in materials and workmanship for a period of [ninety (90)] days from the delivery of the spare parts, unless

otherwise specified. This warranty expressly excludes and does not apply to the appearance of the Products, as variations in color and appearance may occur.

In the event that Seller fails to initiate a corrective action plan to repair or replace the defective Products within [20] days following Purchaser's notification, Purchaser may, at its reasonable discretion, take action to repair or replace such defective product and Seller shall bear the direct and commercially reasonable cost for parts and labor thereof. In such circumstances, Seller has no warranty obligation with regard to the repair or replacement performed by Purchaser. Further, if Purchaser improperly repairs or replaces the defective Products and/or uses incompatible components, Seller is not responsible for any costs, damages or malfunctions resulting therefrom.

Any alteration, disassembly, storage or use of the Products not in accordance with Seller's Documentation shall void all warranty obligations of Seller related to such Products. Purchaser assumes full responsibility in the event Purchaser uses the Products in combination with other goods or in any manner not stated in Purchaser's written specifications provided prior to sale.

All costs associated with removing the Products from service and re-installing same following examination, repair or replacement are to be borne by Purchaser. Seller may, in its sole discretion, require that the Products be shipped to Seller's facility for examination, repair or replacement. All transportation costs to and from Seller's facility, if required, are to be prepaid by Purchaser.

THE WARRANTIES SET FORTH HEREIN, IF ANY, ARE MADE EXPRESSLY IN LIEU OF OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, EVEN IF THAT PURPOSE IS KNOWN TO SELLER, IS HEREBY EXPRESSLY EXCLUDED; PROVIDED, HOWEVER, THAT THE PRODUCTS ARE WARRANTED TO CONFORM IN ALL MATERIAL RESPECTS TO THE RELEVANT AND KNOWN SPECIFICATIONS, AND PERFORMANCE STANDARDS, INCLUDING ANY MUTUALLY AGREED MODIFICATIONS THERETO.

SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY FAILURE BY SELLER TO SUPPLY PRODUCTS THAT MEET THE FOREGOING WARRANTY IS EXPRESSLY LIMITED TO, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF THE NON-CONFORMING PRODUCTS.

9. INDEMNIFICATION

Purchaser and Seller shall each defend, indemnify and hold the other harmless from and on account of all bodily injury and property damage claims asserted by third parties as a result of the other's negligent acts or omissions. To the extent that both Purchaser and Seller are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of a claim by a third party against either Purchaser or Seller, then in such event, Purchaser and Seller shall each be responsible for a portion of the liability, including costs and expenses, attributable to its comparative share of the total negligence.

Seller agrees to indemnify and hold harmless Purchaser against any third party claim alleging that the Products infringe upon a valid and enforceable United States patent, provided Purchaser gives Seller written notice immediately when such claim is asserted, directly or indirectly. Notwithstanding the foregoing, Seller shall have no liability to Purchaser if any patent infringement or claim thereof is based upon or arises out of:

(a) compliance with designs, plans or specifications furnished by or on behalf of Purchaser;

(b) use of the Products in a manner for which the Products were neither designed nor contemplated; or

(c) the claimed infringement of any patent in which the Purchaser or any affiliate or subsidiary of Purchaser has any direct or indirect interest by license or otherwise.

10. LIMITATION OF LIABILITY

Seller's total aggregate liability to Purchaser with respect to any cause of action or claim hereunder shall not exceed the purchase price payable pursuant to the Contract. In no event shall Seller be liable, either directly or as indemnitor of Purchaser, for any special, punitive, indirect or consequential damages, including but not limited to damages for loss of use, loss of income or loss of profit. Notwithstanding the above, this limitation of liability shall not apply to claims arising from Seller's gross negligence or willful misconduct. All of Purchaser's claims or actions of any description whatsoever against the Seller shall be brought not later than one (1) year after the occurrence of the event upon which each such claim or action is based.

11. FORCE MAJEURE

Force Majeure shall mean any act, event or condition that is beyond Seller's reasonable control, that materially and adversely affects Seller's ability to perform its obligations hereunder, and that is not the result of Seller's willful neglect, error, omission or failure to exercise reasonable due diligence.

Seller shall not be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. If Seller is unable to perform any of its obligations hereunder as a result of a Force Majeure event, Seller shall be required to resume performance upon termination of the event and shall have reasonable additional time for performance.

In addition, to the extent that a Force Majeure event materially increases Seller's cost of performance hereunder, Seller shall be entitled to an equitable contribution from Purchaser towards such additional costs of performance, excluding any costs that are covered by Seller's insurance.

12. DEFAULT AND TERMINATION

The substantial failure of either Party to comply with the terms herein shall constitute default hereunder. Upon default by one Party, the other non-defaulting Party shall provide written notice clearly specifying the nature of the default. The defaulting Party shall have thirty (30) days to cure the default. If the default is capable of being cured within thirty (30) days and is not cured within thirty (30) days, this Contract may be terminated. In the case of default that cannot be cured within thirty (30) days, this Contract shall not be terminated so long as the defaulting Party has given written notice of extension to the other Party and the defaulting Party has commenced and is diligently pursuing a cure.

For purposes of this Contract, the failure of Purchaser to pay Seller in accordance with the payment terms hereunder shall be considered a substantial default for which no cure period beyond thirty (30) days shall be allowed. In the event of the Purchaser's default, Seller may, in addition to the right to terminate set forth in this paragraph, elect to suspend work until the default has been cured.

In the event of any termination, Seller shall be paid for Products delivered and Services rendered (including Products specifically manufactured/assembled or special ordered for the Purchaser that have yet to be supplied) through the date of termination.

No delay or omission on the part of the Seller in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.

13. INTELLECTUAL PROPERTY

All devices, equipment, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller in connection with the Products sold hereunder shall remain Seller's exclusive property. Purchaser shall not disclose any such material to third parties without Seller's prior written consent. Purchaser will not undertake any analyses or "reverse engineering" of the products for the purpose of designing, developing or manufacturing by the Purchaser or by any third party of products that compete with the Product(s).

Seller will retain sole ownership of all discoveries, improvements, inventions, patents, trademarks, copyrights, know-how, trade secrets, or other intellectual property rights associated in any way with the Products. The Parties specifically agree that all improvements, inventions, discoveries and copyright in works of authorship, including those in formative stages, made by either Party hereto (either alone or jointly with others) improving upon or related to the Products shall from the time of conception or, in the case of works of authorship, from the time of creation, be the property of Seller.

14. **RELIANCE ON INFORMATION**

Purchaser acknowledges that Seller has used and expressly relied upon information provided by the Purchaser, if any, regarding site conditions, specifications and other technical requirements in the design, installation and start-up of its Product(s) and the provision of Services. Seller shall not be obligated to establish or verify the accuracy of the information furnished by the Purchaser nor shall Seller be responsible for the impact or effect on its Products(s) and any Services provided by Seller hereunder of the information furnished by the Purchaser in the event that such information is in error.

15. **DISPUTE RESOLUTION**

All matters arising out of or relating to the Contract shall be governed by and construed in accordance with the internal laws of the State of Ohio, USA without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Ohio, USA. Any legal suit, action or proceeding arising out of or relating to this Contract shall be instituted in the courts of the State of Ohio, USA in each case located in Cuyahoga County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply to this Contract.

16. MISCELLANEOUS PROVISIONS

The Contract constitutes the entire agreement of sale and purchase between Purchaser and Seller and supersede all prior or contemporaneous communications, representations, understandings or agreements, whether written or oral, unless such document states that it intends to modify this Contract and is signed by both Parties. No modification of this Contract (including changes in scope, specifications, price or delivery schedule) shall be of any force or effect unless made pursuant to a writing signed by both Parties. No course of dealing or performance or usage of trade may be used to modify this Contract. Those federal contract clauses required to be expressly incorporated into this Contract are expressly incorporated herein by reference as if originally included herein. The English language shall be the official text of this Contract.

The failure on the part of either Party to enforce its rights as to any provisions herein shall not be construed as a waiver of its rights to enforce such provisions in the future. Should any provision of this Contract for any reason be declared invalid or void, such declaration will not affect the remaining provisions of this Contract, which shall remain in full force and effect.

Purchaser may not assign or permit any other transfer of this Contract without Seller's prior written consent. Purchaser acknowledges that Seller shall be entitled to manufacture the Products at any of its or its affiliates' facilities worldwide, and the Contract may be assigned to such affiliates without the consent of Purchaser. This Contract is entered into solely between, and may be enforced only by, the Purchaser and Seller; and this Contract shall not be deemed to create any rights in third parties, including customers, subcontractors, or affiliates of the Purchaser, or to create any obligations to any such third parties.

Any translation, summary, or description of the terms herein are provided solely as a courtesy and the terms set forth herein, and the English version thereof, shall govern and have full force and effect and be precedent above any such translation, summary, or description.

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Minutes of City Council Meetings

Department: Finance

Presented by: Melissa Wright

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Review and approval of City Council meeting minutes.

Staff Recommendation

Approve minutes as listed.

Background Information

City Council meetings are available on the City's website for reference to actions taken and discussion made as items are considered. In accordance with Meeting procedures, Council approves meeting minutes in order for these to become the official minutes of the meeting.

The process for drafting meeting minutes was delayed with the vacancy of the Administrative Assistant position responsible for this task. That position was filled and draft minutes have been prepared. To allow for review, minutes for two or three months of meetings will be presented to Council for review until prior meeting minutes are completed.

Attachments

1. May 7, 2020 (Regular Meeting)
2. May 21, 2020 (Special Meeting - Budget)
3. May 21, 2020 (Regular Meeting)
4. June 4, 2020 (Regular Meeting)
5. June 10, 2020 (Regular Meeting)
6. June 18, 2020 (Regular Meeting)
7. June 25, 2020 (Regular Comment)
8. July 9, 2020 (Public Comment)
9. July 9, 2020 (Regular Meeting)
10. July 15, 2020 (Regular Meeting)
11. July 23, 2020 (Regular Meeting)
12. July 30, 2020 (Regular Meeting)

May 7, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, May 7, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris, Councilmember Ronnie Martin, and City Attorney Adam Tucker participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
David Ives, Assistant City Attorney
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Joshua Miller, Administrative Assistant

Mr. Smotherman commenced the meeting with a prayer followed by the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. City Paving Contract Renewal (Engineering)
2. City Concrete and Storm Drainage Annual Contract Renewal (Engineering)
3. City Specialty Paving Contract Renewal (Engineering)
4. Cintas Citywide Agreement (Facilities)
5. Bid Approval for Fire Helmets (Fire Rescue)
6. Mandatory Referral for Irrigation Lines in Public Right-of-Way at Blackman Village (Planning)
7. Computer Equipment Purchase Request (Police)
8. Main Street Banner Request: (Street)
    a. Murfreesboro Symphony December 5–14, 2020
    b. Murfreesboro Symphony February 3-13, 2021
    c. Murfreesboro Symphony April 7-17, 2021
9. 2019 Pole Attachment Expense Payment (Transportation)
10. Asphalt Purchases Report (Water Resources)
11. Lagoon Water Treatment Residuals Removal (Water Resources)
12. Meter Vaults Bid (Water Resources)

13. Purchase and Installation of Energy Pump Management for High Service Pump Station (Water Resources)
14. Purchase of Sodium Hypochlorite (Water Resources)
15. Purchase of Water Resource Recovery Facility Traveling Irrigators (Water Resources)
16. Replacement of Water Resource Recovery Facility Roof (Water Resources)
17. Water/Wastewater Mechanical/Electrical Services Contract Task Order 19-12 (Water Resources)

(Insert letters here from Engineering (3), Facilities, Fire & Rescue, Planning, Police, Street, Transportation, & Water Resources (8) here.)

Mr. Shacklett made a motion to approve the Consent Agenda. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here regarding rezoning approximately 0.89 acres located along Bradyville Pike [2019-445].)

An ordinance, entitled "ORDINANCE 20-OZ-02 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.89 acres along Bradyville Pike, west of Minerva Drive, from Single-Family Residential Ten (RS-10) District to Planned Commercial Development (PCD) District; Ken Xayabudda, applicant [2019-445]," which passed first reading on April 30, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-02 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here regarding rezoning approximately 0.71 acres located along the south side of East Vine Street, east of South Highland Avenue [2019-440].)

An ordinance, entitled "ORDINANCE 20-OZ-03 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now

in force and effect, to rezone approximately 0.71 acres along East Vine Street, east of South Highland Avenue, from Single-Family Residential Eight (RS-8) District to Planned Residential Development (PRD) District (East Vine Villas PRD); Blue Sky Construction, Inc., applicant [2019-440]," which passed first reading on April 30, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-03 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here regarding amendments to the Zoning Ordinance regarding the definition of "family", variances, lighting fixtures at recreation fields, and landscaping for stormwater management areas [2019-809].)

An ordinance, entitled "ORDINANCE 20-O-04 amending Murfreesboro City Code Appendix A—Zoning, Sections 2, 10, 18, and 27, pertaining to the definition of "family", variances, height of light fixtures for recreational fields, and landscaping for stormwater management areas; City of Murfreesboro Planning Staff, applicant [2019-809]," which passed first reading on April 30, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-04 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to Plan of Services, annexation, and zoning for approximately 26.8 acres and 27.9 acres, respectively, located along New Salem Highway and Barfield Road [2020-501] & [2020-402].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-11 adopted by the City Council on March 19, 2020, to consider (1) adoption of a Plan of Services for and annexation of 26.8 acres and (2) zoning of approximately 26.8 acres to Commercial Highway (CH) District and rezoning of approximately 1.1 acres from Single-Family Residential Fifteen (RS-15) District to Commercial Highway (CH) District along New Salem Highway and Barfield Road; New Salem Land Development, LLC, applicant [2020-402] & [2020-501]. Notice of said public hearing was published in the April 21, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to approve the Plan of Services and annexation, pending a public hearing.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Plan of Services and annexation of approximately 26.8 acres located along New Salem Highway and Barfield Road step forward to the podium.

There was no one present who wished to speak for or against the proposed Plan of Services or annexation and, after ample time had been given, Mayor McFarland declared the public hearing closed.

The following RESOLUTION 20-R-PS-11 was read to the Council and offered for adoption upon motion made by Vice-Mayor Scales Harris, seconded by LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PS-11 here with regards to adopting a Plan of Services for approximately 26.8 acres along New Salem Highway and Barfield Road; New Salem Land Development, LLC, applicant [2020-402].)

The following RESOLUTION 20-R-A-11 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-A-11 here with regards to annexation for approximately 26.8 acres along New Salem Highway and Barfield Road; New Salem Land Development, LLC, applicant [2020-501].)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning and introduced Mr. Matt Taylor, SEC Inc., who presented a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 26.8 acres located along New Salem Highway and Barfield Road step forward to the podium.

There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Mr. LaLance expressed his concern regarding the potential for the developer to build a truck stop with the Commercial Highway zoning and his desire to amend the ordinance to remove truck stops as a permitted use on the property.

Mr. Taylor assured the Council that the developer had no intention of building a truck stop on this property and would have no objection to the ordinance being amended to remove truck stops as potential uses.

An ordinance, entitled "ORDINANCE 20-OZ-11 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 26.8 acres along New Salem Highway and Barfield Road to Commercial Highway (CH) District, simultaneous with annexation, and to rezone approximately 1.1 acres from Single-Family Residential Fifteen (RS-15) District to Commercial Highway (CH) District; New Salem Land Development, LLC, applicant [2020-402]," amended to remove truck stops as a permitted use on the property, was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance,

seconded by Mr. Shacklett. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to a Zoning Ordinance Amendment for the Old Fort Plaza PUD along Old Fort Parkway [2019-447].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-08 adopted by the City Council on March 19, 2020, to consider a proposed amendment to the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, to approximately 5.4 acres in the Planned Unit Development (PUD) District (Old Fort Plaza PUD) located along Old Fort Parkway; Autumn Plaza Partners, applicant [2019-447]. Notice of said public hearing was published in the April 21, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the Zoning Ordinance amendment, and presented a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Zoning Ordinance amendment for approximately 5.4 acres located along Old Fort Parkway step forward to the podium.

There was no one present who wished to speak for or against the proposed Zoning Ordinance amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-08 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 5.4 acres in the Planned Unit Development (PUD) District (Old Fort Plaza PUD) located along Old Fort Parkway as indicated on the attached map; Autumn Plaza Partners, applicant [2019- 447]," was read to the Council and offered for passage on first reading upon motion made by Mr.

Shacklett, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to rezoning for approximately 0.36 acres located at the northwest corner of East Vine Street and South Bilbro Avenue [2020-401].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-09 adopted by the City Council on March 19, 2020, to consider a proposed amendment to the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, to rezone approximately 0.36 acres along East Vine Street and South Bilbro Avenue from Single-Family Residential Eight (RS-8) District to Planned Residential Development (PRD) District (Bilbro & Vine Towns PRD); Greg Stanley, applicant [2020-401]. Notice of said public hearing was published in the April 21, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning and introduced Mr. Clyde Rountree, Huddleston-Steele Engineering, and Mr. Michael Picklesimer, Project Architect, who presented a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 0.36 acres located along East Vine Street and South Bilbro Avenue step forward to the podium.

There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-09 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.36 acres along East Vine Street and South Bilbro Avenue from Single-Family Residential Eight (RS-8) District to Planned Residential Development (PRD) District (Bilbro & Vine Towns PRD); Gregg Stanley, applicant [2020-401]," was read to the Council and offered for passage on first reading upon motion made

by Mr. Shacklett, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to rezoning for approximately 2.42 acres located along East College Street, North Church Street, East Lytle Street, and North Spring Street [2019-434].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-10 adopted by the City Council on March 19, 2020, to consider a proposed amendment to the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, to rezone approximately 2.42 acres along East College Street, North Spring Street, East Lytle Street, and North Church Street from General Office-Residential (OG-R) District to Planned Unit Development (PUD) District (One East College PUD); 705 4th Avenue South Holding Company, applicant [2020-434]. Notice of said public hearing was published in the April 21, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning and introduced Mr. Matt Taylor, SEC, Inc., who presented a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 2.42 acres along East College Street, North Spring Street, East Lytle Street, and North Church Street step forward to the podium.

There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Vice-Mayor Scales Harris asked what the construction timeline for the project was and Mr. Martin questioned if the recent economic downturn would cause a delay in that schedule.

Mr. Taylor answered that the timeline was to begin construction in summer 2020 with the project taking an estimated two and a half years to finish and that the construction start date was going to be delayed due to the current state of the economy.

An ordinance, entitled "ORDINANCE 20-OZ-10 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.42 acres along East College Street, North Spring Street, East Lytle Street, and North Church Street from General Office - Residential (OG-R) District to Planned Unit Development (PUD) District (One East College PUD); 705 4th Avenue South Holding Company, applicant [2020-434]," was read to the Council and offered for passage on first reading upon motion made by Mr. Smotherman, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to a Zoning Ordinance Amendment regarding the definition of "yard", timeframes for Planning Commission review of zoning applications, outdoor storage and displays, and several other miscellaneous changes [2020-801].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-12 adopted by the City Council on March 19, 2020, to consider amending Murfreesboro City Code Appendix A-Zoning, Sections 2, 6, 7, 13, 18, 24, and 25 pertaining to outdoor storage, timeframe for holding zoning public hearings, site plan review timeframe to fit within new review cycle, yard encroachments, and minimum lighting; City of Murfreesboro Planning Staff, applicant [2020-801]. Notice of said public hearing was published in the April 21, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the Zoning Ordinance amendment.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Zoning Ordinance amendment step forward to the podium.

There was no one present who wished to speak for or against the proposed Zoning Ordinance amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-O-12 amending Murfreesboro City Code Appendix A— Zoning, Sections 2, 6, 7, 13, 18, 24, and 25 pertaining to outdoor storage, timeframe for holding zoning public hearings, site plan review timeframe to fit within new review cycle, yard encroachments, and minimum lighting; City of Murfreesboro Planning Staff, applicant [2020-801]," was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to Regulatory Assistance for NPDES permit renewal.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve the Regulatory Assistance proposal with Hayzen and Sawyer and the associated Master Services Agreement, subject to Legal approval, for $203,700.

Mr. LaLance made a motion to approve the proposal with Hayzen and Sawyer and the associated MSA, subject to legal approval. Mr. Smotherman seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated May 7, 2020 here with regards to Shelton Square Special Sanitary Sewer Assessment District.)

Mr. Darren Gore, Assistant City Manager, presented a proposal for the Shelton Square Special Sanitary Sewer Assessment District in the amount of $500 per single family unit or equivalent. Mr. Gore stated that this proposal was just for review and no vote would be called.

The City Recorder/Finance Director announced that there were not any licensing, board or commission appointments, nor any statements to be considered.

There being no further business, Mayor McFarland adjourned this meeting at 7:15 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

May 21, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic in special session at 4:00 p.m. on Thursday, May 21, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris, Council Member Ronnie Martin, City Attorney Adam Tucker participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Erin Tucker, Budget Director
P.D. Mynatt, General Manager M.E.D.
Betty Brewer, Evergreen Cemetery Manager
Gary Anderson, Assistant Superintendent of Schools
Joshua Miller, Administrative Assistant

Mayor McFarland announced that the purpose of this meeting was to present to Council overviews of entities that are funded separately from the City General Fund and to discuss the Fiscal Year 2021 Budget.

Mrs. Erin Tucker, Budget Director, presented to Council a timeline of Covid–19 in Murfreesboro and the impact the pandemic was expected to have on the Cities budget discussion including the freeze on non-critical hiring and spending; reworking of departmental budgets with supplemental requests deferred; restructuring the CIP to eliminate borrowing for Fiscal Year 2020; projections for State/Local Sales Tax and Business License Tax Collections; and the need to defer discussion of the Fiscal Year 2021 CIP to August or September.

Mr. Martin asked where the projected numbers for the tax collections were coming from and what type of modeling was used to determine the projected numbers. Since the State's projected tax collection numbers predict a much worse outcome, why does Murfreesboro's look better?

Mrs. Tucker answered that past records and best estimates were used and, as new information comes in, the numbers will be constantly updated. The State's numbers look much worse because they include projections from large cities like Nashville and Memphis which rely heavily on tourism.

Mrs. Tucker announced that the City's Fiscal Year 2021 strategy had three potential approaches: If a moderate economic recovery occurs, the City could fund 19 police officer positions and equipment ($1.8 Million), IT equipment and software ($440,000), and fire equipment ($20,000). If a solid economic recovery occurs, the City could fund police technology and equipment ($1.27 Million) and fire rescue equipment ($7,000). If a strong economic recovery occurs, the City could fund payroll and benefit increases ($1.9 Million), health insurance premium increases ($600,000), new positions ($450,000), new equipment ($245,000), and other miscellaneous items ($265,000).

Council's questions regarding budget projections and possible proposals were discussed with staff.

Mr. Darren Gore, Assistant City Manager, presented the Water Resources and Stormwater Fund Budget for Fiscal Year 2021. He announced that there were no decreases in revenues, but there were around $80,000 in late fees, with no accompanying shut off of services, that had accumulated during the pandemic.

Mr. P.D. Mynatt, General Manager Murfreesboro Electric Department, presented the Murfreesboro Electric Department Budget for Fiscal Year 2021 and announced that the pandemic had not negatively affected the budget. He stated that the merger with MTEMC is still pending, waiting on TVA review.

Mr. Gary Anderson, Assistant Superintendent of City Schools, presented the Murfreesboro City Schools Budget for Fiscal Year 2021. He stated that there is a shortfall in the budget, but it is anticipated that funds from the CARE Act and FEMA funds will make up for the shortfall.

Ms. Betty Brewer, Evergreen Cemetery Manager, presented the Evergreen Cemetery Budget for Fiscal Year 2021 and announced that the Serenity section of the cemetery had opened. There was a small revenue drop in grave sales that she attributed to the Covid-19 pandemic.

There being no further business, Mayor McFarland adjourned this meeting at 5:21 p.m.

SHANE MCFARLAND - MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

May 21, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, May 21, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris, Council Member Ronnie Martin, and City Attorney Adam Tucker participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Chad Gehrke, Airport Manager
Joshua Miller, Administrative Assistant

Mr. Wade commenced the meeting with a prayer followed by introducing Mr. Christopher Curtis, Valedictorian at Riverdale High School, Eagle Scout, and 3-year letterman, who will be attending West Point U.S. Military Academy, to lead the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. 2020 THDA Continuum of Care COVID-19 Pandemic Response Grant (Community Development)
2. Overall Creek FEMA MT-2 Letter of Map Revision (Development Services)
3. Community Investment Program Funds Transfer (Finance)
4. Mandatory Referral for Dedication of Waterline and Temporary Construction Easements along Burnt Knob Road (Planning)
5. Mandatory Referral for Irrigation Lines in Public Right-of-Way at Legacy Pointe (Planning)
6. Mandatory Referral for Abandonment of Sanitary Sewer Easement along Westlawn Boulevard (Planning)

(Insert letters from Community Development,
Development Services, Finance,
& Planning (3) here.)

Mr. Shacklett made a motion to approve the Consent Agenda. Mr. Smotherman seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding rezoning approximately 5.4 acres in the Old Fort Plaza PUD located along Old Fort Parkway [2019-447].)

An ordinance, entitled "ORDINANCE 20-OZ-08 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 5.4 acres in the Planned Unit Development (PUD) District (Old Fort Plaza PUD) located along Old Fort Parkway as indicated on the attached map; Autumn Plaza Partners, applicant [2019-447]," which passed first reading on May 7, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-08 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 regarding rezoning approximately 0.36 acres located at the northwest corner of East Vine Street [2020-401].)

An ordinance, entitled "ORDINANCE 20-OZ-09 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.36 acres along East Vine Street and South Bilbro Avenue from Single-Family Residential Eight (RS-8) District to Planned Residential Development (PRD) District (Bilbro & Vine Towns PRD); Gregg Stanley, applicant [2020-401]," which passed first reading on May 7, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-09 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding rezoning approximately 2.42 acres located along East College Street, North Church Street, East Lytle Street, and North Spring Street [2019-434].)

An ordinance, entitled "ORDINANCE 20-OZ-10 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.42 acres along East College Street, North Spring Street, East Lytle Street, and North Church Street from General Office - Residential (OG-R) District to Planned Unit Development (PUD) District (One East College PUD); 705 4th Avenue South Holding Company, applicant [2020-434]," which passed first reading on May 7, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-10 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding rezoning approximately 27.9 acres located along New Salem Highway and Barfield Road [2020-402].)

An ordinance, entitled "ORDINANCE 20-OZ-11 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 26.8 acres along New Salem Highway and

Barfield Road to Commercial Highway (CH) District, simultaneous with annexation, and to rezone approximately 1.1 acres from Single-Family Residential Fifteen (RS-15) District to Commercial Highway (CH) District; New Salem Land Development, LLC, applicant [2020-402]," which passed first reading on May 7, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded by Mr. Martin. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-11 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to a Zoning Ordinance Amendment regarding the definition of "yard", timeframes for Planning Commission review of zoning applications, outdoor storage and displays, and several other miscellaneous changes [2020-801].)

An ordinance, entitled "ORDINANCE 20-O-12 amending Murfreesboro City Code Appendix A— Zoning, Sections 2, 6, 7, 13, 18, 24, and 25 pertaining to outdoor storage, timeframe for holding zoning public hearings, site plan review timeframe to fit within new review cycle, yard encroachments, and minimum lighting; City of Murfreesboro Planning Staff, applicant [2020-801]," which passed first reading on May 7, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-12 here.)

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding
Resolution 20-R-10 – Unclaimed
Property Request.)

The following RESOLUTION 20-R-10 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-10 here with regards to requesting
unclaimed balance of accounts remitted to State Treasurer
under Unclaimed Property Act.)

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding
Budget Amendment Ordinance 20-O-15.)

An ordinance, entitled "ORDINANCE 20-O-15 amending the 2019-2020 Budget (3rd Amendment)," was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated May 21, 2020 here regarding
Amendment of the City Ordinance permitting
regulated take-out and delivery of beer.)

Council questioned locations that would be covered under this ordinance, who would I.D. the purchaser to determine legal age for alcohol purchase and beer container types were discussed with staff. Council requested that plastic be added to Section 2(B) as a container type, before passage.

An ordinance, entitled "ORDINANCE 20-O-16 amending the Murfreesboro City Code, Chapter 4, Alcoholic Beverages, Article IV, Beer, authorizing the sale of beer within the City Limits via delivery and take-out service," was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to a Plan of Services and annexation for approximately 190 linear feet (0.22 acres) of Annell Drive right-of-way (ROW) [2020-501].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-06.1 adopted by the City Council on April 2, 2020, to consider adoption of a Plan of Services for and annexation of approximately 190 linear feet (0.22 acres) of Annell Drive right-of-way (ROW); City of Murfreesboro, applicant [2019-516]. Notice of said public hearing was published in the May 5, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to approve the Plan of Services and annexation.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Plan of Services and annexation of approximately 190 linear feet (0.22 acres) of Annell Drive right-of-way (ROW) step forward to the podium.

There was no one present who wished to speak for or against the proposed Plan of Services or annexation and, after ample time had been given, Mayor McFarland declared the public hearing closed.

The following RESOLUTION 20-R-PS-06 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance

Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PS-06 here with regards to Plan of Services for approximately 190 linear feet (0.22 acres) of Annell Drive right-of-way (ROW); City of Murfreesboro, applicant [2019-516].)

The following RESOLUTION 20-R-A-06 was read to the Council and offered for adoption upon motion made by Mr. LaLance seconded by Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-A-06 here with regards to annexation for approximately 190 linear feet (0.22 acres) of Annell Drive right-of-way (ROW), and to incorporate the same within the corporate boundaries of the City of Murfreesboro, Tennessee; City of Murfreesboro, applicant [2019-516].)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to rezoning for approximately 1.11 acres located at the southeast corner of South Academy Street and East Sevier Street [2019-446].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-07.1 adopted by the City Council on April 2, 2020, to consider a proposed amendment of the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, to rezone approximately 1.11 acres along South Academy Street, north of East State Street, from Highway Commercial (CH) District and City Core Overlay (CCO) District to Planned Unit Development (PUD) District (Greenhouse Ministries PUD) and City Core Overlay (CCO) District; Greenhouse Ministries, applicant [2019-446]. Notice of said public hearing was published in the May 5, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning, and introduced Mr.

Matt Taylor, SEC, Inc., who gave a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 1.11 acres located along South Academy Street, north of East State Street, step forward to the podium.

There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-07 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 1.11 acres along South Academy Street, north of East State Street, from Highway Commercial (CH) District and City Core Overlay (CCO) District to Planned Unit Development (PUD) District (Greenhouse Ministries PUD) and City Core Overlay (CCO) District; Greenhouse Ministries, applicant [2019-446]," was read to the Council and offered for passage on first reading upon motion made by Mr. Smotherman, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to scheduling a public hearing for zoning amendment in the Westlawn PUD for approximately 10.5 acres located along Veterans Parkway.)

The following RESOLUTION 20-R-PH-17 was read to the Council and offered for adoption upon motion made by Mr. Smotherman, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-17 here fixing the time for holding a public hearing on June 18, 2020, so as to consider a proposed amendment to approximately 10.5 acres in the Planned Unit Development (PUD) District (Westlawn PUD) located along Veteran's Parkway; Saint Thomas Rutherford, applicant [2020-404].)

Mayor McFarland announced that Agenda Item Number 18, a board and commission appointment, was to be pulled from the agenda.

The City Recorder/Finance Director announced that there were not any beer permits nor any payment of statements to be considered.

Under other business, the following letter from the Airport Manager was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to Airport Terminal furniture, fixtures, and equipment.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve the change order in the amount of $423,018 to be used for the purchase of audio-visual equipment, signage, and kitchen equipment for the new Airport Terminal.

Mr. Shacklett made a motion to approve the change order in the amount of $423,018. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Executive Director of Development Services was presented to the Council:

(Insert letter dated May 21, 2020 here with regards to Quitclaim Deed Tax Parcel 90J A 32.0 – Greenbrier S/D Lot 9.)

Mr. Sam Huddleston, Executive Director of Development Services, presented the request to approve the Quitclaim Deed for Tax Parcel 90J A 32.0 and abandonment of any City interest in the parcel which appears to have been created in 1978 for a proposed sewage ejection station that was never constructed.

Mr. Smotherman made a motion to approve the Quitclaim Deed. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

There being no further business, Mayor McFarland adjourned this meeting at 6:32 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

June 4, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, June 4, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris, Council Member Ronnie Martin, and City Attorney Adam Tucker participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Chris Griffith, Executive Director/
Public Infrastructure/City Engineer
Sam Huddleston, Executive Director/
Development Services
Angela Jackson, Executive Director/
Community Services
Mark Foulks, Chief of Fire & Rescue
Erin Tucker, Budget Director
Greg McKnight, Planning Director
Nate Williams, Parks and Recreation Director
Robert Holtz, Building and Codes Director
Ralph Ringstaff, Interim Director of Schools
Matthew Blomeley, Assistant Planning Director
Chad Gehrke, Airport Manager
Gary Anderson, Assistant Superintendent of Schools
Teresa Stevens, Sign Administrator
Joshua Miller, Administrative Assistant

Mayor McFarland commenced the meeting with a prayer followed by the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. Fiscal Year 2020 City Manager Approved Budget Amendments (Finance)
2. Coronavirus Emergency Supplemental Funding Program (Finance)
3. Purchase of Fire Equipment (Fire & Rescue)
4. Additional Costs for Cannonsburgh Window Replacements (Parks & Recreation)
5. Main Street Banner Request: (Street)
    a. MTSU American Democracy Project for Civic Learning August 10 – 20, 2020
    b. Linebaugh Library Foundation April 21 – May 1, 2021

6. Barton Lawncare – Change Order No. 1 (Water Resources)
7. Asphalt Purchases Report (Water Resources)
8. JB Mech Elec Service Contract Ext. No. 2 (Water Resources)
9. Operation and Maintenance Custodial Services Renewal (Water Resources)
10. Sanitary Sewer Rehab Change Order No. 3 (Water Resources)
11. Water-Wastewater Mechanical-Electrical Contract Task Order No. 20-03 (Water Resources)

(Insert letters from Finance (2), Fire & Rescue, Parks & Recreation, Street, & Water Resources (6) here.)

Mr. LaLance made a motion to approve the Consent Agenda. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 4, 2020 here regarding rezoning approximately 1.11 acres along South Academy Street, north of East State Street [2019-446].)

An ordinance, entitled "ORDINANCE 20-OZ-07 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 1.11 acres along South Academy Street, north of East State Street, from Highway Commercial (CH) District and City Core Overlay (CCO) District to Planned Unit Development (PUD) District (Greenhouse Ministries PUD) and City Core Overlay (CCO) District; Greenhouse Ministries, applicant [2019-446]," which passed first reading on May 21, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-07 here.)

The following letter from the Finance Director was presented to the Council:

(Insert letter dated June 4, 2020 here regarding modification of the 2019-2020 Budget to incorporate expenditure decisions made during the 2019-2020 Fiscal Year.)

An ordinance, entitled "ORDINANCE 20-O-15 amending the 2019-2020 Budget (3rd Amendment)," which passed first reading on May 21, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded

by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-15 here.)

The following letter from the Finance Director was presented to the Council:

(Insert letter dated June 4, 2020 here amending Chapter 4, Alcoholic Beverages, Article IV, Beer, authorizing sale of beer within City Limits via delivery and takeout service.)

An ordinance, entitled "ORDINANCE 20-O-16 amending the Murfreesboro City Code, Chapter 4, Alcoholic Beverages, Article IV., Beer, authorizing the sale of beer within the City limits via delivery and take-out service," which passed first reading on May 21, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-16 here.)

Mr. Smotherman made a motion to suspend the rules to change the order of the agenda and move Items No. 17 and No. 18 (budget items) to the end of the agenda. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to rezoning for approximately 30 acres located along North Thompson Lane, West College Street, West Northfield Boulevard, and Hope Way [2020-403].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-13 adopted by the City Council on April 30,

2020, to consider a proposed amendment to zone approximately 30 acres along North Thompson Lane, West College Street, and West Northfield Boulevard as Planned Signage Overlay (PSO) District; New Vision Baptist Church, applicant [2020-403]. Notice of said public hearing was published in the May 19, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning and introduced Ms. Teresa Stevens, Sign Administrator, Buildings and Codes Department, and Ms. Regina Thompson, Visioneering Studios, who gave brief presentations on the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed zoning of approximately 30 acres located along North Thompson Lane, West College Street, and West Northfield Boulevard step forward to the podium.

There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-13 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 30 acres along North Thompson Lane, West College Street, and West Northfield Boulevard as Planned Signage Overlay (PSO) District; New Vision Baptist Church, applicant [2020-403]," was read to the Council and offered for passage on first reading upon motion made by Mr. Smotherman, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to rezoning for approximately 1.44 acres located at the northeast corner of North Rutherford Boulevard and Gold Valley Drive [2019-435].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-14 adopted by the City Council on April 30,

2020, to consider a proposed amendment to rezone approximately 1.44 acres located at the northeast corner of Gold Valley Drive and North Rutherford Boulevard from Planned Commercial Development (PCD) District to Planned Residential Development (PRD) District (Rutherford Corner PRD); Masterson Homes, Inc., applicant [2019-435]. Notice of said public hearing was published in the May 19, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the unanimous recommendation of the Planning Commission to approve the rezoning and introduced Mr. Matt Taylor, SEC, Inc., who gave a brief presentation on the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed zoning of approximately 1.44 acres located at the northeast corner of Gold Valley Drive and North Rutherford Boulevard step forward to the podium.

There was no one present who wished to speak for or against the proposed zoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-14 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 1.44 acres located at the northeast corner of Gold Valley Drive and North Rutherford Boulevard from Planned Commercial Development (PCD) District to Planned Residential Development (PRD) District (Rutherford Corner PRD); Masterson Homes, Inc., applicant [2019-435]," was read to the Council and offered for passage on first reading upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Airport Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to sale of excess Airport property.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve the sale of 1.276 acres of Airport property at the corner of Memorial Boulevard and Airport Road for

$1,400,000. The FAA, TDOT, and Airport Commission have approved the sale of the property, and the Planning Commission has approved commercial use for the property.

Mr. Shacklett made a motion to approve the property sale on the corner of Memorial Boulevard and Airport Road in the amount of $1,400,000. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Airport Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to engineering and design of Taxiway F development area.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve work Authorization No. B-07-20 with ATKINS North America in the amount of $127,498 for the design and bid consultant services for the expansion of the Taxiway E (future Taxiway F) development area.

Mr. Wade made a motion to approve the Work Authorization No. B-07-20 with ATKINS North America. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The following letter from the Airport Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to engineering and design of MTSU ramp expansion and construction of Taxiway E.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve Work Authorization No. B-08-20 with ATKINS North America in the amount of $118,045 for the design and bid consultant services for the expansion of the MTSU aircraft ramp and construction of Taxiway E.

Mr. Shacklett made a motion to approve Work Authorization No. B-08-20 with ATKINS North America. Mr. Martin seconded the motion and all members of the Council voted "Aye".

The following letter from the City Attorney was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to purchase of insurance coverage for the City.)

Mr. Adam Tucker, City Attorney, presented the request to approve the purchase of insurance coverages for the City for Fiscal Year 2021 in the amount of $2,617,628.

Mr. Shacklett made a motion to approve the purchase of insurance coverage for the City for a total cost of $2,617,628. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards
to sewer inspection & asset management
software.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve the purchase of new software, WinCan, to assist in the collection, reporting, and analyzation of pipeline inspection data for $53,138 from the Sansom Equipment Company.

Mr. LaLance made a motion to approve the purchase of WinCan from Sansom Equipment Company in the amount of $53,138. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards
to final bulk water purchase and sale agreement
with Marshall County, TN.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to give final approval for a bulk water purchase and sale agreement with Marshall County for 216,000 gallons per day of drinking water for a minimum period of five years at $2.35 per thousand gallons.

Mr. Shacklett made a motion to approve the purchase and sale agreement with Marshall County. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards
to Sewer Basin 10A-3 & 4 Density Restriction &
Engineering Capacity Study.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to restrict the development in Basins 10A-3 & 10A-4 to those allowable for a Commercial Zoning at 2.5 single family units per acre or 650 gallons per day per acre and approve the engineering proposal with CIA in an amount not to exceed $30,000 to study the existing pump station and flow monitor Basin 9A.

Council engaged in discussion regarding the proposed restrictions and the potential for a grandfather period to exist to not unfairly prohibit developers who were already in the development process.

Mr. Martin made a motion to approve the development restrictions, with the inclusion of a grandfather clause and three readings at the planning level, and the engineering proposal with CIA. Mr. LaLance seconded the motion and all members of the Council voted "Aye" except Mr. Smotherman, Mr. Wade, and Mayor McFarland who voted "Nay".

Under other business, the following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to Water Tank Public-Entity Signage Agreement with MTSU here.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to execute the Water Tank Public-Entity Signage Agreement with MTSU for installation of logo on Mill Street tank for a lump sum cost of $27,000.

Mr. Wade made a motion to approve the Water Tank Public-Entity Signage Agreement with MTSU in the amount of $27,000. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were not any statements to be considered.

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to Beer Permit Applications for Cracker Barrel Old Country Store #90 & #11 at 138 Chaffin Place & 2115 S Church St.; Bar Louie at 2615 Medical Center Pkwy., Ste. 2395; and Special Event Permits for Main Street Murfreesboro, Rutherford County on 7/18/20 at Cannonsburgh Village, 312 South Front Street.)

Mr. Shacklett made a motion to approve Beer Permits for Cracker Barrel Old Country Store #90 & #11, 138 Chaffin Place & 2115 South Church Street (New Locations); Bar Louie at 2615 Medical Center Parkway, Suite 2395 (Ownership Change); and Special Event Permit for Main Street Murfreesboro, Rutherford County on 07/18/20 at Cannonsburgh Village, 312 South Front Street. Mr. Wade seconded the motion and all members of the Council voted "Aye".

Upon recommendation of Mayor McFarland, Mr. Smotherman made a motion to reappoint Mr. Ben Blake (term expires June 30, 2023), Ms. Carolyn Lester (term expires June 30, 2023), Mr. Mike Picklesimer (term expires June 30, 2023) and Mr. Matt Taylor (term expires June 30, 2023) to the Construction Board of Adjustments and Appeal; reappoint Mr. Lamar Dixon (term expires June 30, 2023) and Mr. Dan Sharley (term expires June 30, 2023) to the Greenway Projects Committee; reappoint Dr. Gloria Bonner (term expires June 30, 2023), Mr. Tim Roediger (term expires June 30, 2023) and Mr. Ricky Turner (term expires June 30, 2023) to the Parks and Recreation Commission and reappoint Mr. Ron Crabtree (term expires June 30, 2024) and Mr. Brian Kidd (term expires June 30, 2024) to the Water Resources Board. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Budget Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to Fiscal Year 2021 Budget information and related ordinances.)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to the provisions of T.C.A. 6-56-206 and the City Charter, to consider the proposed Fiscal Year 2020-2021 City of Murfreesboro Budget. Notice of said public hearing was published in the May 26, 2020 issue of a local newspaper as follows:

(Insert notice here.)

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Fiscal Year 2020-2021 City of Murfreesboro Budget come forward to the podium.

Mr. Richard Baines, 1319 Parkview Terrace, opposes the proposed Fiscal Year 2021 Budget, stating that he believes that the City's income stream needs to be improved; feedback from public comment sessions need to be listened to; and the City needs to consider implementing impact fees.

Ms. Ryan Lake, 1612 Damascus Road, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded and the resulting excess funds reallocated into community services as the amount of money currently being spent on MPD is unsatisfying.

Mr. Mike McDougal, 1315 East Castle Street, opposes the proposed Fiscal Year 2021 Budget, stating that he would like to see the Murfreesboro Police Department defunded and the money reallocated to community services due to the recent decision by MPD to use tear gas to disperse protesters.

Mr. Joshua Howse, 1413 Westview Drive, opposes the proposed Fiscal Year 2021 Budget, stating that he would like to see the Murfreesboro Police Department defunded due to the department's handling of a nonviolent protest.

Ms. Cimrun Srivastava, 1810 Somerset Drive, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded due to their use of teargas on nonviolent protesters after a curfew was put into effect and the racial discrimination lawsuits against the Police Chief.

Ms. Whitney Tesi, Craythorne Drive, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded and the resulting money invested back into the community.

Mr. Bennett Norris, 2319 Mayfair Avenue, opposes the proposed Fiscal Year 2021 Budget, stating that he would like to see the Murfreesboro Police Department defunded and

the resulting money invested back into the community, specifically to institute curbside recycling for the City.

Ms. Quinlan Odom, 1414 Poplar Avenue, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded or have the department's budget cut and have the resulting money invested back into the community.

Ms. Victoria Hensley, 218 West Main Street, Apt. 27, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded and the resulting money invested back into programs that will help the community.

Ms. Mariah Phillips, 511 East Clark Boulevard, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded; the resulting money invested back into the community; and the City to develop a Human Rights Commission.

Ms. Hannah Giles, 1322 North Rutherford Boulevard, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded and the resulting money invested into body cameras, diversity training, and de-escalation training.

Ms. Kelly Fletcher, 2319 Mayfair Avenue, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department defunded and the resulting money invested into public services, education, and health services.

Mr. Preston Gustin, 350 Tremont Drive, opposes the proposed Fiscal Year 2021 Budget, stating that he would like to see the Murfreesboro Police Department defunded and the resulting money reinvested in community services.

Mr. Ryan Pierce, 869 Maricopa Drive, opposes the proposed FY 2021 Budget, stating that he would like to see the Murfreesboro Police Department defunded and the resulting money reinvested into education, small business, public transport, affordable housing, and healthcare.

Ms. Julianna Mercado, 3025 Robinwood Drive, opposes the proposed Fiscal Year 2021 Budget, stating that she would like to see the Murfreesboro Police Department budget cut and the resulting money reallocated back into community resources.

There was no one else present who wished to speak for or against the proposed Fiscal Year 2021 budget and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Council engaged in discussion covering funding of community services supported by the Fiscal Year 2020-2021 budget and each Council Member shared their individual thoughts, feelings and perspectives about the events that transpired before, during and after the protests.

An ordinance, entitled "ORDINANCE 20-O-18 adopting a budget and appropriations ordinance providing for appropriations out of the general and special funds of the City of Murfreesboro, Tennessee, of certain sums to defray the current, necessary and special expenses of said City for the Fiscal Year 2020-2021, and for other purposes," was read to the Council and offered for passage on first reading upon motion made by Mr. Smotherman, seconded by Mr. Martin. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

An ordinance setting the tax rate at $1.2894, entitled "ORDINANCE 20-O-19 providing for the levy and collection of a tax for the year 2020 upon all property, real, personal and mixed, within and subject to the jurisdiction of the City of Murfreesboro that is now taxable under the laws and Constitution of the State of Tennessee and the Charter of said City, and for the interest and costs to be added to such taxes after certain dates," was read to the Council and offered for passage on first reading upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Budget Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards
to Fiscal Year 2021 Budget Resolutions.)

The following RESOLUTION 20-R-13 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-13 here with regards to approving the budget of the Murfreesboro Water Resources Department for the Fiscal Year 2020-2021.)

The following RESOLUTION 20-R-14 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-14 here with regards to approving the budget of the Stormwater Utility Management Fund for the Fiscal Year 2020-2021.)

The following RESOLUTION 20-R-15 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. Smotherman. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-15 here with regards to approving the budget of the Murfreesboro City Schools for the Fiscal Year 2020-2021, which budget includes the General Purpose Fund, the Extended School Program Fund, the Federal and State Program Funds, the Cafeteria Fund, and the Debt Service Fund.)

The following RESOLUTION 20-R-16 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. Smotherman. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-16 here with regards to approving
the budget of the Evergreen Cemetery for the
Fiscal Year 2020-2021.)

The following RESOLUTION 20-R-17 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-17 here with regards to approving
the budget of the Murfreesboro Electric Department for
the Fiscal Year 2020-2021.)

The following letter from the Budget Director was presented to the Council:

(Insert letter dated June 4, 2020 here with regards to
Other Post-Employment Benefits (OPEB) election
for retirees' medical benefits.)

The following RESOLUTION 20-R-12 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded Vice-Mayor Scales Harris. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-12 here with regards to providing
other post-employment benefits for retirees
for Fiscal Year 2020-2021.)

There being no further business, Mayor McFarland adjourned this meeting at 8:52 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

June 10, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 11:43 a.m. on Wednesday, June 10, 2020 in the Community Room at Murfreesboro Police Headquarters with Councilman Bill Shacklett present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris and City Attorney Adam Tucker participated telephonically at this meeting. Mayor McFarland was absent and excused.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Paul Boyer, Executive Director/
Internal Services
Angela Jackson, Executive Director/
Community Services
Raymond Hillis, Executive Director/
Public Works
Michael Bowen, Chief of Police
Erin Tucker, Budget Director
Chris Lilly, Information Technology Director
Greg McKnight, Planning Director
Nate Williams, Parks and Recreation Director
Mike Browning, Public Information Director
Gary Anderson, Assistant Superintendent of Schools
Jennifer Vickery, Assistant Finance Director
Joshua Miller, Administrative Assistant

The following letter from the Budget Director was presented to the Council:

(Insert letter dated June 10, 2020 here with regards
to Fiscal Year 2021 Budget Ordinances.)

An ordinance, entitled "ORDINANCE 20-O-18 adopting a budget and appropriations ordinance providing for appropriations out of the general and special funds of the City of Murfreesboro, Tennessee, of certain sums to defray the current, necessary and special expenses of said City for the Fiscal Year 2020-2021, and for other purposes," which passed first reading on June 4, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance

Ronnie Martin
Eddie Smotherman
Kirt Wade
Bill Shacklett

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-18 here.)

An ordinance, setting the tax rate at $1.2894, entitled "ORDINANCE 20-O-19 providing for the levy and collection of a tax for the year 2020 upon all property, real, personal and mixed, within and subject to the jurisdiction of the City of Murfreesboro that is now taxable under the laws and Constitution of the State of Tennessee and the Charter of said City, and for the interest and costs to be added to such taxes after certain dates," which passed first reading on June 4, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Eddie Smotherman
Kirt Wade
Bill Shacklett

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-19 here.)

The following letter from the Information Technology Director was presented to the Council:

(Insert letter dated June 10, 2020 here with
regards to Amendment No. 3 to City Hall
garage camera contract.)

Ms. Chris Lilly, Information Technology Director, presented an amendment to the City Hall garage security camera contract with Twins Technology, LLC to add automatic one-year renewals up to five years which was included in the original bid but inadvertently left out of the finalized contract.

Vice-Mayor Scales Harris made a motion to approve Amendment No. 3 with Twins Technology, LLC. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The following letter from the Budget Director was presented to the Council:

(Insert letter dated June 10, 2020 here with
regards to April 2020 Dashboard packet.)

Mrs. Erin Tucker, Budget Director, presented the April 2020 Dashboard update which included Financial, Building & Codes, Risk Management, and Construction data. She also

presented Sales Tax Revenues, Solid Waste Revenues, State Revenue Collections, City Schools Cash Flow Statements, and Revenue & Expenditure Budget Comparison Reports.

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 4, 2020 here with regards
to reconsideration of Sewer Basin 10A-3 & 4
density restriction.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to reconsider the original request made by the department on June 4, 2020 to restrict the development in Basins 10A-3 & 10A-4 to those allowable for a Commercial Zoning at 2.5 single family units per acre or 650 gallons per day per acre. Council had approved the request with an amendment to include a grandfather clause and three readings at the planning level. Mr. Martin felt that, due to his participating in the meeting telephonically at the last session, he had been misunderstood regarding his position on the amendments that had been made to staff's original restriction request.

Mr. Martin made a motion to have Council reconsider the request. Mr. Wade seconded the motion and all members of the Council present voted "Aye".

Mr. Martin made a motion to approve the original development restrictions recommended by the Water Resources Department. Mr. Wade seconded the motion and all members of the Council present voted "Aye" except Mr. LaLance who voted "Nay".

The City Recorder/Finance Director announced that there was not any licensing nor any statements to be considered.

There being no further business, Councilman Shacklett adjourned this meeting at 11:55 a.m.

_____
MADELYN SCALES HARRIS – VICE-MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

June 18, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, June 18, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris and City Attorney Adam Tucker participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Chris Griffith, Executive Director/
Public Infrastructure/City Engineer
Raymond Hillis, Executive Director/
Public Works
Sam Huddleston, Executive Director/
Development Services
Angela Jackson, Executive Director/
Community Services
David Ives, Deputy City Attorney
Greg McKnight, Planning Director
Robert Holtz, Building and Codes Director
Ralph Ringstaff, Interim Director of Schools
Matthew Blomeley, Assistant Planning Director
Gary Anderson, Assistant Superintendent of Schools
Joshua Miller, Administrative Assistant

Vice-Mayor Scales Harris commenced the meeting with a prayer followed by Mayor McFarland leading the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. FY 2020 Budget Amendments (Finance)
2. Amendments to PSAs for Tennis Instructors (Parks & Recreation)
3. Amendment to Grant Contract between GNRC and City (Parks & Recreation)
4. Mandatory Referral for Abandonment of Water Line Easement along West Northfield Boulevard (Planning)
5. Contract Extension – Annual Firing Range Membership (Police)
6. Contract Approval for Vehicle Equipment Purchase (Police)
7. Contract Extension - Laundry and Dry-Cleaner Services (Police/MFRD)
8. Contract with TDOT for Improve Act Funds (Transportation)
9. Contract Amendment with TripSpark for System Supply and Support Agreement (Transportation)

(Insert letters from Parks & Recreation (2), Planning,
Police (2), MFRD, & Transportation (2) here.)

Mayor McFarland announced that Item No. 1 on the Consent Agenda, Fiscal Year 2020 Budget Amendments, was to be pulled and heard under new business as RESOLUTION 20-R-11.

Mr. Smotherman made a motion to approve the amended Consent Agenda. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 18, 2020 here regarding rezoning approximately
1.44 acres located at the northeast corner of Gold Valley Drive and
North Rutherford Boulevard [2019-435].)

An ordinance, entitled "ORDINANCE 20-OZ-14 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 1.44 acres located at the northeast corner of Gold Valley Drive and North Rutherford Boulevard from Planned Commercial Development (PCD) District to Planned Residential Development (PRD) District (Rutherford Corner PRD); Masterson Homes, Inc., applicant [2019-435]," which passed first reading on June 4, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Wade, seconded by Mr. Martin. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-14 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 18, 2020 regarding rezoning approximately
30 acres located along North Thompson Lane, West College
Street, and West Northfield Boulevard [2020-403].)

An ordinance, entitled "ORDINANCE 20-OZ-13 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 30 acres along North Thompson Lane, West

College Street, and West Northfield Boulevard as Planned Signage Overlay (PSO) District; New Vision Baptist Church, applicant [2020-403]," which passed first reading on June 4, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. LaLance, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-13 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 18, 2020 here with regards to amending the Westlawn PUD for approximately 10.5 acres located along Veterans Parkway and Shores Road [2020-404].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-17 adopted by the City Council on May 21, 2020, to consider a proposed amendment to approximately 10.5 acres in the Planned Unit Development (PUD) District (Westlawn PUD) located along Veterans Parkway; Saint Thomas Rutherford, applicant [2020-404]. Notice of said public hearing was published in the June 2, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to approve the rezoning and introduced Mr. Gordon Ferguson, St. Thomas Rutherford Hospital, and Mr. David Hendrickson, Ragan-Smith Associates, Inc., who each gave a brief presentation of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed amendment of approximately 10.5 acres in the Planned Unit Development (PUD) District (Westlawn PUD) located along Veterans Parkway, step forward to the podium.

There was no one present who wished to speak for or against the proposed amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-17 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 10.5 acres in the Planned Unit Development (PUD) District (Westlawn PUD) located along Veterans Parkway; Saint Thomas Rutherford, applicant [2020-404]," was read to the Council and offered for passage on first reading upon motion made by Mr. Wade, seconded by Mr. Smotherman. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 18, 2020 here with regards to scheduling public hearings for rezoning along South Maney Avenue (Maney Station PUD) and expanding the uses permitted for property along North Thompson Lane (North Thompson Place PUD/Gateway Village.)

The following RESOLUTION 20-R-PH-20 was read to the Council and offered for adoption upon motion made by Mr. Smotherman, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-20 here to schedule a public hearing for July 23, 2020 to consider a proposed amendment to rezone approximately 0.47 acres along South Maney Avenue, north of East Castle Street, from Highway Commercial (CH) District and City Core Overlay (CCO) to Planned Unit Development (PUD) District (Maney Station PUD) and City Core Overlay (CCO); Saint Thomas Rutherford, applicant [2020-408].)

The following RESOLUTION 20-R-PH-21 was read to the Council and offered for adoption upon motion made by Mr. Smotherman, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance

Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-21 here to schedule a public hearing for July 23, 2020 to consider a proposed amendment to approximately 5.09 acres in the North Thompson Place Planned Unit Development (PUD) District (also known as Gateway Village) located along North Thompson Lane; Swanson Development, LP, applicant [2020-406].)

The following letter from the Assistant Superintendent of Schools was presented to the Council:

(Insert letter dated June 18, 2020 here with regards to Fiscal Year 2020 Budget Amendments.)

The following RESOLUTION 20-R-11 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. Martin. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-11 here amending the 2019-2020 Murfreesboro City Schools Budget (2nd Amendment).)

The following letter from the Parks and Recreation Director was presented to the Council:

(Insert letter dated June 18, 2020 here regarding employment of Kennedy Ryann Martin as lifeguard for Murfreesboro Parks & Recreation Department.)

Mrs. Angela Jackson, Executive Director of Community Services, presented the request to approve the employment of Kennedy Ryann Martin, daughter of Council Member Ronnie Martin, as a lifeguard for the Murfreesboro Parks & Recreation Department.

Vice-Mayor Scales Harris made a motion to approve the employment of Kennedy Ryann Martin. Mr. LaLance seconded the motion and all members of the Council voted "Aye" except Mr. Martin who voted "Abstain".

The following letter from the Executive Director of Public Works was presented to the Council:

(Insert letter dated June 18, 2020 here with regards
to approval of State Maintenance Contract for
FY 2020-2021.)

Mr. Raymond Hillis, Executive Director of Public Works, presented the request of the Street Department to approve the Fiscal Year 2020-2021 State Maintenance Contract with TDOT which has a maximum reimbursement amount of $341,261.

Mr. Shacklett made a motion to approve the State Maintenance Contract with TDOT for Fiscal Year 2020-2021. Vice-Mayor Scales Harris seconded the motion and all members of the Council voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated June 18, 2020 here with regards to Beer Permit
Application for Los Barriles Mexican Grill at 2395 New
Salem Highway, Suite J.)

Mr. LaLance made a motion to approve the Beer Permit for Los Barriles Mexican Grill, 2395 New Salem Highway, Suite J (New Location). Mr. Martin seconded the motion and all members of the Council voted "Aye".

Mayor McFarland announced that the appointment to the Rutherford County Library System Board of Directors was to be deferred from this meeting and heard at a later time.

Upon recommendation of Mayor McFarland, Mr. LaLance made a motion to reappoint Mr. Jason Schmitt (term expires April 30, 2023) to the Cable Television Commission; reappoint Mr. Tim Tipps (term expires June 30, 2023) and Mr. Davis Young (term expires June 30, 2023) to the Board of Zoning Appeals; reappoint Mr. Gilbert Backlund (term expires June 30, 2025), Ms. Deborah Belcher (term expires June 30, 2025), Mr. Bill Jakes (term expires June 30, 2025) and Ms. Marimae White (term expires June 30, 2025) to the Historic Zoning Commission; and reappoint Ms. Jennifer Garland (term expires June 30, 2023) and Mr. Warren Russell (term expires June 30, 2023) to the Planning Commission. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following statement was presented to the Council with the recommendation of the City Manager and City Recorder/Finance Director that its payment be approved:

From General Fund:

Motlow State Community College	$ 31,200.00

Mr. Shacklett made a motion to approve payment of the statement as recommended by the City Manager and City Recorder/Finance Director. Mr. Martin seconded the motion and all members of the Council voted "Aye".

There being no further business, Mayor McFarland adjourned this meeting at 6:33 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

June 25, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, June 25, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Chris Griffith, Executive Director/
Public Infrastructure/City Engineer
Sam Huddleston, Executive Director/
Development Services
David Ives, Deputy City Attorney
Erin Tucker, Budget Director
Pam Russell, Human Resources Director
Joey Smith, Solid Waste Director
P.D. Mynatt, M.E.D. General Manager
Matthew Blomeley, Assistant Planning Director
Joshua Miller, Administrative Assistant

Council Member Rick LaLance commenced the meeting with a prayer followed by the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. Contract with Quantum Spatial and Associated Federal Grant (Airport)
2. FY 2020 City Manager Approved Budget Amendments (Finance)
3. Purchase of New Garbage Trucks (Solid Waste)
4. Purchase of New Garbage Carts (Solid Waste)
5. FY 2021 Contract with RTA for Provision of Transit Services (Transportation)

(Insert letters from Airport, Finance, Solid Waste (2)
& Transportation here.)

Mr. LaLance made a motion to approve the Consent Agenda. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated June 25, 2020 here regarding amending the Westlawn
PUD on approximately 10.5 acres located along Veterans Parkway
and Shores Road [2020-404].)

An ordinance, entitled "ORDINANCE 20-OZ-17 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 10.5 acres in the Planned Unit Development (PUD) District (Westlawn PUD) located along Veterans Parkway; Saint Thomas Rutherford, applicant [2020-404]," which passed first reading on June 18, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Smotherman, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-17 here.)

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated June 25, 2020 here with regards to scheduling a public hearing for establishing a Special Sanitary Sewer Assessment District (SSSAD) for properties in and adjoining the Shelton Square Subdivision.)

The following RESOLUTION 20-R-PH-22 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Martin. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-22 here to schedule a public hearing for July 23, 2020 with respect to formation of a special assessment district, known as the Shelton Square Sanitary Sewer Special Assessment District.)

The following letter from the City Manager was presented to the Council:

(Insert letter dated June 25, 2020 here with regards to amendment of Asset Purchase and Sale Agreement with Middle Tennessee Electric Membership Corporation.)

The following RESOLUTION 20-R-18 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Martin. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-18 here approving the interfund transfer of real property and fiber connection assets from the Murfreesboro Electric Department Enterprise Fund to the City's General Fund.)

The following letter from the Executive Director of Public Infrastructure/City Engineer was presented to the Council:

(Insert letter dated June 25, 2020 here with regards to Cherry Lane II – Professional Services Agreement for Environmental Permitting.)

Mr. Chris Griffith, Executive Director of Public Infrastructure/City Engineer, presented the request of the Engineering Department to approve the Professional Services Agreement with Griggs & Maloney, Inc. for Cherry Lane Phase II Transportation Alternatives Analysis and Section 401/404 Environmental Permitting in the amount of $68,750.

Mr. Martin made a motion to approve the Professional Services Agreement with Griggs & Maloney in the amount of $68,750. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated June 18, 2020 here with regards to Special Event Permit Applications for Oaklands Association, Inc. at 900 & 901 N. Maney Avenue on 7/10/20, 9/25/20 & 12/4/20.)

Mr. Martin made a motion to approve the Special Event Permit for Oaklands Association, Inc. at 900 & 901 North Maney Avenue on 7/10/20, 9/25/20 and 12/4/20. Mr. Wade seconded the motion and all members of the Council voted "Aye".

Upon recommendation of Mayor McFarland, Mr. Martin made a motion to reappoint Mr. Joseph Duncan (term expires June 30, 2023) to the Board of Gas Examiners; appoint Ms. Stephanie Davis (term expires June 30, 2024), replacing Mr. Eddie Davis, Mr. Tim Barnes (term expires June 30, 2024), replacing Mr. Bart Ring, Mr. Jason Griffin (term expires June 30, 2024), replacing Mr. Steve Morris, and Mr. Mike Bauer (term expires June 30, 2024), replacing Mr. Steve Simmons to the Board of Gas Examiners; and to appoint Ms.

Lynette Ingram to the Rutherford County Library System Board of Directors to fill the vacancy left by Mr. Jimmy L. Tyson (term expires June 2023). Mr. Wade seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were not any statements to be considered.

Under other business, the following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated June 25, 2020 here with regards
to CT – 0253 Report of New Debt Obligation.)

Mrs. Melissa Wright, City Recorder/Finance Director, presented information regarding the bond issuance to refund City and Water Resources variable rate debt in forms CT-0253 2020A and CT-0253 2020B. Mrs. Wright announced that, as required by State Statute, the information was being presented at a public meeting and that no vote was needed.

There being no further business, Mayor McFarland adjourned this meeting at 6:27 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

July 9, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in special session in the Council Chambers at City Hall at 5:30 p.m. on Thursday, July 9, 2020, with Councilmember Bill Shacklett present and presiding and with the following Council Members present and in attendance, to wit:

Rick LaLance
Ronnie Martin
Eddie Smotherman
Kirt Wade

Mayor McFarland and Vice-Mayor Scales Harris were absent and excused from this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Joshua Miller, Administrative Assistant

Councilmember Shacklett announced that this special meeting is being held to hear from the citizens of Murfreesboro. He reviewed the procedures for speaking and invited those present to come forward to the lectern.

Mr. Eric Hughes, Palmer Drive, presented Council with a request for accountability regarding the use of tear gas against protesters on May 30th, 2020. He also asked for the City to be held accountable for the use of an unjust curfew to break up protests, a need for explanation regarding intel City officials may have had prior to the protests, and for the Council to address the confederate monuments around the square.

There were no others present who wished to speak.

Councilmember Shacklett adjourned this session of the public comment meeting at 5:35 p.m.

_____
BILL SHACKLETT - COUNCILMEMBER

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

July 9, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, July 9, 2020, with Council Member Bill Shacklett present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris participated telephonically at this meeting and Mayor Shane McFarland was absent and excused.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Mark Foulks, Chief of Fire & Rescue
Greg McKnight, Planning Director
Robert Holtz, Building and Codes Director
Ralph Ringstaff, Interim Director of Schools
Gary Anderson, Assistant Superintendent of Schools
Chad Gehrke, Airport Manager
Joshua Miller, Administrative Assistant

Council Member Ronnie Martin commenced the meeting with a prayer followed by the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. Fiscal Year 2020 City Manager Approved Budget Amendments (Finance)
2. Community Investment Program Funds Transfer (Finance)
3. Asphalt Purchases Report (Water Resources)
4. One Year Contract Extension of ADS Professional Services (Water Resources)
5. Boundary Revisions for Water Service with Consolidated Utility District (Water Resources)
6. Renewal of Memorandum of Understanding with MTSU (Water Resources)

(Insert letters from Finance (2) & Water Resources (4) here.)

Mr. Wade made a motion to approve the Consent Agenda. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The following letter from the Building and Codes Director was presented to the Council:

(Insert letter dated July 9, 2020 here with regards to establishing
a Commercial Construction Burn and Bonfire Permit.)

The following RESOLUTION 20-R-19 was read to the Council and offered for adoption upon motion made by Vice-Mayor Scales Harris, seconded by Mr. Martin. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Kirt Wade
Bill Shacklett

Nay: Rick LaLance
Eddie Smotherman

(Insert RESOLUTION 20-R-19 here setting the amount of Burn Permit Fees for Commercial Burnings and Bonfires as authorized by Article 12 of the Murfreesboro City Code.)

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated July 9, 2020 here regarding Budget Amendment Ordinance 20-O-23.)

An ordinance, entitled "ORDINANCE 20-O-23 amending the 2020-2021 Budget (1st Amendment)," was read to the Council and offered for passage on first reading upon motion made by Mr. Wade, seconded by Mr. Martin. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Eddie Smotherman
Kirt Wade
Bill Shacklett

Nay: None

The following letter from the Interim Director of Schools was presented to the Council:

(Insert letter dated July 9, 2020 here with regards to staff and student school technology purchase from Dell, Inc.)

Mr. Ralph Ringstaff, Interim Director of Schools, presented the Council with the request of the City Schools to approve the purchase of computers for staff and students from Dell, Inc. using the Wilson County Board of Education Dell Contract for $874,734.

Mr. Martin made a motion to approve the computer purchase in the amount of $874,734. Mr. Wade seconded the motion and all members of the Council present voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 9, 2020 here with regards to Water Storage Tank Actuator Modifications.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve the purchase of equipment components for existing Rotork actuators at each of the department's water storage tanks from Eco-Tech, Inc. for $24,300.

Mr. LaLance made a motion to approve the equipment purchase from Eco-Tech, Inc. in the amount of $24,300. Mr. Wade seconded the motion and all members of the Council present voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 9, 2020 here with regards
to West Fork Stones River Bioassessment and
J. Percy Priest Stratification Study.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve Amendment No. 7 to SSR Task Order 09-47-001.2 to allow for continued biological sampling of the West and East Fork Stones River and Stratification Study of J. Percy Priest Reservoir for $108,800.

Mr. LaLance made a motion to approve Amendment No. 7 to SSR Task Order 09-47-001.2 in the amount of $108,800. Mr. Smotherman seconded the motion and all members of the Council present voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 9, 2020 here with regards
to Overall Creek Pumping Station Upgrade
Additions.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve Amendment No. 1 to SSR Task Order 18-41-009.0 to allow for upgrades for soft starters removal and replacement, control panel upgrades, and additional engineering services at Overall Creek Pumping Station.

Mr. LaLance made a motion to approve Amendment No. 1 to SSR Task Order 18-41-009.0 for additional upgrades at a total cost of $173,681, revising the project cost to $559,373. Mr. Wade seconded the motion and all members of the Council present voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated July 9, 2020 here with regards to Beer Permit
Applications for Irene's Singapore Kitchen at 120 Eleanor Way,
Suite A and Crab Fever at 1720 Old Fort Parkway, #C170.)

Mr. Wade made a motion to approve the Beer Permits for Irene's Singapore Kitchen, 120 Eleanor Way, Suite A (New Location) and Crab Fever, 1720 Old Fort Parkway, #C170

(Ownership & Name Change). Mr. Martin seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director announced that there were not any statements nor any board or commission appointments to be considered.

Under other business, the following letter from the Airport Manager was presented to the Council:

(Insert letter dated July 9, 2020 here with regards
to Eastern Aviation Fuels Contract Extension.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve a one-year contract extension with Eastern Aviation Fuels.

Mr. Smotherman made a motion to approve the contract extension with Eastern Aviation Fuels. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

Mr. Darren Gore, Assistant City Manager, stated that he needed to clarify that in Item No. 10 on the agenda, the memo he submitted stated the amount of $24,300 for the actuators but the quoted price is actually $25,925.96 and that the agreement will be subject to legal approval.

Mr. Smotherman made a motion to approve the equipment purchase from Eco-Tech, Inc. for the corrected amount of $25,925.96, subject to legal approval. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

Council engaged in discussion regarding the legality and ability of the Council to mandate mask wearing in the City and amongst the City's employees. Council decided to revisit the matter at the next workshop session when the Mayor would be present.

There being no further business, Council Member Bill Shacklett adjourned this meeting at 7:00 p.m.

_____
MADELYN SCALES HARRIS – VICE-MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

July 15, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 11:30 a.m. on Wednesday, July 15, 2020 in the Community Room at Murfreesboro Police Headquarters, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Michael Bowen, Chief of Police
Mark Foulks, Chief of Fire & Rescue
Erin Tucker, Budget Director
Chad Gehrke, Airport Manager
Gary Anderson, Assistant Superintendent of Schools
Matthew Blomeley, Assistant Planning Director
Joshua Miller, Administrative Assistant

Mayor McFarland commenced the meeting with a prayer followed by the Pledge of Allegiance.

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated July 15, 2020 here with regards to scheduling public hearings for an amendment to the Victory Station PUD and proposed amendments to the Zoning Ordinance Section 26: Off-Street Parking, Queuing, and Loading.)

The following RESOLUTION 20-R-PH-25 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-25 here to schedule a public hearing for August 20, 2020 to consider a proposed amendment to approximately 32.6 acres in the Planned Unit Development (PUD) District located south of Franklin Road and east of Rucker Lane (Victory Station PUD) [2020-407]; Swanson Development, LP, applicant.)

The following RESOLUTION 20-R-PH-26 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-PH-26 here to schedule a public hearing for August 20, 2020 with respect to amending the Murfreesboro City Code Appendix A-Zoning, Section 26, regarding off-street parking, queuing, and loading [2020-803]; City of Murfreesboro Planning Staff, applicant.)

An item for other business was presented by the Airport Manager at this time:

(Insert letter dated July 15, 2020 here with regards to annual State Airport Maintenance Grant.)

Mr. Chad Gehrke, Airport Manager, presented the request to approve the annual State Airport Maintenance Grant to be used for maintenance and repairs, airfield lighting, and mowing equipment.

Mr. LaLance made a motion to approve the annual State Maintenance Grant. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

The following letter from Mayor McFarland was presented to the Council:

(Insert letter dated July 15, 2020 here with regards to designation of individuals to serve on the MTEMC Board of Directors, the Board's Nomination Committee, and the Sharing Change Foundation.)

Mayor Shane McFarland presented his recommendation to appoint Mr. Ross Bradley and Dr. Shawn Brown to the MTEMC Board of Directors Interim Board Representatives; appoint Mr. Richard Stone to the MTEMC Board of Directors Nominating Committee; and appoint Ms. Irene Pitts-McDonald to the Sharing Change Board of Directors.

Mr. Wade made a motion to approve the appointments presented by Mayor McFarland, contingent upon information from staff regarding when the MTEMC elections will be held. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from Mayor McFarland was presented to the Council:

(Insert letter dated July 15, 2020 here with regards to dissolution of the Power Board and appointments to the MED Pension Committee.)

Mayor Shane McFarland presented his recommendation to dissolve the Power Board and appoint Mr. Craig Tindall, Mrs. Melissa Wright and Mr. Jackie Whitaker (Plan Participant) to the MED Pension Committee. Council engaged in discussion regarding the appointments, and it was decided that Mr. Ross Bradley and Mrs. Lori Williams (Plan Participant) should be added to the MED Pension Committee, contingent on their acceptance of the appointment.

Mr. Wade made a motion to approve the Mayor's recommendation to dissolve the Power Board and approve appointments to the MED Pension Committee. Mr. Martin seconded the motion and all members of the Council voted "Aye".

The following letter from the City Manager was presented to the Council:

(Insert letter dated July 15, 2020 here with regards to
Murfreesboro Electric Department Sale Proceeds.)

Mr. Craig Tindall, City Manager, presented a spreadsheet detailing the estimated MTEMC transaction proceeds and asked Council for direction regarding the use of the MED sale proceeds. Mr. Wade addressed Council and staff regarding rumors that he had been advocating to use the MED proceeds for a specific project and asked for it to be on the record that he had done no such thing. Mayor McFarland explained to Council that he believed that there were three potential plans regarding the use of the MED funds: preserving all the proceeds; spending most of the proceeds on CIP projects; or a hybrid plan where a portion of the proceeds would be preserved and the other portion used for CIP projects. Mr. James L. Murphy III, Bradley Arant Boult Cummings, LLP, presented Council with financial options the City could adopt to best conserve the funds. Council engaged in discussion regarding the three proposed plans and reached a consensus that they would like staff to research options regarding the hybrid plan.

The following letter from the Budget Director was presented to the Council:

(Insert letter dated July 15, 2020 here with
regards to May 2020 Dashboard packet.)

Mrs. Erin Tucker, Budget Director, presented the May 2020 Dashboard update which included Financial, Building & Codes, Risk Management, and Construction Data. She also provided Council with Sales Tax Revenues, Solid Waste Revenues, State Revenue Collections, City Schools Cash Flow Statements, and Revenue & Expenditure Budget Comparison Reports.

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated July 15, 2020 here with regards to Beer Permit
Applications for Lucky Thai at 2705 Old Fort Parkway, Suite N
and Murfreesboro Axe at 211 W Main Street.)

Mr. Martin made a motion to approve the Beer Permits for Lucky Thai, 2705 Old Fort Parkway, Suite N (New Location) and Murfreesboro Axe, 211 West Main Street (Ownership Change). Mr. Smotherman seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were not any statements to be considered.

Council Member Bill Shacklett gave a summary from the City School Board meeting regarding the plan for Murfreesboro City Schools reopening during the Coronavirus pandemic.

There being no further business, Mayor McFarland adjourned this meeting at 12:58 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

July 23, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:00 p.m. on Thursday, July 23, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Angela Jackson, Executive Director/
Community Services
Greg McKnight, Planning Director
Pam Russell, Human Resources Director
Ralph Ringstaff, Interim Director of Schools
Helen Glynn, Assistant Director Community Development
Joshua Miller, Administrative Assistant

Council Member Bill Shacklett commenced the meeting by introducing Pastor James McCarroll, Jr. of First Baptist Church Murfreesboro to lead a prayer followed by the Pledge of Allegiance.

Mayor McFarland issued a Proclamation declaring July 23, 2020 as a day to honor and recognize the Power Board and presented each member of the board with a plaque to thank them for their years of service.

The Consent Agenda was presented to the Council for approval:

1. CDBG Consolidated Plan Extension request to HUD (Community Development)
2. Contract with Rice Construction for the replacement of the City Hall internal gutter system (Facilities)
3. Professional Services Agreements with Tennis Instructors (Parks & Recreation)
4. Consider Contract with Griggs and Maloney for On-call Plans Review Services (Planning)
5. School Patrol Service Contracts for Private Schools (Police)
6. Transit Agency Safety Plan (Transportation)

(Insert letters from Community Development,
Facilities, Parks & Recreation, Planning,
Police & Transportation here.)

Mr. Wade made a motion to approve the Consent Agenda. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Human Resources Director was presented to the Council:

(Insert letter dated July 23, 2020 here with regards
to Safety Partners Grant Program.)

The following RESOLUTION 20-R-20 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

(Insert RESOLUTION 20-R-20 here authorizing the City of Murfreesboro to
participate in Public Entity Partners "Safety Partners" Matching
Grant Program.)

The following letter from the City Manager was presented to the Council:

(Insert letter dated July 23, 2020 here regarding amendment
to City Code regarding Discharging Firearms.)

An ordinance, entitled "ORDINANCE 20-O-27 amending the Murfreesboro City Code, Chapter 21, Offenses and Miscellaneous Provisions, Section 21-44, Weapons – Discharging Firearms, Etc.," was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Vice-Mayor Scales Harris. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated July 23, 2020 here with regards to rezoning
approximately 0.47 acres located along South Maney Avenue,
south of East State Street and north of East Castle
Street [2020-408].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-20 adopted by the City Council on June 18, 2020, to consider a proposed amendment to approximately 0.47 acres along South Maney Avenue, north of East Castle Street and south of East State Street, from Highway Commercial (CH) District and City Core Overlay (CCO) to Planned Unit Development (PUD) District (Maney Station PUD) and City Core Overlay (CCO); Rhett Kelton, applicant [2020-408]. Notice of said public hearing was published in the July 7, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Greg McKnight, Planning Director, presented the unanimous recommendation of the Planning Commission to approve the proposed amendment and introduced Mr. Clyde Rountree, Huddleston-Steel Engineering, Inc., and Mr. Brian Oliver, Oliver Architecture, P.C., who each gave brief presentations of the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed amendment to approximately 0.47 acres along South Maney Avenue, north of East Castle Street and south of East State Street, from Highway Commercial (CH) District and City Core Overlay (CCO) to Planned Unit Development (PUD) District (Maney Station PUD) and City Core Overlay (CCO), step forward to the podium.

There was no one present who wished to speak for or against the proposed amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Mr. Rick LaLance voiced his concerns with the project's density and the fact that, if this project was approved with higher than allowed density, the Council would be establishing a precedent for other high-density projects to be approved.

An ordinance, entitled "ORDINANCE 20-OZ-20 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.47 acres along South Maney Avenue, north of East Castle Street, from Highway Commercial (CH) District and City Core Overlay (CCO) to Planned Unit Development (PUD) District (Maney Station PUD) and City Core Overlay (CCO); Rhett Kelton, applicant [2020-408]," was read to the Council and offered for passage on first reading upon motion made by Mr. Martin, seconded by Mr. Smotherman. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Bill Shacklett

Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: Rick LaLance

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated July 23, 2020 here with regards to amending the Gateway Village PUD on approximately 5.09 acres located along North Thompson Lane, north of Medical Center Parkway [2020-406].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-21 adopted by the City Council on June 18, 2020, to consider a proposed amendment to approximately 5.09 acres in the North Thompson Place Planned Unit Development (PUD) District (also known as Gateway Village) located along North Thompson Lane, north of Medical Center Parkway; Swanson Development, LP, applicant [2020-406]. Notice of said public hearing was published in the July 7, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Greg McKnight, Planning Director, presented the unanimous recommendation of the Planning Commission to approve the proposed amendment and introduced Mr. Rob Molchan, SEC, Inc., who gave a brief presentation on the proposed plans for the development.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed amendment to approximately 5.09 acres in the North Thompson Place Planned Unit Development (PUD) District (also known as Gateway Village) located along North Thompson Lane, north of Medical Center Parkway, step forward to the podium.

Ms. Kara Kirk, Swanson Developments, stated that she was working on this project with her uncle and was ready to answer any questions from Council.

Mr. Joe Swanson, Jr., Swanson Developments, voiced his approval for the project and stated his desire to answer any questions the Council may have.

There was no one else present who wished to speak for or against the proposed amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 20-OZ-21 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 5.09 acres in the

North Thomson Place Planned Unit Development (PUD) District (also known as Gateway Village) located along North Thompson Lane, as indicated on the attached map; Swanson Development, LP, applicant [2020-406],” was read to the Council and offered for passage on first reading upon motion made by Mr. Martin, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 23, 2020 here with regards to Shelton Square Special Sewer Assessment District (SSSAD).)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 20-R-PH-22 adopted by the City Council on June 25, 2020, to consider the formation of a sanitary sewer special assessment district, known as the Shelton Square Sanitary Sewer Special Assessment District. Notice of said public hearing was published in the July 7, 2020 issue of the local newspaper as follows:

(Insert notice here.)

Mr. Darren Gore, Assistant City Manager, presented the proposed plans for the sanitary sewer special assessment district.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed Shelton Square Sanitary Sewer Special Assessment District, step forward to the podium.

There was no one present who wished to speak for or against the sanitary sewer special assessment district and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled “ORDINANCE 20-O-22 amending Chapter 33 of the Murfreesboro City Code by creating Section 33-215, establishing a sanitary sewer special assessment district to be known as the Shelton Square Sanitary Sewer Special Assessment District,” was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Mr. Martin. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett

Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

The following letter from the Assistant Community Development Director was presented to the Council:

(Insert letter dated July 23, 2020 here with regards to amending the Community Development 2019-2020 Action Plan for CDBG CV-19 funds.)

Ms. Helen Glynn, Assistant Community Development Director, presented the request of the Community Development Department to approve the amendment to the current 2019-2020 CDBG COVID-19 Action Plan to allow for an additional $521,501 in funding from HUD.

Mr. Shacklett made a motion to approve the amendment for an additional $521,501 to the current 2019-2020 CDBG COVID-19 Action Plan. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Interim Director of Schools was presented to the Council:

(Insert letter dated July 23, 2020 here with regards to Wireless Equipment Purchase from CDW-G, LLC.)

Mr. Ralph Ringstaff, Interim Director of Schools, presented the request of the City Schools to approve the purchase of access points and switches for wireless access point upgrades from CDW-G, LLC for $184,163.

Mr. Shacklett made a motion to approve the equipment purchase from CDW-G in the amount of $184,163. Mr. Martin seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there was not any licensing to be considered.

Upon recommendation of Mayor McFarland, Mr. Wade made a motion to reappoint Mr. Richie Bolin (term expires June 30, 2022); Mr. Alton Fann (term expires June 30, 2022); Mr. Phillip Lim (term expires June 30, 2022); Mr. Carl Peas (term expires June 30, 2023); Mr. Michael McCann (term expires June 30, 2023); Ms. Eva Warden (term expires June 30, 2024); and Mr. Tony Ogles (term expires June 30, 2024) to the Board of Electrical Examiners. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were not any statements to be considered for approval.

Mr. Adam Tucker, City Attorney, asked Council for guidance regarding a lawsuit against the City in which the City had obtained outside legal services. He questioned if the payments should be from the Water Resources Fund or the General Fund.

Vice-Mayor Scales Harris made a motion to pay outside legal fees up to $25,000 from the General Fund with the understanding that the City Attorney would come back before the Council for approval once the $25,000 limit was reached. Mr. LaLance seconded the motion and all members of the Council voted "Aye" except Mr. Smotherman and Mayor McFarland who voted "Nay".

Mayor McFarland reminded everyone of "Rutherford County Counts" and to be sure to participate and complete the 2020 Census.

Mayor McFarland gave a brief update on the County-wide mask mandate.

There being no further business, Mayor McFarland adjourned this meeting at 7:12 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

July 30, 2020

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, consistent with the Governor's order, members of the City Council are participating by electronic means as has been determined necessary to protect public health, safety, and welfare in light of the coronavirus pandemic at 6:02 p.m. on Thursday, July 30, 2020, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade

Vice-Mayor Scales Harris participated telephonically at this meeting.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Melissa Wright, City Recorder/
Finance Director
Gary Whitaker, Assistant City Manager
Darren Gore, Assistant City Manager
Sam Huddleston, Executive Director/
Development Services
Angela Jackson, Executive Director/
Community Services
Michael Bowen, Chief of Police
Matthew Blomeley, Assistant Planning Director
Helen Glynn, Assistant Director Community Development
Joshua Miller, Administrative Assistant

Council Member Eddie Smotherman commenced the meeting with a prayer followed by the Pledge of Allegiance.

The following letter from the City Manager was presented to the Council:

(Insert letter dated July 30, 2020 here regarding amendment
to City Code regarding Discharging Firearms.)

An ordinance, entitled "ORDINANCE 20-O-27 amending the Murfreesboro City Code, Chapter 21, Offenses and Miscellaneous Provisions, Section 21-44, Weapons – Discharging Firearms, Etc.," which passed first reading on July 23, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-27 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to rezoning approximately 0.47 acres located along South Maney Avenue, south of East State Street and north of East Castle Street [2020-408].)

An ordinance, entitled "ORDINANCE 20-OZ-20 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.47 acres along South Maney Avenue north of East Castle Street from Highway Commercial (CH) District and City Core Overlay (CCO) to Planned Unit Development (PUD) District (Maney Station PUD) and City Core Overlay (CCO); Rhett Kelton, applicant [2020-408]," which passed first reading on July 23, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Shacklett, seconded by Mr. Smotherman. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: Rick LaLance

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-20 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to amending the Gateway Village PUD on approximately 5.09 acres located along North Thompson Lane, north of Medical Center Parkway [2020-406].)

An ordinance, entitled "ORDINANCE 20-OZ-21 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 5.09 acres in the North Thomson Place Planned Unit Development (PUD) District (also known as Gateway Village) located along North Thompson Lane, as indicated on the attached map; Swanson Development, LP, applicant [2020-406]," which passed first reading on July 23, 2020, was read to the Council and offered for passage on second and final reading upon motion made

by Mr. Martin, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-OZ-21 here.)

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to Shelton Square Special Sanitary Sewer Assessment District (SSSAD).)

An ordinance, entitled "ORDINANCE 20-O-22 amending Chapter 33 of the Murfreesboro City Code by creating Section 33-215, establishing a sanitary sewer special assessment district to be known as the Shelton Square Sanitary Sewer Special Assessment District," which passed first reading on July 23, 2020, was read to the Council and offered for passage on second and final reading upon motion made by Mr. Shacklett, seconded by Mr. Wade. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Eddie Smotherman
Kirt Wade
Shane McFarland

Nay: None

Said ordinance so passed on second and final reading is as follows:

(Insert ORDINANCE 20-O-22 here.)

The following letter from the Assistant Community Development Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to The Journey Home CDBG Property Acquisition of 433 S. Kings Highway.)

Ms. Helen Glynn, Assistant Community Development Director, presented the request of the Community Development Department to approve a $100,000 CDBG grant and Subrecipient Agreement with The Journey Home for property acquisition at 433 South Kings Highway.

Mr. Martin made a motion to approve the CDBG grant in the amount of $100,000 and execute a Subrecipient Agreement with The Journey Home. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant Community Development Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to Greenhouse Ministries CDBG Property Acquisition of 222 S. Bilbro Avenue.)

Ms. Helen Glynn, Assistant Community Development Director, presented the request of the Community Development Department to approve a $120,000 CDBG grant and Subrecipient Agreement with Greenhouse Ministries for property acquisition at 222 South Bilbro Avenue.

Mr. Martin made a motion to approve the CDBG grant in the amount of $120,000 and execute a Subrecipient Agreement with Greenhouse Ministries. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Chief of Fire & Rescue was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to Expansion of Scope of Services approval.)

Mr. Mark Foulks, Chief of Fire & Rescue, presented the request of the Fire & Rescue Department to approve the expansion of services agreement provided by TargetSolutions Learning, LLC for $25,737.

Mr. Wade made a motion to approve the agreement with TargetSolutions Learning, LLC in the amount of $25,737 for expansion of services to include management of reserve apparatuses at three locations. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Chief of Police was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to 2020 Edward Byrne Memorial Justice Assistance Grant Application (JAG) Program and MOU with RCSO.)

Mr. Michael Bowen, Chief of Police, presented the request of the Police Department to approve the Memorandum of Understanding between the City and Rutherford County Sherriff's Office for the submission of the 2020 JAG Program which will result in the City receiving $31,572.

Mr. Smotherman made a motion to approve the application for the 2020 JAG Program and enter a MOU with RCSO for sharing of grant funds. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to
Sewer Allocation Variance – Panda Express.)

Mr. Darren Gore, Assistant City Manager, presented the request of the Water Resources Department to approve Panda Express's Variance request to allow an additional 2.3 sfu's at 2122 Memorial Boulevard. Mr. Gore announced that Panda Express would pay approximately $16,000 to the department in water and sewer connection fees.

Mr. Wade made a motion to approve the variance request for Panda Express. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the City Manager was presented to the Council:

(Insert letter dated July 30, 2020 regarding amendment
to Compensation Policy 5003 (Temp-1).)

Mr. Craig Tindall, City Manager, presented the request to approve an amendment to the temporary emergency Compensation Policy to allow the Chiefs to balance the requirements of addressing the pandemic with the need to maintain public safety.

Mr. LaLance made a motion to approve the amendment to Policy 5003 (Temp-1). Mr. Martin seconded the motion and all members of the Council voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to Beer Permit
Application for Silo's Bar & Grill at 1453 Silohill Lane.)

Mr. Martin made a motion to approve the Beer Permit for Silo's Bar & Grill, 1453 Silohill Lane (Ownership & Name Change). Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were not any statements to be considered.

Under other business, the following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated July 30, 2020 here with regards to
Refinancing of City General Obligation Fixed
Rate Debt.)

Mrs. Melissa Wright, City Recorder/Finance Director, presented information regarding a potential debt refinancing of City fixed rate debt and that, due to current market conditions, there could be the potential savings between $500,000 and $1,000,000. Mrs. Wright stated that a final proposal would be brought before Council for approval and that no vote was needed tonight.

Council engaged in discussion with staff regarding the MED Pension Plan and MED healthcare benefits. They also discussed outside EMS services and recent bids the City had

received. Staff was asked to provide more information so they could better answer questions from the public.

There being no further business, Mayor McFarland adjourned this meeting at 7:14 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
MELISSA B. WRIGHT - CITY RECORDER

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Amending Sign Ordinance
[Second Reading]

Department: Planning

Presented by: Robert Holtz, Director of Building and Codes

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Amendment to the Sign Ordinance.

Staff Recommendation

Approve Ordinance 20-0-28 as Amended.

On August 5, 2020, Planning Commission recommend approval.

Background Information

The Building and Codes Department requests amendment to the Sign Ordinance, Sections 25.2-2, 25.2-4, 25.2-23, 25.2-24, 25.2-25, and 25.2-26 [2020-802] for the purposes of:

(1) adding a definition of "External Customer Transaction Portal" and allowing certain, limited electronic changeable signs at external locations such as ATMs, drive-thru lanes, and gasoline pumps;

(2) decreasing the time a confiscated temporary sign can be claimed and increasing the fee of temporary signs picked up in the ROW;

(3) prohibiting certain materials from use in signage;

(4) reducing the maximum allowable size of temporary signs; and

(5) allowing murals on more than two sides of a building.

On 09/24/20, the proposed Ordinance amendment was approved on first reading. Second reading was deferred during the 10/01/20 and 10/22/20 meeting.

After input and further consideration, Staff requests that Council delete the proposed amendments to Section 25.2-4, which addresses the time and fee to claim confiscated signs.

Council Priorities Served

Improve economic development

The proposed amendments allow for implementation of newer sign technology commonly used at drive-thru lanes.

Maintain public safety

The proposed amendments reducing temporary sign sizes will reduce visual clutter and distractions for motor vehicle drivers.

Fiscal Impact

None

Attachments

1. Original Ordinance 20-0-28
2. Amended Ordinance 20-0-28 without changes to Section 25.2-4 of the Sign Ordinance.

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ORDINANCE 20-O-28 amending Murfreesboro City Code, Chapter 25.2 Signs, Sections 25.2-2, 25.2-4, 25.2-23, 25.2-24, 25.2-25, and Section 25.2-26, for the purposes of: (1) adding a definition of "External Customer Transaction Portal" and allow certain, limited electronic changeable signs at external locations such as ATMs, drive-up windows and gasoline pumps, (2) allowing the immediate disposition of temporary signs picked up in the ROW, (3) prohibiting certain materials from use in signage, (4) reducing the maximum allowable size of temporary signs, and (5) allowing murals on more than two sides of a building.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Section 25.2-2, Definitions; interpretation, of the Murfreesboro City Code is hereby amended at subsection (A) by adding the following definition in appropriate alphabetical order:

"External Customer Transaction Portal (ECTP)": An exterior location where an activity or event that can be measured in terms of money and which affects the financial position or operations of the business entity. Examples include, but are not limited to: ATM machines, fuel dispensers, and DVD rental kiosks.

SECTION 2. Section 25.2-4, Violations; penalties, of the Murfreesboro City Code is hereby amended at subsection (B), *Signs Placed in Right of Way,* by deleting subsection (B)(1) and (B)(2) in their entirety and substituting in lieu thereof the following:

(B)(1) Signs five and one-half square feet and under - $15.00 return fee. If the sign is not claimed within 5 business days, the City may consider it abandoned and destroy same.

(B)(2) Signs over five and one-half square feet - $75.00 return fee. If the sign is not claimed within 5 business days, the City may consider it abandoned and destroy same.

SECTION 3. Section 25.2-23, Exemptions, of the Murfreesboro City Code is hereby amended at subsection (A)(6) by deleting the subsection in its entirety and substituting in lieu thereof the following:

(6) Murals placed on a side or rear wall or elevation. Murals placed on front elevation are prohibited. See Section 25.2-24.

SECTION 4. Section 25.2-24, Prohibited signs and other regulations, of the Murfreesboro City Code is hereby amended at subsections (A)(18) and (A)(23) by deleting the word 'Reserved' and substituting in lieu thereof the following:

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(18) Signs which are constructed from painted or unpainted tires; exposed razor or barbed wire; or wood, metal, or plastic pallets.

(23) Murals placed on a front wall or elevation. For purposes of this subsection, the front wall or elevation of a building shall be the exterior wall or elevation that is substantially parallel to the public street or right of way reflected by the building's street address.

SECTION 5. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (C)(12) by deleting subsections (C)(12)(b), (C)(12)(c), and (C)(12)(i) in their entirety and substituting in lieu thereof the following:

(b) Size – sixteen (16) square feet maximum

(c) Height – six (6) feet maximum

(i) Other Limitations- On-site only. Multiple signs shall not be placed so as to appear to be one sign that exceeds sixteen (16) square feet.

SECTION 6. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (D)(17) by deleting it in its entirety and substituting in lieu thereof the following:

(17) Reserved.

SECTION 7. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended by deleting subsection (F), Violations; penalties, in its entirety and marking as "Reserved."

SECTION 8. Section 25.2-26, On-site permanent sign requirements, of the Murfreesboro City Code is hereby amended at subsection (C)(9), Allowable changeable signs, by adding the following subsection to the end thereof:

(g) A 'changeable sign-electronic graphic display' or a 'changeable sign-video display' sign may be used at a point of sale or an automated External Customer Transaction Portal (ECTP), the location of which must be shown on a site plan and approved by the Planning Department, prior to the issuance of a sign permit pursuant to Chapter 25.2, subject to the following:

[1] At an External Customer Transaction Portal (ECTP)

[aa] An External Customer Transaction Portal (ECTP) shall be allowed one 'changeable sign-video display' sign per station that is no greater than three (3) square feet.

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[bb] The 'changeable sign-video display' sign can be no more than six (6) feet above the adjacent ground.

[cc] Signs must be equipped to automatically adjust to ambient light conditions.

[2] At Drive Thru Lanes and Point of Sale Sites

[aa] Drive Thru Lanes as shown on approved site plans shall be permitted the following signs at each drive lane.

(i) One nine (9) square foot 'changeable sign- electronic graphic display' sign.

(ii) One 'changeable sign- electronic graphic display' sign menu or reader board that is no more than twenty (20) square feet.

(iii) One order station 'changeable sign- electronic graphic display' sign of no more than nine (9) square feet which can include no more than three (3) square feet of changeable sign-video display signage.

(iv) Signs allowed by (i), (ii), and (iii) of this subsection (g)[2][aa];

a. Must be placed between the beginning of each drive lane (stacking lane) and the 1st pick up window.

b. Must be equipped to automatically adjust to ambient light conditions.

c. Shall have a maximum six (6) feet in overall height.

SECTION 9. That Section 5 of this Ordinance shall become effective [PLACEHOLDER: six months from the date of passage]. The remainder of this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
A4A7035561F4407...

Melissa B. Wright
City Recorder

Adam F. Tucker
City Attorney

SEAL

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ORDINANCE 20-O-28 amending Murfreesboro City Code, Chapter 25.2 Signs, Sections 25.2-2, 25.2-4, 25.2-23, 25.2-24, 25.2-25, and Section 25.2-26, for the purposes of: (1) adding a definition of "External Customer Transaction Portal" and allow certain, limited electronic changeable signs at external locations such as ATMs, drive-up windows and gasoline pumps, (2) allowing the immediate disposition of temporary signs picked up in the ROW, (3) prohibiting certain materials from use in signage, (4) reducing the maximum allowable size of temporary signs, and (5) allowing murals on more than two sides of a building.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Section 25.2-2, Definitions; interpretation, of the Murfreesboro City Code is hereby amended at subsection (A) by adding the following definition in appropriate alphabetical order:

"External Customer Transaction Portal (ECTP)": An exterior location where an activity or event that can be measured in terms of money and which affects the financial position or operations of the business entity. Examples include, but are not limited to: ATM machines, fuel dispensers, and DVD rental kiosks.

SECTION 2. Section 25.2-23, Exemptions, of the Murfreesboro City Code is hereby amended at subsection (A)(6) by deleting the subsection in its entirety and substituting in lieu thereof the following:

(6) Murals placed on a side or rear wall or elevation. Murals placed on front elevation are prohibited. See Section 25.2-24.

SECTION 3. Section 25.2-24, Prohibited signs and other regulations, of the Murfreesboro City Code is hereby amended at subsections (A)(18) and (A)(23) by deleting the word 'Reserved' and substituting in lieu thereof the following:

(18) Signs which are constructed from painted or unpainted tires; exposed razor or barbed wire; or wood, metal, or plastic pallets.

(23) Murals placed on a front wall or elevation. For purposes of this subsection, the front wall or elevation of a building shall be the exterior wall or elevation that is substantially parallel to the public street or right of way reflected by the building's street address.

SECTION 4. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (C)(12) by deleting subsections (C)(12)(b), (C)(12)(c), and (C)(12)(i) in their entirety and substituting in lieu thereof the following:

DocuSign Envelope ID: A4644D54-0C44-4E2C-A80B-2B7F3B929417

(b) Size – sixteen (16) square feet maximum

(c) Height – six (6) feet maximum

(i) Other Limitations- On-site only. Multiple signs shall not be placed so as to appear to be one sign that exceeds sixteen (16) square feet.

SECTION 5. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (D)(17) by deleting it in its entirety and substituting in lieu thereof the following:

(17) Reserved.

SECTION 6. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended by deleting subsection (F), Violations; penalties, in its entirety and marking as "Reserved."

SECTION 7. Section 25.2-26, On-site permanent sign requirements, of the Murfreesboro City Code is hereby amended at subsection (C)(9), Allowable changeable signs, by adding the following subsection to the end thereof:

(g) A 'changeable sign-electronic graphic display' or a 'changeable sign-video display' sign may be used at a point of sale or an automated External Customer Transaction Portal (ECTP), the location of which must be shown on a site plan and approved by the Planning Department, prior to the issuance of a sign permit pursuant to Chapter 25.2, subject to the following:

[1] At an External Customer Transaction Portal (ECTP)

[aa] An External Customer Transaction Portal (ECTP) shall be allowed one 'changeable sign-video display' sign per station that is no greater than three (3) square feet.

[bb] The 'changeable sign-video display' sign can be no more than six (6) feet above the adjacent ground.

[cc] Signs must be equipped to automatically adjust to ambient light conditions.

[2] At Drive Thru Lanes and Point of Sale Sites

[aa] Drive Thru Lanes as shown on approved site plans shall be permitted the following signs at each drive lane.

(i) One nine (9) square foot 'changeable sign- electronic graphic display' sign.

(ii) One 'changeable sign- electronic graphic display' sign menu or reader board that is no more than twenty (20) square feet.

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(iii) One order station 'changeable sign- electronic graphic display' sign of no more than nine (9) square feet which can include no more than three (3) square feet of changeable sign-video display signage.

(iv) Signs allowed by (i), (ii), and (iii) of this subsection (g)[2][aa];

a. Must be placed between the beginning of each drive lane (stacking lane) and the 1st pick up window.

b. Must be equipped to automatically adjust to ambient light conditions.

c. Shall have a maximum six (6) feet in overall height.

SECTION 8. That Section 4 of this Ordinance shall become effective 180 days from the date of passage. The remainder of this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

Melissa B. Wright
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F9401...

Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Community Investment Study Group

Department: Administration

Presented by: Craig Tindall, City Manager

Requested Council Action:

Ordinance	☐
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Resolution 21-R-07, if approved, would create the Community Investment Study Group.

Staff Recommendation

Approve Resolution 21-R-07 c

Background Information

City Council has expressed a desire to receive input and advice from members of the community regarding the purpose, handling, disposition, and structure of the mechanisms for management of the unique revenue sources resulting from the sale of the Murfreesboro Electric Department's assets and operations to Middle Tennessee Electric Membership Corporation. The attached resolution establishes a study group as a means for studying various alternatives and making recommendations to City Council.

Council Priorities Served

Establishing the Study Group could ultimately serve all five Council priorities: *responsible budgeting; improve economic development; establish strong City brand; expand infrastructure; and maintain public safety*

Operational Issues

None

Fiscal Impact

None

Attachments

Resolution 21-R-07

DocuSign Envelope ID: 0D58C0D3-4B16-49BC-ACB1-814378E0D2AF

RESOLUTION 21-R-07 creating Community Investment Study Group

WHEREAS, on June 30, 2020, the City of Murfreesboro sold the operations and substantially all of the assets and operations of its Electric Department to the Middle Tennessee Electric Membership Corporation ("MTEMC") for $245,000,000, with $43,000,000 paid at closing and annual installments of $17,290,134 paid over a 15-year period (the "Sale"); and

WHEREAS, the City Council has determined that it is in the best long-term interests of the citizens of Murfreesboro for the proceeds of the Sale offset the cost and support the financing of public works, public infrastructure, and other public improvements; promote and support economic development and employment opportunities within the City; fund City projects and programs of other governmental or non-profit agencies and organizations that benefit and advance the general welfare of City residents, business, and visitors; and

WHEREAS, in furtherance of these purposes, the City Council has determined that the proceeds of the Sale should be invested at the highest and best practical return of income and in Tennessee law and regulation governing municipal assets; and

WHEREAS, the City Council desires advice from members of the community regarding the purpose, handling, disposition, and structure of the mechanisms for management of the unique revenue sources resulting from the Sale that are consistent with Tennessee law and the City's Charter, including any proposed Charter amendments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The City Council hereby creates the Community Investment Study Group to consider and advise on the handling, disposition, and structure of the mechanisms for management of the proceeds accruing from the Sale in order to achieve the objectives of the declared in this resolution.

SECTION 2. The Study Group shall have five voting members, one of whom will be a current member of City Council. Individual members of City Council may recommend up to three individuals to serve on the Study Group and submit such recommendations to the Mayor. The Mayor shall present the list of nominees at a regular meeting of Council for consideration. City Council shall then select, by majority vote, the five nominees that they believe are best suited to serve on the Study Group. The City Manager, City Attorney, Financial Director, and Budget Director shall serve as non-voting, ex-officio members of the Study Group. The five voting members of the Study Group shall serve in such capacity without compensation.

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The City Manager shall convene a public meeting of the Study Group as soon as possible after Council's appointment of the five voting members. At its first meeting, the Study Group shall select a chairperson from the five voting members. Roberts Rules of Order shall generally govern and apply to meetings of the Study Group.

The Study Group will report progress on the findings, recommendations, and alternatives to City Council within four months following the first meeting.

Unless otherwise directed by City Council, the Study Group shall automatically dissolve 30 days after the City Council meeting at which the Study Group presents its findings and recommendations.

SECTION 2. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: _____

_____
Shane McFarland, Mayor

ATTEST:

_____
Melissa B. Wright
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2B5E51F9...

Adam F. Tucker,
City Attorney

21-R-07 Community Investment Trust Fund Study Group-Final
Legal Dept. Matter Number 2021-00096
February 12, 2021

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Planning Commission Recommendations

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☐
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Scheduling a matter previously heard by the Planning Commission for a public hearing before Council.

Staff Recommendation

Schedule a public hearing for the item below on March 25, 2021.

Background Information

During its regular meeting on February 3, 2021, the Planning Commission conducted a public hearing on the item listed below. After the public hearing, the Planning Commission discussed the matter and then voted to recommend its approval.

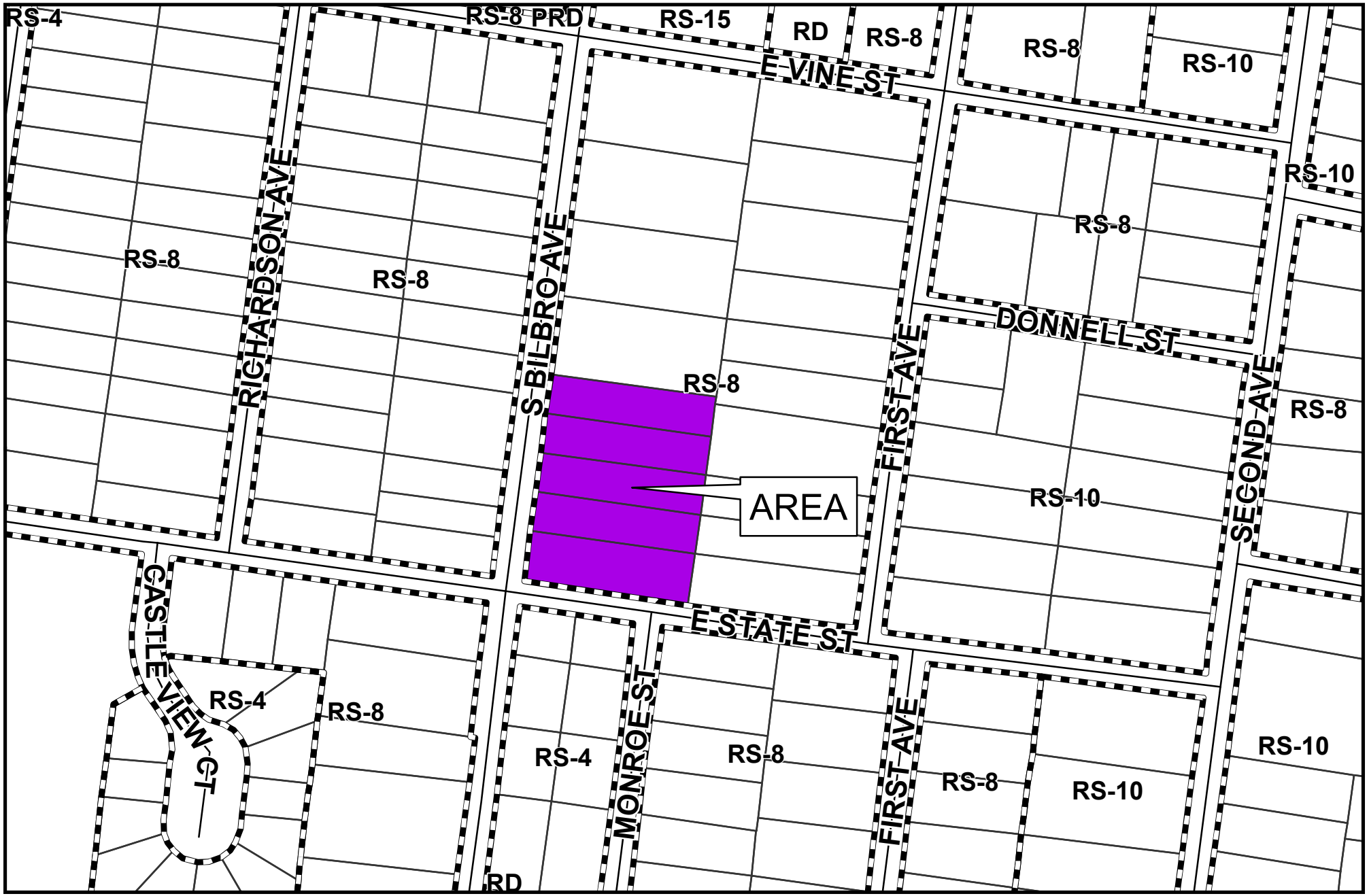
a. Zoning application [2020-422] for approximately 1.28 acres located along South Bilbro Avenue and East State Street to be rezoned from RS-8 and CCO to PRD (The Row on Bilbro PRD) and CCO, Blue Sky Construction, Inc. applicant.

Fiscal Impact

The only fiscal impact is the cost of advertising in the newspaper (exact cost unknown at this time).

Attachment:

Map for zoning application for approximately 1.28 acres located along South Bilbro Avenue



Rezoning Request for Property Along South Bilbro Avenue and East State Street
RS-8 to PRD (The Row on Bilbro PRD)

0 125 250 500 750 Feet

Planning Department
City of Murfreesboro
11 W Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

Path: X:\FILE_ROOM_FOLDERS\Rezonings\2020\2020-422_Row_on_Bilbro\Maps\Data\2020-422_Row_on_Bilbro.mxd

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title:	Management and Administrative Services Contract for Community Development Department
Department:	Community Development
Presented by:	Helen Glynn, Assistant Director of Community Development

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Management and Administrative Services contract to assist the Community Development Department.

Staff Recommendation

Approve the proposed contract with BluLynx Solutions, LLC.

Background Information

The City issued a Request for Competitive Sealed Proposals for management and administrative services to assist the Community Development Department with updating the 5-year Consolidated Plan and other services. Following review by an evaluation committee, BluLynx was determined to have the most responsive proposal. Services from BluLynx are anticipated to be required over the next 12 to 15 months with funding from CDBG funds.

Council Priorities Served

Responsible budgeting

This contract will allow the City to efficiently allocate CDBG formula funds to local agencies and assist those residents who income qualify for services.

Fiscal Impact

This $57,640 expenditure is fully funded from existing administrative CDBG funds from the Community Development Department.

Attachments

1. Agreement for Management and Administrative Services with BluLynx Solutions, LLC

DocuSign Envelope ID: DEE3044D-FCDE-4BA8-98FE-66FD291E2185

Agreement for Management and Administrative Services

This Agreement is entered into and effective as of the ____ day of _____ 2021 (the "Effective Date"), by and between the **City of Murfreesboro,** a municipal corporation of the State of Tennessee (the "City"), and **BluLynx Solutions, LLC**, a Georgia Limited Liability Company ("Contractor").

This Agreement consists of the following documents:

- This document
- The City's Request for Competitive Sealed Proposals, No. RFCSP-08-2021, issued January 12, 2021 (the "Solicitation");
- Contractor's Proposal, dated January 19, 2021 ("Contractor's Proposal"); and
- Any properly executed amendments to this Agreement.

In the event of conflicting provisions, all documents will be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Solicitation; and
- Lastly, Contractor's Proposal.

1. **Duties and Responsibilities of Contractor.** Contractor shall provide those services listed in the Solicitation, including (without limitation) professional management and administrative services related to the implementation of the Community Development Block Grant (CDBG) program and other programs funded by the U.S. Department of Housing and Urban Development (HUD) and other agencies issuing funds for Community Development efforts. Such services will include planning, preparing and assistance with implementing a HUD Five-Year (2020-2025) Consolidated Plan and Annual Action Plan, updating the Citizen's Participation Plan, and an Analysis to Impediments. Services will also include researching, application assistance, reporting assistance, program monitoring, and staff training in the HUD IDIS system federal grant programs.

2. **Term.** The term of this Agreement commences on the Effective Date and expires on June 30, 2022, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

    a. Upon 30-day prior notice, for the convenience of the City.
    b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
    c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the

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grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.

d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. **Compensation; Method of Payment.** Contractor will be compensated upon the completion of tasks as outlined in the Proposal and submission of an invoice to the City at its address for Notices, with a total contract price not to exceed Fifty-Seven Thousand Six Hundred Forty and 00/100 Dollars ($57,640.00). Payment for services delivered will be thirty (30) days from the date of the invoice.

4. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

5. **Insurance.** Contractor shall maintain at least the following commercial insurance policies for the entire term of this Agreement in the amounts specified:

   a. Workers' compensation and employer's liability insurance – Workers' compensation in compliance with the applicable state and federal laws; employer's liability with a limit of $1,000,000 per occurrence.
   b. Comprehensive general liability insurance – insurance including blanket contractual, broad form property damage, completed operations, and independent contractor's liability, all applicable to personal injury, bodily injury, and property damage to a limit of $1,000,000 per occurrence and $2,000,000 aggregate.
   c. Technology errors and omissions insurance with minimum coverage of $500,000 per claim. Such insurance policy shall include, at a minimum, coverage for data breach, data loss, and expense reimbursement. In addition, Contractor shall notify the City if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

   Contractor will provide to the City: (I) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, and (ii) an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

   The insurance required under the preceding paragraphs shall provide adequate protection for Contractor and any sub-contractors against damage claims that may arise from operations

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under this Agreement, whether such operations are by the insured or by anyone directly or indirectly employed by Contractor.

6. Indemnification.

a. Contractor shall indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

c. Copyright, Trademark, Service Mark, or Patent Infringement.

   i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

   ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

      1. Procure for the City the right to continue using the products or services.
      2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
      3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not

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exercise this option until Contractor and the City have determined that each of the other options are impractical.

iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

7. Notices. Any Notice required, permitted, or contemplated under this Agreement shall be mailed via certified mail/delivery (which may include, without limitation, delivery by USPS, UPS, FedEx, or other major parcel carrier) or hand delivered to the following:

If to the City of Murfreesboro:

City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

With a copy to:

Assistant Director of Community Development
City of Murfreesboro
P.O. Box 1139
211 Bridge Ave.
Murfreesboro, TN 37133

If to Contractor:

BluLynx Solutions
ATTN: Kimberly Roberts
8343 Roswell Rd, Suite 154
Atlanta, GA 30350

With a copy to:

BluLynx Solution
ATTN: Eryca Fambro
8343 Roswell Rd, Suite 154
Atlanta, GA 30350

8. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws and regulations, including (without limitation) all laws and regulations listed and/or referenced in the Solicitation.

9. Maintenance of Records. Contractor must maintain documentation relating to its performance of services for and all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for the greater of (i) a period of three (3) full years from the date of final payment or (ii) any period specified by applicable law and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles. Contractor shall afford City agents or auditors reasonable facilities and access for the

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examination and audit of its records pertaining to its performance. Upon request by the City, Contractor shall produce and exhibit all such records as requested. Records shall be available within an office environment located not more than a 45 minutes' drive from the City's local office or the reasonable expenses incurred to access the records shall be borne by Contractor.

10. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

15. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or

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subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

16. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.

17. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.

18. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, pandemic, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

19. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

20. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.

21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

22. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

[*Signatures appear on the following page*]

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IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date first written.

CITY OF MURFREESBORO	**BLULYNX SOLUTIONS, LLC**
Shane McFarland, Mayor Date signed: _____ APPROVED AS TO FORM: DocuSigned by: Adam F. Tucker 4A0D5551F410... Adam Tucker, City Attorney	DocuSigned by: **By:** Kimberly Roberts 962E7CDA582346B... **Print:** Kimberly Roberts **Its:** Principal Date signed: 2/12/2021

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Old Fire Station 4 Restroom Renovation Construction Contract

Department: Project Development

Presented by: Kayla Walker

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Contract for the renovation of the Old Fire Station 4 restrooms.

Staff Recommendation

Approve the construction contract with Boyce Ballard Construction, LLC.

Background Information

This project consists of the conversion of the existing locker room at Old Fire Station 4 into two ADA compliant restrooms. Work associated with this project include demolition, reconstruction, and installation of new finishes and fixtures. Staff advertised the contract and two bids were received on January 21, 2021 for the referenced project. A low bid in the amount of $115,950 was submitted by Boyce Ballard Construction, LLC., which is competitive to the architect's estimate of $156,944.

Council Priorities Served

Maintain Public Safety

Improvements to City buildings by bringing them up to ADA standards increases safety to the public as well as City employees.

Fiscal Impact

The contract amount of $115,950 is within the CIP Budget for ADA improvements.

Attachments

Construction Contract with Boyce Ballard, LLC

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AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 25th day of February in the year 2021
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Murfreesboro, Tennessee, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

and the Contractor:
(Name, legal status, address and other information)

Boyce Ballard Construction, LLC, a Tennessee limited liability company
10-B Public Square North
Murfreesboro, TN 37130

for the following Project:
(Name, location and detailed description)

New Accessible Restrooms Old Fire Station #4
City of Murfreesboro Fire & Rescue
1311 Jones Boulevard
Murfreesboro, TN 37129

The Architect:
(Name, legal status, address and other information)

CMH Architects
1800 International Park Drive
Suite 300
Birmingham, Alabama 35243

The Mechanical Engineer:
(Name, legal status, address and other information)

M W Davis Dumas & Associates
4500 Southlake Park
Hoover, AL 35244

The Plumbing Engineer:
(Name, legal status, address and other information)

M W Davis Dumas & Associates
4500 Southlake Park
Hoover, AL 35244

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Electrical Engineer
(Name, legal status, address and other information)

Hyde Engineering
3120 8th Ave. S.
Birmingham, AL 35233

The Owner and Contractor agree as follows.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall
(Paragraphs deleted)
be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[ ] Not later than ninety (90) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

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§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one hundred fifteen thousand nine hundred and fifty dollars ($ 115,950.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
N/A	N/A

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)
N/A		

§ 4.5 Liquidated Damages

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, $500.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause

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shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

.5 Retainage withheld pursuant to Section 5.1.7.

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§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 [Intentionally omitted.]

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment has been issued by the Architect;

.3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and

.4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the
(Paragraphs deleted)
daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

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ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[X] Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

(Paragraphs deleted)
§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Kayla Walker, Director, Project Development
City of Murfreesboro
111 West Vine St.
Murfreesboro, TN 37130
Tel: 615-542-7640
Email: kwalker@murfreesborotn.gov

or her designee as indicated in writing from time to time.

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§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Mike Boyce, Co-Owner
Boyce Balard Construction, LLC
10-B Public Square N.
Murfreesboro, TN 37130
Tel: 615-617-3812
Email: mike@boyceballard.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds
§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
.2 Exhibit A, Contractor's Insurance and Bonds Requirements
.3 AIA Document A201™–2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
.4 [Intentionally Omitted]

.5 Drawings

Number	Title	Date
A0.0	Cover Sheet	July 14, 2020
A0.1	ADA details	July 14, 2020
A2.0	Demolition Site Plans	July 14, 2020
A2.1	New Work Floor Plan Elevation Details	July 14, 2020
A2.2	Reflected Ceiling Plan	July 14, 2020
M1.0	HVAC Demolition New Work Plan	July 14, 2020
P1.0	Plumbing Demolition New Work Plan	July 14, 2020

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E0.1	Legend Notes Riser	July 14, 2020
E1.1	Electrical Demo Plan	July 14, 2020
E1.2	Electrical New Work Plan	July 14, 2020

.6 Specifications

Section	Title	Date	Pages
CMH Project #1720	New Accessible Restrooms Old Fire Station #4 Single File Specifications	01/06/2021	205
Boyce Ballard Bid	Proposal for City of Murfreesboro, TN New Accessible Restrooms Old Fire Station #4	01/21/2021	9

.7 Addenda, if any:

Number	Date	Pages
Addendum 1	01/07/2021	
Addendum 2	~~01/05/2021~~ 01/14/2021 MD	
Addendum 3	01/20/2021	

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Shane McFarland, Mayor	Mike Boyce, Co-Owner
(Printed name and title)	*(Printed name and title)*

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F9401...

Adam F. Tucker, City Attorney

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Additions and Deletions Report for
AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the _____day of February in the year 2021

...

City of Murfreesboro, Tennessee, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

...

Boyce Ballard Construction, LLC, a Tennessee limited liability company
10-B Public Square North
Murfreesboro, TN 37130

...

New Accessible Restrooms Old Fire Station #4
City of Murfreesboro Fire & Rescue
1311 Jones Boulevard
Murfreesboro, TN 37129
The Architect:
(Name, legal status, address and other information)

CMH Architects
1800 International Park Drive
Suite 300
Birmingham, Alabama 35243

The Mechanical Engineer:
(Name, legal status, address and other information)

M W Davis Dumas & Associates
4500 Southlake Park
Hoover, AL 35244

The Plumbing Engineer:
(Name, legal status, address and other information)

M W Davis Dumas & Associates
4500 Southlake Park
Hoover, AL 35244

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The Electrical Engineer
(Name, legal status, address and other information)

Hyde Engineering
3120 8th Ave. S.
Birmingham, AL 35233
PAGE 3

§ 3.1 The date of commencement of the Work shall ~~be:~~
~~*(Check one of the following boxes.)*~~

~~[ ] The date of this Agreement.~~

~~[ ] A date set forth in a notice to proceed issued by the Owner.~~

~~[ ] Established as follows:~~
~~*(Insert a date or a means to determine the date of commencement of the Work.)*~~

~~If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.~~be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

...

[ ] Not later than ninety (90) calendar days from the date of commencement of the Work.
PAGE 4

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one hundred fifteen thousand nine hundred and fifty dollars ($ 115,950.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A N/A

...

N/A

§ 4.5 Liquidated ~~damages, if any:~~**Damages**
~~(Insert terms and conditions for liquidated damages, if any.)~~§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, $500.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished. § 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

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...

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

PAGE 5

§ 5.1.2 ~~The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:~~

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided ~~that an~~ the Application for Payment and all required supporting documentation is received by the Architect not later than the ~~day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

PAGE 6

five percent (5%)

...

N/A

...

§ 5.1.8 ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~[Intentionally omitted.]

...

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

.2 a final Certificate for Payment has been issued by ~~the Architect.~~the Architect;

.3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and

.4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

...

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Payments due and unpaid under the Contract shall bear interest from the date payment is due at the ~~rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)~~

~~—%~~ daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.
PAGE 7

[X] Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

~~**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

...

Kayla Walker, Director, Project Development
City of Murfreesboro
111 West Vine St.
Murfreesboro, TN 37130
Tel: 615-542-7640
Email: kwalker@murfreesborotn.gov

or her designee as indicated in writing from time to time.
PAGE 8

Mike Boyce, Co-Owner
Boyce Balard Construction, LLC
10-B Public Square N.
Murfreesboro, TN 37130
Tel: 615-617-3812
Email: mike@boyceballard.com

...

§ 8.5.1 The ~~Owner and the~~ Contractor shall purchase and maintain insurance as set forth in ~~AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum,~~ Exhibit A, ~~Insurance and Bonds,~~ and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in ~~AIA Document A101™–2017~~ Exhibit A, and elsewhere in the Contract Documents.

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...

.2 ~~AIA Document A101™–2017,~~ Exhibit A, Contractor's Insurance and Bonds Requirements

.3 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures

.4 ~~AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~[Intentionally Omitted]

...

A0.0	Cover Sheet	July 14, 2020	
A0.1	ADA details	July 14, 2020	
A2.0	Demolition Site Plans	July 14, 2020	
A2.1	New Work Floor Plan Elevation Details	July 14, 2020	
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...

Addendum 1	01/07/2021
Addendum 2	01/05/2021
Addendum 3	01/20/2021

Shane McFarland, Mayor

Mike Boyce, Co-Owner

...

APPROVED AS TO FORM:

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Adam F. Tucker, City Attorney

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:35:52 ET on 02/11/2021 under Order No. 3414833268 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

New Accessible Restrooms Old Fire Station #4
City of Murfreesboro Fire & Rescue
1311 Jones Boulevard
Murfreesboro, TN 37129

THE OWNER:
(Name, legal status and address)

City of Murfreesboro, Tennessee, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

THE ARCHITECT:
(Name, legal status and address)

CMH Architects
1800 International Park Drive
Suite 300
Birmingham, Alabama 35243

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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/

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 All questions relative to the Contract Documents shall be addressed to the Architect for clarification. In the event of any conflict/ inconsistencies in the Contract Documents for the Described Work, the following take precedence:

A. The agreement (contract)
B. Addenda
C. Supplementary Conditions
D. General Conditions
E. Drawings and specifications. In the event of conflict between these two, the stricter or higher quality shall prevail.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§1.1.6.1 The reference standards referred to in the Specifications references the edition current as of the date of the documents. References to non-proprietary standards, codes and specifications, and the manufacturer's specifications, instructions and directions mean the date included with such reference. Where no date is given, references will mean the latest edition in effect on the date of the documents. Such references require that the Contractor become fully and adequately informed of the contents of such directions, specifications and codes, and will properly apply that information so that the best possible use of the item, material or technique is achieved. Before such referenced information is utilized in the Work, the Architect may request the Contractor to use editions of later date than specified. If a difference in cost is necessary, the Contract Sum will be adjusted by Change Order.

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§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.9 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog

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numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's ownership interest.

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.7 Confidentiality

§ 1.7.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.7.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

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§ 1.7.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.7.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.7.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 [Intentionally Deleted]

§ 2.2 Evidence of the Owner's Financial Arrangements

[Intentionally Deleted.]
(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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§ 2.3.6 Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work

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is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. The Contractor shall be responsible for the accuracy of measurements, elevations, lines and grades of work. If Contractor chooses to measure distance by scaling from the Drawings, it is totally at his risk and is not considered by Owner/Architect to be an accurate measurement. Contractor shall do field work necessary to lay out and maintain the work. Differences which may be found between Drawings and actual conditions shall be submitted to the Owner/Architect for his consideration before proceeding with the work.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 The Contractor is responsible for having a thorough knowledge of all Drawings, Specifications, General Supplementary, and Special Conditions, and other Contract Documents. Failure to acquaint himself with this knowledge does not relieve him of the responsibility for performing his work in a manner acceptable to the Owner. No additional compensation will be allowed because of conditions that occur due to failure by the Contractor to familiarize himself and all works with this knowledge.

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§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Contractor agrees upon request of the Owner/Architect, to change any sequence of work provided such change does not cause delay in the completion of work or increase the cost. If such a change does cause a delay or increase the cost, a change order maybe issued extending the time of completion and/or changes in cost.

§ 3.3.1.1 The Owner/Architect reserve the right to approve the Contractor's Project Manager and/or Superintendent assigned to this project. The Owner/Architect also reserves the right to reject any of the Contractor's personnel assigned to this project, and have the Contractor replace such personnel with acceptable, qualified personnel within 5 working days prior to beginning and during course of work.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of

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code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

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§ 3.4.6 All manufactured articles, materials and equipment must be supplied, installed, connected, erected, used, cleansed and conditioned in accordance with the manufacturer's specifications unless otherwise specified.

§ 3.4.7 The Contractor agrees that neither he nor his subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to his hire, tenure, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract.

§3.4.8 Comply with all applicable State and Federal statutes regarding minimum wages to be paid. The Contract Sum will not be increased because of subsequent increases in the wage rates.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranty periods will start at the date of substantial completion as defined in paragraph 9.8.

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.5.4 Workmanship and installation must be the best quality possible. Perform each part of the work and related activities with the best possible workmanship to produce work that is neat, secure, weatherproof, with the best possible appearance and utility.

§ 3.5.5 The Architect will be the sole judge of all installed work, and may reject work that does not conform to the requirements of the Contract Documents. Repair or replace rejected work to the satisfaction of the Architect without additional cost to the Owner.

§3.5.6 Contractor does hereby warranty and covenant to Owner that all materials and workmanship shall be of the highest quality, in accordance with the Contract Documents and free from defects that if any portion of Work is not of the highest quality, in accordance with the contractor Documents and free from defects, Contractor shall, upon the request of Owner, for a period of one year from the date of Grand Opening or Substantial Completion, whichever is later, of the Work under the contract, promptly correct such non-compliance or defect. For the purposes of ascertaining the quality and performance standards required by this warranty and ascertaining the Contractor's responsibility in cases where the required performance standard has not been met. Owner and Contractor agree that they shall be guided by the performance standard for workmanship, materials, systems, and structures deemed appropriate by the Architect except for the following standards which shall be set forth:

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.1 Should there be any conflict between the local and state Building Codes, the quality of standard for sound industry practices with regard to materials or workmanship, and the quality standard required by the Contract Documents, the higher standard shall govern.
.2 See additional and specific warranty information as specified in Sections 2 through 16.

§ 3.5.7 Contractor will at all times provide proper facilities and an opportunity for the inspection of the Work by the Architect and Owner and their representatives. Contractor shall, within twenty-four (24) hours after receiving written notice from Architect proceed to takedown and remove all portions of the Work which shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents and shall replace with same with proper and satisfactory Work make good all work damaged or destroyed thereby at no cost to the Owner. Failure to discover or notify Contractor of defective or nonconforming work by Architect or Owner shall not relieve Contractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In the event this project is constructed in an area where governmental jurisdiction requires income tax to be withheld, the contractor shall comply with the requirements in a manner that will absolve the Owner of any withholding liability.
§ 3.6.1 The City is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded firm. Contractors doing business with the City shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the City, nor shall any vendor be authorized to use the City's Tax Exemption Number in securing such materials.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.
§ 3.7.1.1 All Contractors performing work must be licensed as required by the state, county, and/or municipality having jurisdiction. Transmit copies of license certificate to the Architect and Owner within ten (10) days following the execution of the contract.

§ 3.7.2

The Contractor shall be totally and solely responsible for compliance with and notices under all licensing laws and other statutory requirements which apply to himself or any Subcontractor actively engaged in any work on the project.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor's work includes, without limitation, all disposal or removal of waste and rubbish attributed to the project and warrants that it is familiar with all applicable federal, state and local laws and ordinances concerning disposal of waste and rubbish.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall

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promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- **.4** the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not

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exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or

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invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.10.7 Should the Contractor fail to complete his Work within the time allowed by the Project schedule, including extensions of time that the Contractor may be entitled to under the Contract documents unless the Owner elects to accelerate the work, Contractor will be responsible for paying the Owner all additional costs incurred by the Owner's consultants and sub consultants hired in conjunction with the execution of the late Work and will be subject to liquidated damages as defined in the contract. The period that the Contractor will be responsible for such costs is from the point that the Contractor's work activity exceeded the scheduled completion dates until the date of actual substantial completion of that particular activity.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

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§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

.1 Identification as to pertinent Specification Division

.2 Item(s) involved.

.3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.

.4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the

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deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall comply with all instructions of the Owner given to it with regards to the use of site.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

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§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

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§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner's agents Owner's Lender, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work including but not limited to spilling or dumping of hazardous waste materials at or upon the construction site, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§5.1.1.1 Any Subcontractor performing work must be licensed as required by the State, County, and/or municipality having jurisdiction. Transmit copies of license certificates to the Architect and Owner within ten (10) days following the execution of the Contract.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or

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Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 5.5 SUBCONTRACTOR DUTIES

§ 5.5.1 All subcontractors will participate in installing and removing general temporary protection measures and completing a nightly cleaning at the end of each work shift. Participation will be proportional to the level of manpower present on site for given night's work.

§ 5.5.2 All subcontractors will be provided with a temporary utility source, toilet facilities, and dumpster (for common trash). All other general conditions, temporary facilities, staging components, scaffolding, hoisting, conveyance

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equipment, etc. required for the commission of its scope of work shall be furnished, installed, and subsequently removed by subcontractor.

§ 5.5.3 All subcontractors will perform a daily cleanup of its debris. All common trash may be placed in the General Contractor furnished project dumpster. All bulk debris resulting from subcontractor's scope of work will be properly disposed of site by subcontractor.

§ 5.5.4 All subcontractors shall furnish, install, and subsequently remove adequate protection measures for new and existing finishes, equipment, and furnishing to protect against damage that may result from the commission of subcontractor's scope of work.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No Change Orders, Construction Change Directives or order for a minor change in the work will be considered unless approved by the Owner in writing prior to the work performed.

§ 7.1.1.1 It is agreed the Owner has the right to request changes during performance of the Contract for Construction. The Contractor agrees to perform those requested changes for a fair and reasonable cost/credit and within the time directed by the Owner, whether the change requires an increase or a decrease to the Scope of the Work.

a. A fair and reasonable cost is defined as not greater than the current industry standard for the type work and circumstances under which it is to be performed. Means Construction Cost Data, latest edition, with locality factors taken under consideration, will be used as a guide and costs may not be higher without sufficient documentation

to, in the Architect's, substantiate the increase. The Architect may also check costs against current similar work on other projects.

b. A fair and reasonable time extension is defined as the net increase to the overall project schedule, as sufficiently documented by the Contractor and clearly determined justifiable by the Architect's review of the current Project Schedule. A request for a time extension must accompany any and all of the Contractor's cost proposal submittals or no additional time will be allowed.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 If the net value of a change or deletion results in a Credit to the Owner, the Credit shall be the net without profit and overhead.

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§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any,

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provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.

.2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

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§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the notice to proceed.
§ 8.1.2.1 Notice to Proceed will be issued. Obtain necessary insurance and permits, file documents and notices and commence the Work as soon as notified. Five (5) days will be allowed for mobilization.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 It is the intent that the owner issue Notice to Proceed no later than 30 days after receipt of bids.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day. In the event that in the opinion of the Owner, in order to meet the construction schedule and to complete the Work within the time specified by this Agreement, the Contractor needs to employ additional personnel and labor and to have such employees work on an overtime basis,
including but not limited to Saturdays, Sundays and holidays, in order to meet such Contractor's schedule and the completion dates as required by this Agreement, then the Contractor agrees to immediately comply with such instructions as are given with regard thereto at no additional cost to the Owner. However, nothing in this paragraph supersedes Paragraph 8.3.1 of General Conditions. If the Contractor is delayed by causes beyond its control, the Owner may by written authorization to the Contractor accelerate the time of completion. As a result, the Contractor at

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the Owner's expense will employ additional personnel and labor and have such employees work on an overtime basis. The cost of this overtime work will be reported to the Owner weekly and may be terminated by the Owner at any time.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

§ 8.3.4 Should a Contractor fail to complete his work within the time allowed by the Project Schedule at no one's fault but his own, he will be responsible for paying the Owner all costs incurred for the Owner's consultants and subconsultants hired in conjunction with the execution of the work. The period that the Contractor will be responsible for such costs is from the point that the Contractor's work exceeded the scheduled completion date until the date of actual substantial completion.

§ 8.4 REIMBURSEMENT OF CONSULTANTS

§ 8.4.1 The involved Contractor is responsible for paying the Owner all costs incurred for consultants, including sub-consultants hired in the performance of the Work, including their overhead and profit, relative to the project during the following period:

§ 8.4.1.1 After the Contract Time, as defined in this Article, has expired, until the actual date of Substantial Completion or Final Completion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 9.2 Schedule of Values

(Paragraph deleted)

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.2.3 All pay request forms are to be the AIA G702, Application and Certification for Payment must be supported by the AIA document G703 continuation sheet. Submit three (3) notarized applications monthly.

§ 9.3 Applications for Payment

§ 9.3.1 All payments must be submitted to the Owner for review and processing on AIA forms G-702 (certificate and application for payment) and AIA G-703 (continuation Sheet), or an Owner's approved equal, three original copies. Such application shall be notarized, and supported by such data substantiating the Contractor's right to payment, such as copies of requisitions from subcontractors and material suppliers. The Owner shall determine the amount less retainage of each Application for Payment that is properly due and will issue payment for such amount, if Owners Lender does not reasonably object to such payment, no later than twenty (20) days after the first day of the next month following the period covered by the Application for Payment, provided the properly completed Application for Payment is in Owner's possession not later than the 1st day of the month.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Application for Payment shall be submitted on AIA Document G-702 and G-703. All listings of items to agree with the Schedule of Values (Paragraph 9.2).

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

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§ 9.3.1.4 The Contractor is provided with a Monthly Receipt and Release of Lien form by Owner as part of the Contract Documents Package and the Contractor shall properly complete and submit the required form with each Application for Payment. No payment will be issued without the fully executed Lien Waiver. This must be accompanied by fully executed Lien Waivers from all appropriate Subcontractors and Suppliers involved in the preceding Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

.1 The aggregate cost of materials stored off site shall not exceed $ 50,000 at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in

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connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.3.4 In the event Owner receives information that indicates a lien has been filed or that there exists a potential lien situation, the Contractor will be notified by the Owner and they will expect the Contractor to immediately resolve the situation to the satisfaction of the Owner. All monies requested for this pay period, as described in Part 9.3.1, shall be withheld until such liens have been removed and the dispute rectified.

§ 9.3.3.5 It is hereby agreed between the Owner and the Contractor that each properly executed Monthly Receipt and Release of Lien form is a valid lien release form, the Contractor thereby agrees to defend and indemnify the Owner against any and all claims resulting from a lien against the property.

§ 9.3.3.6 Payment for materials stored off site will not be made by Owner unless approved by the Architect. Also, Contractor submitting request for payment of stored materials must attach proof of adequate insurance coverage of such materials to the pay request for the month they are making the request.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently

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discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the

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Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 All monies paid on account to Contractor for materials or labor used in the performance of the Work will be regarded as funds held in trust solely for payment of any and all of contractor's obligations relating to or arising out of the Work including the payment of all subcontractors and suppliers of the contractor who have supplied labor, equipment, or materials or performed any work whatsoever on this Project.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.9 Procedures for processing payments for stored materials and release of retainage:
§ 9.6.9.1 The amount of retainage that will be withheld from partial payments will be 10% for the first 50% of the value of the estimated work performed and the value of materials stored on-site or stored off-site in compliance with paragraph 9.3.3.3. then 0% after that. With regards to materials stored off-site, the Architect must receive proof of

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adequate insurance of such materials; must approve the storage facility in which they are placed; and must verify both the quantity and quality of such materials, all before the Contractor's application for partial payment will be processed.

§ 9.6.9.2 Upon completion of the construction Project and completion of the punch list, the Owner will pay 100% of the amount due the Contractor less retainage. Upon completion of all close-out requirements, including submission of all applicable releases, record documents and warranties, the Owner will pay all retainage. No partial retainage will be paid before all close-out items are complete.

§ 9.6.9.3 Substantial Completion (completion of punch lists) must be achieved within the time limits established in the Project Schedule for each phase to relieve the Contractor of responsibility for liquidated damages (if called for).

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.1.1 The date of commencement of Work and the date of Substantial Completion shall be agreed upon between the Owner and the Contractor at the time of Contract award and shall be made part of the Construction Agreement between the Owner and Contractor.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $500.00 per person per day plus expenses.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.8.9 Substantial Completion (completion of punch lists) must be achieved within the time limits established in the Project Schedule for each phase to relieve the Contractor of responsibility for liquidated damages.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.1.1 If the Owner elects to occupy or use any completed or partially completed portion of the Work as permitted by Paragraph 9.9, the Contractor agrees to cooperate in the segregation and coordination of its construction activities. Such occupancy does not relieve the Contractor of liability to perform work required by the contract that has not been completed at the time of occupancy.

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§ 9.9.1.2 Prior to the foregoing occupancy activity beginning, it is essential that the following steps be taken by the Contractor:

.1 Fire Escapes: Fire exits shall have the illuminate exit signs installed above the exit openings. Panic hardware shall be installed and fully operational. Required exits must be kept usable throughout the construction period. Provide lighted, enclosed walkways through construction areas and make other provisions for safety as required by governmental authorities having jurisdiction.

.2 Building Security: Required door locks at doors are installed and operational.

.3 Fire Protection Sprinkler System: The fire protection sprinkler system shall be completely operational.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents;
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- **.5** damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Final Application for Payment under paragraph 9.3.1 will not be approved for payment by the Owner until the following items are provided to the Owner by the Contractor in a "Close-Out Book" consisting of a black, three-ring binder with tabs for each category and any other Close-Out Document required by the specifications:

- **.1** Final List of Subcontractors and Material Suppliers with their address, phone number and scope of work.
- **.2** General Contractors Statement of one-year Warranty.
- **.3** Final Unconditional Lien Releases from General Contractor and All Subcontractors and Suppliers.
- **.4** Final Inspection Approvals (See Specifications)
- **.5** Red-Lined As-Built Drawings
- **.6** Electronic As-Built files in PDF format on CD (2ea.), 1 set of prints in 30" x 42" format.
- **.7** Any and all operational manuals including but not limited to HVAC, plumbing and electrical.
- **.8** All Building Permits
- **.9** Consent of Surety
- **.10** Signed receipts by Owner of attic stock.
- **.11** All warranties and extended warrantees required by Contract documents for Contractor's work.
- **.12** All maintenance service agreements.
- **.13** Certified copy of Architect's Certificate of Substantial Completion.
- **.14** Two copies of sign-in sheets and videos of owner training sessions.
- **.15** Copy of weekly job photo documentation.
- **.16** Two signed copies of certified interior area survey.

§ 9.10.7 In no instance will a final settlement be made upon the contract until the expiration of thirty (30) days from the completion of the contract

§ 9.10.8 If "Close-Out" book is furnished later than 60 days from Substantial Completion, liquidated damages of $100.00/day will be imposed for each day the "Close-Out Book" is late.

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such

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delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

§ 9.12 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of the Contractor or any subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided that such additional time is reflected in a written signed Change Order.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.1.1 All work performed in conjunction with this project will be done in full compliance with all current United States Occupational Safety and Health Administration (OSHA) regulations.

§ 10.1.1.2 Provide temporary bracing and shoring and protect work. Comply with State and local codes, and all U.S. Occupational Safety and Health Administration (OSHA) regulations. Contractor is responsible for the performance of his temporary work. Protect work in progress and upon removal of temporary work, protect all surrounding existing work.

§ 10.1.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- **.1** Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- **.2** Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- **.3** Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- **.4** Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction;

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.4 material and equipment provided by the Owner shall be received, stored, secured and protected in accordance with Paragraph 10.2.1.2 of the General Conditions. Incurred costs for receiving, storage, liability, and warranty labor shall be included in the Contract Amount. The Owner shall not be responsible for any contractor's material and equipment until Owners final acceptance as described in Paragraph 9.10.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property
All accidents arising out of or in connection with the work which cause death, personal injury, or property damage are to be reported in writing immediately to the Owner and Architect. These reports are to provide full detail of the incident, including any witness statements. All accident reports are to be submitted within one (1) calendar day. In addition, if death, serious personal injury or serious property damage should occur, report the accident immediately by telephone or messenger to the Owner or Architect.
§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3 Hazardous Materials and Substances
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous

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material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

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Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

.1 Insurance shall be maintained with a reliable company (having at least "IV" or better financial rating and "A-" or better general policyholder's rating according to the latest A.M. Best report of Contractor's choice, acceptable to, approved by Owner, authorized to do business in the state where project is located. Contractor shall require his subcontractors to provide insurance certificates for Workers' Compensation and General Liability insurance.

.2 The Contractor shall be responsible for securing Certificates of Insurance from all Subcontractors.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. A Certificate of Insurance, acceptance to the Owner, MUST BE RECEIVED by the Owner before the Owner will execute the Contract or before any work is performed on the project, whichever is the earliest date. The certification must indicate that the limits listed are provided and that insurance will not be canceled while the work specified is in progress without thirty (30) days prior written notice to Owner. Failure to provide the proper Certificate of Insurance as required above may result in the cancellation of the award of Contract.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. Insurance coverage limits required under this article shall be written for not less than the limits required by law or the amounts listed in Subparagraph 11.1.2, whichever is greater:

The contractor shall include within his umbrella insurance policy or shall purchase and maintain in a company or companies licensed to do business in the state in which the project is located, such insurance as indicated herein. Such insurance shall protect the Owner, Owner's Consultants, Architect, Architect's Consultants and the Contractor from claims which may arise out of or result from operations be by himself or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Owner, Architect, their employees, consultants or agents shall be named insured for Commercial General Liability and excess Liability Insurance for this project.

OWNER MUST BE NAMED AS AN ADDITIONAL, NAMED INSURED ON ALL POLICIES OF INSURANCE

§ 11.1.5 The Contractor agrees to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement and for five (5) years thereafter, at its sole cost, all of the insurance required by and described in **Exhibit A - Contractor's Insurance and Bond Requirements**, attached. All of said insurance shall be written by, and secured from, a responsible company or companies which are satisfactory to Owner and which are authorized to engage in such insurance business in the state where the work is being performed. Each policy of insurance shall be issued by insurers with a current AM Best's rating of A- IX or better. All of said insurance shall be written for not less than the limits specified herein, or as required by law, whichever is greater.

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§ 11.2 Owner's Insurance
The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents. Owner shall have the right to assign the Contract without the Contractor's consent, provided, however, if Owner does so assign the Contract without Contractor's consent, Owner will not be relieved of its obligations under the Contract. The Contractor will consent to an assignment of this contract to the Lender, as security.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, uties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1

Construction testing shall be performed by an independent testing laboratory selected and paid for by the Owner. Preparation of pavement mix designs is the responsibility of the Contractor and is not part of the testing services to be paid for by the Owner. The Contractor shall coordinate scheduling for construction testing and shall also provide reasonable assistance needed by the testing laboratory to insure that the proper testing procedures are followed. Failure to notify the testing laboratory prior to installation will result in the Contractor repairing or replacing such work until proper testing procedures are met. The independent testing laboratory shall prepare certified test reports that indicate the type, location, date time, conditions, and results of each test. The Owner, Contractor and Tenant (if applicable) shall be provided with copies of each test report within 48 hours of the time the test was performed. In the

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event a test fails to comply with Drawings and Specifications, Owner and Contractor shall be notified immediately by the testing laboratory.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.8.1 The Contractor and all Subcontractors agree that no labor dispute of any kind involving any Contractor or Subcontractor, or their employees or agents shall be permitted to occur or be manifested on the Project and the Contractor and Subcontractors to that end to only employ persons on the Work who will work at all times in harmony with other persons employed of the Project.

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The Contractor and all Subcontractors agree and their employees shall not participate in or accede to any work stoppage, slow down or any type of interference with the performance of work by other persons on the project which may occur as a result of any labor dispute involving their employees.

Should there be a work stoppage, slow down or any type of interference with the performance of work by other persons on the project involving the Contractor or his employees or a Subcontractor or his employees resulting from a labor dispute and which in the judgment of the Owner will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice, Owner shall have the right to declare the Contractor and/or Subcontractor in default under this Contract and take such steps as are necessary to finish the uncompleted portion of work. In such event Owner shall have the right to take possession of and use all of the Contractor's and/or Subcontractor's materials (exclusive of tools) intended for use on the Work. The cost of completion including all expenses, attorney's fees and costs incurred in resolving the labor dispute shall be charged against the Contractor and/or Subcontractor's remaining interest in the Contract amount.

Should the Contractor and/or Subcontractor(s) become involved in a labor dispute resulting in a work stoppage, slow down or any type of interference with the progress of construction and resulting in an increase in interest charges to Owner, the Contractor and/or Subcontract(s) shall be liable to Owner for this increased cost. If the Contractor and/or Subcontractors agree to pay Owner such excess within thirty (30) days after written demand for such excess has been made upon him by Owner.

Should the Contractor and/or Subcontractor(s) become involved in a contractual dispute resulting in a lien being placed on the project work stoppage, slow down, or any type of interference with the progress of construction and in the judgment of the Owner will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice, Owner shall have the right to take possession of and use all of the Contractor and/or Subcontractor's material (exclusive of tools) intended for use on the project. The cost of completion, including all expenses, attorney's fees and costs incurred in resolving subject disputes shall be charged against the Contractor and/or Subcontractor's remaining interest in the Contract amount.
Harmony clause provisions similar to the provisions of the immediately preceding paragraphs shall be included in any of the Contractor and/or Subcontractor's subcontracts relating to the Work.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

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§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

§ 13.13 Liquidated Damages

§ 13.9.1 Should the Contractor or, in case of default, the surety fail to complete the work within the contractual time frame and no extension of contract time is granted by the Owner, a deduction for each calendar day that any work shall remain incomplete, an amount shall be deducted from any monies due to the Contractor. Liquidated damages assessed provided in the specifications is not a penalty but is intended to compensate the Owner for increased time in administrating the contract, supervision, inspection and engineering which required the Owner's forces for a longer time on any construction operation or phase than originally contemplated when the contract period was agreed upon in the contract. Permitting the Contractor to continue and finish the work or any part of it after the contractual completion date will in no way waive the Owner's rights under the contract.

§ 13.9.2 Therefore, should Contractor fail to obtain Substantial Completion by the date agreed to in the contract, the Contractor shall pay the Owner the sum of five hundred dollars ($500.00) for each day beyond that date until Substantial Completion is obtained. Further, a time charge equal to one hundred ($100.00) dollars per calendar day will be assessed against the final payment for each additional day required beyond sixty days from the date of Substantial Completion to submit final Close-Out documents.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

(Paragraph deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 persistently refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents;

.5 Fails to provide proper supervision or displays an inability to complete the work as scheduled; or

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.6 Refuses to correct defective work after notification.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the sum of the costs of finishing the Work and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

.1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and

.2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,

.3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner reserves the right to terminate the Contract for convenience and without cause even though the Contractor has not failed to perform any part of the Contract. Termination of the Work hereunder shall be affected by written notice to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice otherwise directs,

.1 Immediately discontinue the work and the placing of all orders and subcontracts in connection with this Contract.

.2 Immediately cancel all of the existing orders and subcontracts made hereunder; or at Owner's option, assign to Owner all or part of such existing orders and subcontracts;

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.3 Immediately transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Contractor in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the Work relating to this Contract; and

.4 Deliver all plans, drawings, specifications, and other necessary information to the Owner.

(Paragraphs deleted)

§ 14.4.2 If the Owner terminates the Contract for convenience, the following shall be the Contractor's exclusive remedies:

.1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the Work;

.2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settlement or discharging outstanding commitments entered into by the Contractor in performing the Contract, and

.3 Payment of profit, insofar as profit is realized hereunder, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of completion of the Work. In no event shall the Contractor be entitled to anticipated fees or profits on work not required to be performed.

§ 14.4.3 All obligations of the Contractor under the Contract with respect to completed Work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all Work completed or substantially completed by the Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause.

§ 14.4.4 Upon a determination that a termination of this Contract other than a termination for convenience under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article, and the Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under Subparagraph 14.4.2 of this Article.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; ; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice

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from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications. .

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

(Paragraph deleted)

Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.8 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation
[Intentionally Omitted]

(Paragraphs deleted)
§ 15.4 Arbitration
All disputes shall be addressed in accordance with Addendum B.

(Paragraphs deleted)
ARTICLE 16 - APPLICABLE PUBLICATIONS (SUPPLEMENTARY)
§ 16.1 REFERENCE

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§ 16.1.1 Any reference to a publication by its basic designation shall be a reference to the issue, edition and amendment (if any) of that publication current on the date of these specifications. That publication shall for a part of these specifications to the extent indicated by the reference thereof.

§ 16.2 ABBREVIATIONS

§ 16.2.1 Abbreviation used refers to the following basic publications: ACI, American Concrete Inst.; AIA, American Inst. of Architects; AISC, American Inst. of Steel Const.; ASHRAE, American Society of Heating, Refrigeration and Air Conditioning Engineers; ASTM, American Society for Testing and Materials; CRSI, Concrete Reinforcing Steel Inst.; Fed. Spec. (FD), Federal Specifications; SJI, Steel Joist Inst.; CS, U.S. Dept. Of Commerce Commercial Standards; and ANSI, American National Standards Inst.

ARTICLE 17 - GUARANTEE (SUPPLEMENTARY)

§ 17.1 The General Contractor shall guarantee the Work performed under the Contract Documents from any defects due to materials or workmanship, and for necessary adjustments to mechanical systems for a period of one year from date of Owner's Final Acceptance of the Work. The General Contractor shall cut out and replace any defective work, materials or equipment, at his own expense, that occur during the year following acceptance of the work.

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PAGE 1

New Accessible Restrooms Old Fire Station #4
City of Murfreesboro Fire & Rescue
1311 Jones Boulevard
Murfreesboro, TN 37129

...

City of Murfreesboro, Tennessee, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

...

CMH Architects
1800 International Park Drive
Suite 300
Birmingham, Alabama 35243
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§ 1.1.1.1 All questions relative to the Contract Documents shall be addressed to the Architect for clarification. In the event of any conflict/ inconsistencies in the Contract Documents for the Described Work, the following take precedence:

A. The agreement (contract)
B. Addenda
C. Supplementary Conditions
D. General Conditions
E. Drawings and specifications. In the event of conflict between these two, the stricter or higher quality shall prevail.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

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§1.1.6.1 The reference standards referred to in the Specifications references the edition current as of the date of the documents. References to non-proprietary standards, codes and specifications, and the manufacturer's specifications, instructions and directions mean the date included with such reference. Where no date is given, references will mean the latest edition in effect on the date of the documents. Such references require that the Contractor become fully and adequately informed of the contents of such directions, specifications and codes, and will properly apply that information so that the best possible use of the item, material or technique is achieved. Before such referenced information is utilized in the Work, the Architect may request the Contractor to use editions of later date than specified. If a difference in cost is necessary, the Contract Sum will be adjusted by Change Order.

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§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.9 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

...

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

...

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

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§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

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~~In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.~~§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

...

§ 1.5.1 The ~~Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with ~~the~~ this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' reserved rights.~~ Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the ~~copyright notice, if any, shown on the Instruments of Service.~~ following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in

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writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

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§ 1.7 Confidentiality

§ 1.7.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.7.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.7.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.7.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.7.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" ~~means the Owner or the Owner's authorized representative.~~refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such~~

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~~information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~[Intentionally Deleted]

...

[Intentionally Deleted.]

~~§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

...

§ 2.3.4 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

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§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

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§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ~~a ten-day period~~ five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. The Contractor shall be responsible for the accuracy of measurements, elevations, lines and grades of work. If Contractor chooses to

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measure distance by scaling from the Drawings, it is totally at his risk and is not considered by Owner/Architect to be an accurate measurement. Contractor shall do field work necessary to lay out and maintain the work. Differences which may be found between Drawings and actual conditions shall be submitted to the Owner/Architect for his consideration before proceeding with the work.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.
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§ 3.2.5 The Contractor is responsible for having a thorough knowledge of all Drawings, Specifications, General Supplementary, and Special Conditions, and other Contract Documents. Failure to acquaint himself with this knowledge does not relieve him of the responsibility for performing his work in a manner acceptable to the Owner. No additional compensation will be allowed because of conditions that occur due to failure by the Contractor to familiarize himself and all works with this knowledge.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Contractor agrees upon request of the Owner/Architect, to change any sequence of work provided such change does not cause delay in the completion of work or increase the cost. If such a change does cause a delay or increase the cost, a change order maybe issued extending the time of completion and/or changes in cost.
§ 3.3.1.1 The Owner/Architect reserve the right to approve the Contractor's Project Manager and/or Superintendent assigned to this project. The Owner/Architect also reserves the right to reject any of the Contractor's personnel assigned to this project, and have the Contractor replace such personnel with acceptable, qualified personnel within 5 working days prior to beginning and during course of work.
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§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No

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substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

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§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in

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contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

§ 3.4.6 All manufactured articles, materials and equipment must be supplied, installed, connected, erected, used, cleansed and conditioned in accordance with the manufacturer's specifications unless otherwise specified.

§ 3.4.7 The Contractor agrees that neither he nor his subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to his hire, tenure, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract.

§3.4.8 Comply with all applicable State and Federal statutes regarding minimum wages to be paid. The Contract Sum will not be increased because of subsequent increases in the wage rates.

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may~~ will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranty periods will start at the date of substantial completion as defined in paragraph 9.8.

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.5.4 Workmanship and installation must be the best quality possible. Perform each part of the work and related activities with the best possible workmanship to produce work that is neat, secure, weatherproof, with the best possible appearance and utility.

§ 3.5.5 The Architect will be the sole judge of all installed work, and may reject work that does not conform to the requirements of the Contract Documents. Repair or replace rejected work to the satisfaction of the Architect without additional cost to the Owner.

§3.5.6 Contractor does hereby warranty and covenant to Owner that all materials and workmanship shall be of the highest quality, in accordance with the Contract Documents and free from defects that if any portion of Work is not of the highest quality, in accordance with the contractor Documents and free from defects, Contractor shall, upon the request of Owner, for a period of one year from the date of Grand Opening or Substantial Completion, whichever is later, of the Work under the contract, promptly correct such non-compliance or defect. For the purposes of ascertaining the quality and performance standards required by this warranty and ascertaining the Contractor's responsibility in cases where the required performance standard has not been met. Owner and Contractor agree that they shall be guided by the performance standard for workmanship, materials, systems, and structures deemed appropriate by the Architect except for the following standards which shall be set forth:

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.1 Should there be any conflict between the local and state Building Codes, the quality of standard for sound industry practices with regard to materials or workmanship, and the quality standard required by the Contract Documents, the higher standard shall govern.
.2 See additional and specific warranty information as specified in Sections 2 through 16.

§ 3.5.7 Contractor will at all times provide proper facilities and an opportunity for the inspection of the Work by the Architect and Owner and their representatives. Contractor shall, within twenty-four (24) hours after receiving written notice from Architect proceed to takedown and remove all portions of the Work which shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents and shall replace with same with proper and satisfactory Work make good all work damaged or destroyed thereby at no cost to the Owner. Failure to discover or notify Contractor of defective or nonconforming work by Architect or Owner shall not relieve Contractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom.
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The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In the event this project is constructed in an area where governmental jurisdiction requires income tax to be withheld, the contractor shall comply with the requirements in a manner that will absolve the Owner of any withholding liability.
§ 3.6.1 The City is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded firm. Contractors doing business with the City shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the City, nor shall any vendor be authorized to use the City's Tax Exemption Number in securing such materials.

...

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for~~ Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the ~~Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.~~Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.
§ 3.7.1.1 All Contractors performing work must be licensed as required by the state, county, and/or municipality having jurisdiction. Transmit copies of license certificate to the Architect and Owner within ten (10) days following the execution of the contract.

§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~
The Contractor shall be totally and solely responsible for compliance with and notices under all licensing laws and other statutory requirements which apply to himself or any Subcontractor actively engaged in any work on the project.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor's work includes, without limitation, all disposal or removal of waste and rubbish attributed to the project and warrants that it is familiar with all applicable federal, state and local laws and ordinances concerning disposal of waste and rubbish.
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.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;~~and~~
.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs

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and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2; and

.4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

...

§ 3.10.1 ~~The Contractor, promptly after being awarded the Contract,~~ Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the ~~Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work.~~ Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

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§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

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§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.10.7 Should the Contractor fail to complete his Work within the time allowed by the Project schedule, including extensions of time that the Contractor may be entitled to under the Contract documents unless the Owner elects to accelerate the work, Contractor will be responsible for paying the Owner all additional costs incurred by the Owner's consultants and sub consultants hired in conjunction with the execution of the late Work and will be subject to liquidated damages as defined in the contract. The period that the Contractor will be responsible for such costs is from the point that the Contractor's work activity exceeded the scheduled completion dates until the date of actual substantial completion of that particular activity.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

.1 Identification as to pertinent Specification Division

.2 Item(s) involved.

.3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.

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.4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design ~~professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy.~~ professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

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The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall comply with all instructions of the Owner given to it with regards to the use of site.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.
§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.
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§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

...

The ~~Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.~~Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the ~~Owner,~~ Owner and Owner's agents Owner's Lender, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance ~~of the Work,~~ of the Work including but not limited to spilling or dumping of hazardous waste materials at or upon the construction site, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

...

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the ~~Owner, Contractor,~~ Owner and Architect. Consent shall not be unreasonably withheld.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during ~~construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.~~construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The

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Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.
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§ 4.2.13 The Architect's decisions on ~~matters~~ matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

...

§5.1.1.1 Any Subcontractor performing work must be licensed as required by the State, County, and/or municipality having jurisdiction. Transmit copies of license certificates to the Architect and Owner within ten (10) days following the execution of the Contract.

...

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including~~ No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special ~~design. Within 14 days of receipt of the information, the Architect may notify the Contractor~~ design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect ~~(1)~~ has reasonable objection to any such proposed ~~person or entity or (2) requires~~ persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the ~~Architect to provide notice within~~ Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.
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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~ **§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the

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Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

...

§ 5.4.2 ~~Upon such assignment, if the Work~~ If the Work in connection with a subcontract has been suspended for more than 30 ~~days,~~ days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for ~~increases in cost resulting from~~ any increase in direct costs incurred by such Subcontractor as a result of the suspension.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 5.5 SUBCONTRACTOR DUTIES

§ 5.5.1 All subcontractors will participate in installing and removing general temporary protection measures and completing a nightly cleaning at the end of each work shift. Participation will be proportional to the level of manpower present on site for given night's work.

§ 5.5.2 All subcontractors will be provided with a temporary utility source, toilet facilities, and dumpster (for common trash). All other general conditions, temporary facilities, staging components, scaffolding, hoisting, conveyance equipment, etc. required for the commission of its scope of work shall be furnished, installed, and subsequently removed by subcontractor.

§ 5.5.3 All subcontractors will perform a daily cleanup of its debris. All common trash may be placed in the General Contractor furnished project dumpster. All bulk debris resulting from subcontractor's scope of work will be properly disposed of site by subcontractor.

§ 5.5.4 All subcontractors shall furnish, install, and subsequently remove adequate protection measures for new and existing finishes, equipment, and furnishing to protect against damage that may result from the commission of subcontractor's scope of work.

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§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

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§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No Change Orders, Construction Change Directives or order for a minor change in the work will be considered unless approved by the Owner in writing prior to the work performed.

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§ 7.1.1.1 It is agreed the Owner has the right to request changes during performance of the Contract for Construction. The Contractor agrees to perform those requested changes for a fair and reasonable cost/credit and within the time directed by the Owner, whether the change requires an increase or a decrease to the Scope of the Work.

a. A fair and reasonable cost is defined as not greater than the current industry standard for the type work and circumstances under which it is to be performed. Means Construction Cost Data, latest edition, with locality factors taken under consideration, will be used as a guide and costs may not be higher without sufficient documentation
to, in the Architect's, substantiate the increase. The Architect may also check costs against current similar work on other projects.

b. A fair and reasonable time extension is defined as the net increase to the overall project schedule, as sufficiently documented by the Contractor and clearly determined justifiable by the Architect's review of the current Project Schedule. A request for a time extension must accompany any and all of the Contractor's cost proposal submittals or no additional time will be allowed.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect ~~alone.~~as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 If the net value of a change or deletion results in a Credit to the Owner, the Credit shall be the net without profit and overhead.

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§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

...

.2 ~~Unit~~ The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a ~~mutually acceptable fixed or percentage fee;~~ percentage fee as provided in Section 7.3.13; or

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect shall determine the adjustment~~ method and the adjustment shall be determined by the Architect on the

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basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, ~~an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

.2 Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;

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§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.

.2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

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§ 8.1.2 The date of commencement of the Work is the date established in the ~~Agreement.~~notice to proceed.
§ 8.1.2.1 Notice to Proceed will be issued. Obtain necessary insurance and permits, file documents and notices and commence the Work as soon as notified. Five (5) days will be allowed for mobilization.

...

§ 8.2.4 It is the intent that the owner issue Notice to Proceed no later than 30 days after receipt of bids.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended ~~for such reasonable time as the Architect may determine.~~by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day. In the event that in the opinion of the Owner, in order to meet the construction schedule and to complete the Work within the time specified by this Agreement, the Contractor needs to employ additional personnel and labor and to have such employees work on an overtime basis,
including but not limited to Saturdays, Sundays and holidays, in order to meet such Contractor's schedule and the completion dates as required by this Agreement, then the Contractor agrees to immediately comply with such instructions as are given with regard thereto at no additional cost to the Owner. However, nothing in this paragraph supersedes Paragraph 8.3.1 of General Conditions. If the Contractor is delayed by causes beyond its control, the Owner may by written authorization to the Contractor accelerate the time of completion. As a result, the Contractor at the Owner's expense will employ additional personnel and labor and have such employees work on an overtime basis. The cost of this overtime work will be reported to the Owner weekly and may be terminated by the Owner at any time.
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§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

§ 8.3.4 Should a Contractor fail to complete his work within the time allowed by the Project Schedule at no one's fault but his own, he will be responsible for paying the Owner all costs incurred for the Owner's consultants and

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subconsultants hired in conjunction with the execution of the work. The period that the Contractor will be responsible for such costs is from the point that the Contractor's work exceeded the scheduled completion date until the date of actual substantial completion.

§ 8.4 REIMBURSEMENT OF CONSULTANTS

§ 8.4.1 The involved Contractor is responsible for paying the Owner all costs incurred for consultants, including sub-consultants hired in the performance of the Work, including their overhead and profit, relative to the project during the following period:

§ 8.4.1.1 After the Contract Time, as defined in this Article, has expired, until the actual date of Substantial Completion or Final Completion.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.2.3 All pay request forms are to be the AIA G702, Application and Certification for Payment must be supported by the AIA document G703 continuation sheet. Submit three (3) notarized applications monthly.

§ 9.3.1 ~~At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all~~ All payments must be submitted to the Owner for review and processing on AIA forms G-702 (certificate and application for payment) and AIA G-703 (continuation Sheet), or an Owner's approved equal, three original copies. Such application shall be notarized, and supported by such data substantiating the Contractor's right to ~~payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.~~payment, such as copies of requisitions from subcontractors and material suppliers. The Owner shall determine the amount less retainage of each Application for Payment that is properly due and will issue payment for such amount, if Owners Lender does not reasonably object to such payment, no later than twenty (20) days after the first day of the next month following the

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period covered by the Application for Payment, provided the properly completed Application for Payment is in Owner's possession not later than the 1st day of the month.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Application for Payment shall be submitted on AIA Document G-702 and G-703. All listings of items to agree with the Schedule of Values (Paragraph 9.2).

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.1.4 The Contractor is provided with a Monthly Receipt and Release of Lien form by Owner as part of the Contract Documents Package and the Contractor shall properly complete and submit the required form with each Application for Payment. No payment will be issued without the fully executed Lien Waiver. This must be accompanied by fully executed Lien Waivers from all appropriate Subcontractors and Suppliers involved in the preceding Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

.1 The aggregate cost of materials stored off site shall not exceed $ 50,000 at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

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§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.3.4 In the event Owner receives information that indicates a lien has been filed or that there exists a potential lien situation, the Contractor will be notified by the Owner and they will expect the Contractor to immediately resolve the situation to the satisfaction of the Owner. All monies requested for this pay period, as described in Part 9.3.1, shall be withheld until such liens have been removed and the dispute rectified.

§ 9.3.3.5 It is hereby agreed between the Owner and the Contractor that each properly executed Monthly Receipt and Release of Lien form is a valid lien release form, the Contractor thereby agrees to defend and indemnify the Owner against any and all claims resulting from a lien against the property.

§ 9.3.3.6 Payment for materials stored off site will not be made by Owner unless approved by the Architect. Also, Contractor submitting request for payment of stored materials must attach proof of adequate insurance coverage of such materials to the pay request for the month they are making the request.

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§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

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§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

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§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be

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reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

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§ 9.6.2.1 All monies paid on account to Contractor for materials or labor used in the performance of the Work will be regarded as funds held in trust solely for payment of any and all of contractor's obligations relating to or arising out of the Work including the payment of all subcontractors and suppliers of the contractor who have supplied labor, equipment, or materials or performed any work whatsoever on this Project.

...

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

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§ 9.6.9 Procedures for processing payments for stored materials and release of retainage:
§ 9.6.9.1 The amount of retainage that will be withheld from partial payments will be 10% for the first 50% of the value of the estimated work performed and the value of materials stored on-site or stored off-site in compliance with paragraph 9.3.3.3. then 0% after that. With regards to materials stored off-site, the Architect must receive proof of adequate insurance of such materials; must approve the storage facility in which they are placed; and must verify both the quantity and quality of such materials, all before the Contractor's application for partial payment will be processed.

§ 9.6.9.2 Upon completion of the construction Project and completion of the punch list, the Owner will pay 100% of the amount due the Contractor less retainage. Upon completion of all close-out requirements, including submission of

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all applicable releases, record documents and warranties, the Owner will pay all retainage. No partial retainage will be paid before all close-out items are complete.

§ 9.6.9.3 Substantial Completion (completion of punch lists) must be achieved within the time limits established in the Project Schedule for each phase to relieve the Contractor of responsibility for liquidated damages (if called for).

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~**§ 9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.
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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.1.1 The date of commencement of Work and the date of Substantial Completion shall be agreed upon between the Owner and the Contractor at the time of Contract award and shall be made part of the Construction Agreement between the Owner and Contractor.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $500.00 per person per day plus expenses.
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§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.8.9 Substantial Completion (completion of punch lists) must be achieved within the time limits established in the Project Schedule for each phase to relieve the Contractor of responsibility for liquidated damages.

...

§ 9.9.1.1 If the Owner elects to occupy or use any completed or partially completed portion of the Work as permitted by Paragraph 9.9, the Contractor agrees to cooperate in the segregation and coordination of its construction activities. Such occupancy does not relieve the Contractor of liability to perform work required by the contract that has not been completed at the time of occupancy.

§ 9.9.1.2 Prior to the foregoing occupancy activity beginning, it is essential that the following steps be taken by the Contractor:

.1 Fire Escapes: Fire exits shall have the illuminate exit signs installed above the exit openings. Panic hardware shall be installed and fully operational. Required exits must be kept usable throughout the construction period. Provide lighted, enclosed walkways through construction areas and make other provisions for safety as required by governmental authorities having jurisdiction.

.2 Building Security: Required door locks at doors are installed and operational.

.3 Fire Protection Sprinkler System: The fire protection sprinkler system shall be completely operational.

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§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $500.00 per person per day plus expenses.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

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.3 terms of special warranties required by the Contract Documents; ~~or~~

.4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment.~~payment; or

.5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

...

§ 9.10.6 The Final Application for Payment under paragraph 9.3.1 will not be approved for payment by the Owner until the following items are provided to the Owner by the Contractor in a "Close-Out Book" consisting of a black, three-ring binder with tabs for each category and any other Close-Out Document required by the specifications:

.1 Final List of Subcontractors and Material Suppliers with their address, phone number and scope of work.
.2 General Contractors Statement of one-year Warranty.
.3 Final Unconditional Lien Releases from General Contractor and All Subcontractors and Suppliers.
.4 Final Inspection Approvals (See Specifications)
.5 Red-Lined As-Built Drawings
.6 Electronic As-Built files in PDF format on CD (2ea.), 1 set of prints in 30" x 42" format.
.7 Any and all operational manuals including but not limited to HVAC, plumbing and electrical.
.8 All Building Permits
.9 Consent of Surety
.10 Signed receipts by Owner of attic stock.
.11 All warranties and extended warrantees required by Contract documents for Contractor's work.
.12 All maintenance service agreements.
.13 Certified copy of Architect's Certificate of Substantial Completion.
.14 Two copies of sign-in sheets and videos of owner training sessions.
.15 Copy of weekly job photo documentation.
.16 Two signed copies of certified interior area survey.

§ 9.10.7 In no instance will a final settlement be made upon the contract until the expiration of thirty (30) days from the completion of the contract

§ 9.10.8 If "Close-Out" book is furnished later than 60 days from Substantial Completion, liquidated damages of $100.00/day will be imposed for each day the "Close-Out Book" is late.

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§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

§ 9.12 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of the Contractor or any subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided that such additional time is reflected in a written signed Change Order.

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§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.1.1 All work performed in conjunction with this project will be done in full compliance with all current United States Occupational Safety and Health Administration (OSHA) regulations.

§ 10.1.1.2 Provide temporary bracing and shoring and protect work. Comply with State and local codes, and all U.S. Occupational Safety and Health Administration (OSHA) regulations. Contractor is responsible for the performance of his temporary work. Protect work in progress and upon removal of temporary work, protect all surrounding existing work.

§ 10.1.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

.1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.

.2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;

.3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;

.4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

...

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of ~~construction.~~construction;

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.4 material and equipment provided by the Owner shall be received, stored, secured and protected in accordance with Paragraph 10.2.1.2 of the General Conditions. Incurred costs for receiving, storage, liability, and warranty labor shall be included in the Contract Amount. The Owner shall not be responsible for any contractor's material and equipment until Owners final acceptance as described in Paragraph 9.10.

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§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

...

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~All accidents arising out of or in connection with the work which cause death, personal injury, or property damage are to be reported in writing immediately to the Owner and Architect. These reports are to provide full detail of the incident, including any witness statements. All accident reports are to be submitted within one (1) calendar day. In addition, if death, serious personal injury or serious property damage should occur, report the accident immediately by telephone or messenger to the Owner or Architect.
§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.

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When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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§ 11.1.2 The Contractor ~~shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

.1 Insurance shall be maintained with a reliable company (having at least "IV" or better financial rating and "A-" or better general policyholder's rating according to the latest A.M. Best report of Contractor's choice, acceptable to, approved by Owner, authorized to do business in the state where project is located. Contractor shall require his subcontractors to provide insurance certificates for Workers' Compensation and General Liability insurance.

.2 The Contractor shall be responsible for securing Certificates of Insurance from all Subcontractors.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. A Certificate of Insurance, acceptance to the Owner, MUST BE RECEIVED by the Owner before the Owner will execute the Contract or before any work is performed on the project, whichever is the earliest date. The certification must indicate that the limits listed are provided and that insurance will not be canceled while the work specified is in progress without thirty (30) days prior written notice to Owner. Failure to provide the proper Certificate of Insurance as required above may result in the cancellation of the award of Contract.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. Insurance coverage limits required under this article shall be written for not less than the limits required by law or the amounts listed in Subparagraph 11.1.2, whichever is greater:

The contractor shall include within his umbrella insurance policy or shall purchase and maintain in a company or companies licensed to do business in the state in which the project is located, such insurance as indicated herein. Such insurance shall protect the Owner, Owner's Consultants, Architect, Architect's

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Consultants and the Contractor from claims which may arise out of or result from operations be by himself or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Owner, Architect, their employees, consultants or agents shall be named insured for Commercial General Liability and excess Liability Insurance for this project.
OWNER MUST BE NAMED AS AN ADDITIONAL, NAMED INSURED ON ALL POLICIES OF INSURANCE

§ 11.1.5 The Contractor agrees to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement and for five (5) years thereafter, at its sole cost, all of the insurance required by and described in **Exhibit A - Contractor's Insurance and Bond Requirements**, attached. All of said insurance shall be written by, and secured from, a responsible company or companies which are satisfactory to Owner and which are authorized to engage in such insurance business in the state where the work is being performed. Each policy of insurance shall be issued by insurers with a current AM Best's rating of A- IX or better. All of said insurance shall be written for not less than the limits specified herein, or as required by law, whichever is greater.

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

~~**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~

~~**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

~~**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

§ 11.3.1 The ~~Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and~~

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~~sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation.~~ Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the ~~Contractor and to make a claim for breach of warranty.~~ Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.2.3 ~~The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

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§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in ~~Section 13.2.2,~~ Section 13.2.2 or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents. Owner shall have the right to assign the Contract without the Contractor's consent, provided, however, if Owner does so assign the Contract without Contractor's consent, Owner will not be relieved of its obligations under the Contract. The Contractor will consent to an assignment of this contract to the Lender, as security.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender ~~providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents.~~ or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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§ 13.3.1 ~~Duties~~ Except as expressly provided in the Contract Documents, uties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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§ 13.4.1 ~~Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~
Construction testing shall be performed by an independent testing laboratory selected and paid for by the Owner. Preparation of pavement mix designs is the responsibility of the Contractor and is not part of the testing services to be paid for by the Owner. The Contractor shall coordinate scheduling for construction testing and shall also provide reasonable assistance needed by the testing laboratory to insure that the proper testing procedures are followed. Failure to notify the testing laboratory prior to installation will result in the Contractor repairing or replacing such work until proper testing procedures are met. The independent testing laboratory shall prepare certified test reports that indicate the type, location, date time, conditions, and results of each test. The Owner, Contractor and Tenant (if applicable) shall be provided with copies of each test report within 48 hours of the time the test was performed. In the event a test fails to comply with Drawings and Specifications, Owner and Contractor shall be notified immediately by the testing laboratory.
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§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

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§ 13.6 Severability.
Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith
Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors
Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.8.1 The Contractor and all Subcontractors agree that no labor dispute of any kind involving any Contractor or Subcontractor, or their employees or agents shall be permitted to occur or be manifested on the Project and the Contractor and Subcontractors to that end to only employ persons on the Work who will work at all times in harmony with other persons employed of the Project.

The Contractor and all Subcontractors agree and their employees shall not participate in or accede to any work stoppage, slow down or any type of interference with the performance of work by other persons on the project which may occur as a result of any labor dispute involving their employees.

Should there be a work stoppage, slow down or any type of interference with the performance of work by other persons on the project involving the Contractor or his employees or a Subcontractor or his employees resulting from a labor dispute and which in the judgment of the Owner will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice, Owner shall have the right to declare the Contractor and/or Subcontractor in default under this Contract and take such steps as are necessary to finish the uncompleted portion of work. In such event Owner shall have the right to take possession of and use all of the Contractor's and/or Subcontractor's materials (exclusive of tools) intended for use on the Work. The cost of completion including all expenses, attorney's fees and costs incurred in resolving the labor dispute shall be charged against the Contractor and/or Subcontractor's remaining interest in the Contract amount.

Should the Contractor and/or Subcontractor(s) become involved in a labor dispute resulting in a work stoppage, slow down or any type of interference with the progress of construction and resulting in an increase in interest charges to Owner, the Contractor and/or Subcontract(s) shall be liable to Owner for this increased cost. If the Contractor and/or Subcontractors agree to pay Owner such excess within thirty (30) days after written demand for such excess has been made upon him by Owner.

Should the Contractor and/or Subcontractor(s) become involved in a contractual dispute resulting in a lien being placed on the project work stoppage, slow down, or any type of interference with the progress of construction and in the judgment of the Owner will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice, Owner shall have the right to take possession of and use all of the Contractor and/or Subcontractor's material (exclusive of tools) intended for use on the project. The cost of completion, including all expenses, attorney's fees and costs incurred in resolving subject disputes shall be charged against the Contractor and/or Subcontractor's remaining interest in the Contract amount.
Harmony clause provisions similar to the provisions of the immediately preceding paragraphs shall be included in any of the Contractor and/or Subcontractor's subcontracts relating to the Work.

§ 13.9 No Waiver

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The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

§ 13.13 Liquidated Damages

§ 13.9.1 Should the Contractor or, in case of default, the surety fail to complete the work within the contractual time frame and no extension of contract time is granted by the Owner, a deduction for each calendar day that any work shall remain incomplete, an amount shall be deducted from any monies due to the Contractor. Liquidated damages assessed provided in the specifications is not a penalty but is intended to compensate the Owner for increased time in administrating the contract, supervision, inspection and engineering which required the Owner's forces for a longer time on any construction operation or phase than originally contemplated when the contract period was agreed upon in the contract. Permitting the Contractor to continue and finish the work or any part of it after the contractual completion date will in no way waive the Owner's rights under the contract.

§ 13.9.2 Therefore, should Contractor fail to obtain Substantial Completion by the date agreed to in the contract, the Contractor shall pay the Owner the sum of five hundred dollars ($500.00) for each day beyond that date until Substantial Completion is obtained. Further, a time charge equal to one hundred ($100.00) dollars per calendar day will be assessed against the final payment for each additional day required beyond sixty days from the date of Substantial Completion to submit final Close-Out documents.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and

.2 An act of government, such as a declaration of national emergency, that requires all Work to be ~~stopped;~~stopped.

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~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has ~~repeatedly~~ persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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.1 ~~repeatedly~~ persistently refuses or fails to supply enough properly skilled workers or proper materials;

...

.3 ~~repeatedly~~ persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents;

.5 Fails to provide proper supervision or displays an inability to complete the work as scheduled; or

.6 Refuses to correct defective work after notification.

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§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and~~ sum of the costs of finishing the Work and other damages incurred by the Owner ~~and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,~~ exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the ~~Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker,~~ Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

.1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and

.2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,

.3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

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§ 14.4.1 The Owner ~~may, at any time, terminate the Contract for the Owner's convenience and without cause.~~reserves the right to terminate the Contract for convenience and without cause even though the Contractor has not failed to perform any part of the Contract. Termination of the Work hereunder shall be affected by written notice to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice otherwise directs,

.1 Immediately discontinue the work and the placing of all orders and subcontracts in connection with this Contract.

.2 Immediately cancel all of the existing orders and subcontracts made hereunder; or at Owner's option, assign to Owner all or part of such existing orders and subcontracts;

.3 Immediately transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Contractor in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the Work relating to this Contract; and

.4 Deliver all plans, drawings, specifications, and other necessary information to the Owner.

~~**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall~~

~~**.1** cease operations as directed by the Owner in the notice;~~

~~**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and~~

~~**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.~~

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

§ 14.4.2 If the Owner terminates the Contract for convenience, the following shall be the Contractor's exclusive remedies:

.1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the Work;

.2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settlement or discharging outstanding commitments entered into by the Contractor in performing the Contract, and

.3 Payment of profit, insofar as profit is realized hereunder, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of completion of the Work. In no event shall the Contractor be entitled to anticipated fees or profits on work not required to be performed.

§ 14.4.3 All obligations of the Contractor under the Contract with respect to completed Work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all Work completed or substantially completed by the Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause.

§ 14.4.4 Upon a determination that a termination of this Contract other than a termination for convenience under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article, and the Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under Subparagraph 14.4.2 of this Article.

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§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision ~~Maker.~~ Maker; ; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim

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Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.
PAGE 58

§ 15.1.6.2 ~~If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications. .

...

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~
Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for ~~initial~~ decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, ~~an initial~~ a decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.
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§ 15.2.8 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

[Intentionally Omitted]

~~**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties~~

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~~or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

~~**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

All disputes shall be addressed in accordance with Addendum B.

~~**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

ARTICLE 16 - APPLICABLE PUBLICATIONS (SUPPLEMENTARY)

§ 16.1 REFERENCE

§ 16.1.1 Any reference to a publication by its basic designation shall be a reference to the issue, edition and amendment (if any) of that publication current on the date of these specifications. That publication shall for a part of these specifications to the extent indicated by the reference thereof.

§ 16.2 ABBREVIATIONS

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§ 16.2.1 Abbreviation used refers to the following basic publications: ACI, American Concrete Inst.; AIA, American Inst. of Architects; AISC, American Inst. of Steel Const.; ASHRAE, American Society of Heating, Refrigeration and Air Conditioning Engineers; ASTM, American Society for Testing and Materials; CRSI, Concrete Reinforcing Steel Inst.; Fed. Spec. (FD), Federal Specifications; SJI, Steel Joist Inst.; CS, U.S. Dept. Of Commerce Commercial Standards; and ANSI, American National Standards Inst.

ARTICLE 17 - GUARANTEE (SUPPLEMENTARY)

§ 17.1 The General Contractor shall guarantee the Work performed under the Contract Documents from any defects due to materials or workmanship, and for necessary adjustments to mechanical systems for a period of one year from date of Owner's Final Acceptance of the Work. The General Contractor shall cut out and replace any defective work, materials or equipment, at his own expense, that occur during the year following acceptance of the work.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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Certification of Document's Authenticity

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I, Shane McFarland, Mayor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:51:54 ET on 02/11/2021 under Order No. 3414833268 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Recruitment for City Recorder and City Treasurer Positions

Department: Human Resources

Presented by: Pam Russell, HR Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Request to hire a recruiting consultant for the City Recorder and City Treasurer position.

Background Information

Currently, City Recorder and City Treasurer positions are held by Melissa Wright, who has dutifully and diligently served the City for 28 years. Ms. Wright has announced her intention to retire on April 30, 2021.

The City Recorder and City Treasurer positions are appointed by Council. The Charter allows these positions to be held jointly by one person, which has been the case for several years. Staff recommends continuation of these roles being held jointly.

Council desires to initiate a search firm to fill these appointed positions using a corporate recruiter. Staff has contacted reputable recruiters who work for municipal clients and presents their proposals for Council consideration.

Fiscal Impact

The recruitment cost is estimated to be approximately $30,000.00. Proposals for this professional service are attached.

PROPOSAL FOR EXECUTIVE RECRUITMENT SERVICES

FINANCE DIRECTOR, CITY RECORDER & TREASURER
CITY OF MURFREESBORO, TENNESSEE

February 2021

(This proposal is valid for 90 days)

Strategic Government Resources

P.O. Box 1642, Keller, Texas 76244
Office: 817-337-8581

Jennifer Fadden, President of Executive Recruitment
JenniferFadden@GovernmentResource.com

February 12, 2021

Hon. Mayor Shane McFarland and City Council
City of Murfreesboro, Tennessee

Dear Mayor McFarland and City Councilmembers:

Thank you for the opportunity to submit this proposal to assist the City of Murfreesboro in your recruitment for a new Finance Director, City Recorder & Treasurer. SGR has the unique ability to provide a personalized and comprehensive recruitment to meet your needs.

I would like to draw your attention to a few key items that distinguish SGR from other recruitment firms and allow us to reach the most extensive and diverse pool of applicants:

- SGR is a recognized thought leader in local government management and is actively engaged in local government operations, issues, and Best Management Practices.
- SGR's Servant Leadership e-newsletter, where all recruitments conducted by SGR are announced, reaches over 46,000 subscribers in all 50 states.
- SGR will send targeted emails to our opt-in Job Alert subscriber database of over 5,100 local government finance professionals and over 3,300 city/county clerk professionals.
- SGR is familiar with the City of Murfreesboro and conducted the City Manager recruitment in 2018 and the Human Resources Director recruitment in 2017.

We recognize that the COVID-19 pandemic has created unique operating challenges for local governments in a myriad of ways, including recruitment efforts. SGR has invested in a variety of technologies that will allow a safe social distancing recruitment process, and we will continue to improve, adapt and provide alternatives to in-person meetings during this uncertain time.

We are excited about the prospect of working with the City of Murfreesboro again, and we are available to visit with you at your convenience.

Respectfully submitted,

Ron Holifield, Chief Executive Officer
Ron@GovernmentResource.com
Cell: 214-676-1691

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Company Profile

Background

Strategic Government Resources, Inc. (SGR) exists to help local governments become more successful by Recruiting, Assessing, and Developing Innovative, Collaborative, and Authentic Leaders. SGR was incorporated in 2002 with the mission to facilitate innovative leadership in local government. SGR is fully owned by former City Manager Ron Holifield, who spent two high-profile decades in city management and served as a City Manager in several cities.

SGR's Core Values are Customer Service, Integrity, Philanthropy, Continuous Improvement, Agility, Collaboration, Protecting Relationships, and the Golden Rule.

SGR is a **full-service firm**, specializing in executive recruitment, interim placements, online training, onsite training, leadership development, psychometric assessments, strategic visioning retreats, one-on-one employee coaching, and other consulting services designed to promote innovation, team building, collaboration, and continuous improvement in local governments. SGR has approximately 700 local government clients in 47 states for all of our business lines combined. SGR has been, and continues to be, a leader in spurring innovation in local government.

SGR's corporate headquarters is in the Dallas/Fort Worth Metroplex. SGR also has virtual offices in California, Florida, Minnesota, New York, North Carolina, Ohio, and Oklahoma.

SGR Executive Leadership – Recruitment

- Ron Holifield, Chief Executive Officer
- Jennifer Fadden, President, Executive Recruitment
- Melissa Valentine, Managing Director, Recruitment & Human Resources

View all SGR team members and bios at: governmentresource.com/about-us/meet-the-team

SGR's Unique Qualifications

Extensive Network of Prospects

SGR is intent on being a leader in executive recruitment, and we believe it is imperative to be proactive in our mission to build a workforce that represents the communities we serve. SGR reaches an extensive and diverse pool of prospects by utilizing our unequaled network of prospects.

- SGR's Servant Leadership e-newsletter, where your position will be announced, reaches over 46,000 subscribers in all 50 states.
- We will send targeted emails to opt-in subscribers to SGR's Job Alerts. This includes over 5,100 subscribers to Finance Job Alerts and over 3,300 subscribers to City/County Clerk Job Alerts.
- Your position will be posted on SGR's Website, GovernmentResource.com, which has more than 36,000 visitors per month.
- Your position will be posted on SGR's Job Board, SGRjobs.com, which averages more than 16,000 unique visitors per month and has over 1,600 jobs listed at any given time.
- SGR provides a comprehensive social media marketing campaign that includes custom-made graphics and distribution on Facebook, Twitter, Instagram, and LinkedIn.
- SGR frequently partners with local government associations including League of Women in Government and the Local Government Hispanic Network.
- Approximately 65% of semifinalists selected by our clients learned about the open recruitment through via our website, servant leadership e-newsletter, job board, social media, job alert emails, or personal contact.

Collective Local Government Experience

Our recruiters have years of experience in local government and both regional and national networks of relationships. The entire executive recruitment group works as a team to leverage their networks to assist with each recruitment. SGR team members are active on a national basis, in both local government organizations and professional associations. Many SGR team members frequently speak and write on issues of interest to local government executives. SGR can navigate all of the relevant networks as both a peer and insider.

Equal Opportunity Commitment

SGR strongly believes in equal employment opportunity. SGR does not discriminate and believes that equal opportunity is an ethical issue. SGR quite simply will not enter into an engagement with an entity or organization that directs, or expects, that bias should or will be demonstrated on any basis other than those factors that have a bearing on the ability of the candidate to do the job. You can anticipate that SGR will make a serious and sincere effort to encourage qualified applicants from underrepresented demographic groups to apply. Although SGR obviously cannot, and would not, guarantee the makeup of the semifinalist or finalist groups, SGR does have relationships and contacts nationwide to encourage the meaningful participation of

underrepresented minority groups, and we continue to evaluate and improve our processes by embedding a lens of equity and inclusion into our recruitment practices.

Listening to Your Unique Needs
SGR devotes a significant amount of time to actively listening to your organization and helping you define and articulate your needs. We work hard to conduct a comprehensive recruitment that is unique to you. SGR devotes a tremendous amount of energy to understanding your organization's unique culture, environment, and local issues to ensure a great "fit" from values, philosophy, and management style perspectives.

Trust of Candidates
SGR has a track record of remarkable confidentiality and providing wise counsel to candidates and next generation leaders; we have earned their trust. As a result, SGR is often able to get exceptional prospects to become candidates, even if they have declined to become involved in other recruitment processes. Candidates trust SGR to assess the situation well, communicate honestly and bluntly, and maintain their confidentiality to the greatest extent possible.

Accessibility & Communication
Your executive recruiter is accessible at all times throughout the recruitment process and can be reached by candidates or clients, even at night and on weekends, by cell phone or email. In addition, the recruiter communicates with active applicants on a weekly basis and sends Google alerts articles to keep the applicants informed about the community and opportunity.

Comprehensive Evaluation and Vetting of Candidates
SGR offers a candidate screening process that prevents surprises and ensures in-depth understanding. Our vetting process includes:

- Prescreening questions and technical review of resumes
- Cross communication between our recruiters about candidates who have been in previous searches for greater understanding of background and skills
- Comprehensive written questionnaires to gain different insights than typically available on a resume
- Online pre-recorded video interviews that allow search committee members, at their convenience, to view candidates in an interview setting prior to the finalist stage of the recruitment process
- Comprehensive media reports that go far beyond automated Google/LexisNexis searches and are customized to each candidate based on where he/she has lived and worked
- Comprehensive automated and anonymous reference checks that provide deep insights on candidates' soft skills from a well-rounded group of references
- Psychometric assessments (supplemental cost)
- Comprehensive background checks completed by a licensed private investigation firm
- Advanced exercise, customized to the organization, for finalist candidates

Project Personnel

Kurt Hodgen, Senior Vice President

KurtHodgen@GovernmentResource.com
540-820-0531
Based out of Mooresville, North Carolina

With over 30 years of local government experience, Kurt Hodgen joined SGR in 2017 as Senior Vice President. Most recently, from 2007 until his retirement, Kurt served as the City Manager for the City of Harrisonburg, Virginia, after having previously served as the Assistant City Manager beginning in 2001. From 1993 to 2001, Kurt was the Assistant County Administrator/Director of Public Works for Botetourt County, Virginia. Before that, Kurt served as the Town Manager for the Town of Narrows, Virginia.

Kurt has been active in his professional associations and is currently a member of the International City and County Management Association (ICMA) and the Virginia Local Government Management Association (VLGMA). Recently, he served as the Chairman for the Board of Directors for the Virginia Municipal League Insurance Program, in addition to serving on the Executive Committee for VLGMA, the Harrisonburg Rockingham Regional Sewer Authority, the Middle River Regional Jail Board of Directors, Harrisonburg Rockingham Emergency Communication Center Administrative Board, and more.

Kurt holds a Bachelor of Science in Public Administration and Political Science from James Madison University and is an ICMA Credentialed Manager. He is also a graduate of the Senior Executive Institute at the University of Virginia, the Utility Management Institute at Virginia Tech, and the Economic Development Institute at Virginia Tech.

Kurt D. Hodgen, ICMA-CM
Mooresville, NC 28115
(540) 820-0531
kdhodgen@comcast.net

EDUCATION:

James Madison University, B.S. degree in Public Administration and Political Science.
AWWA Utility Management Institute at Virginia Tech.
Senior Executive Institute, University of Virginia.
Virginia Institute for Economic Development
ICMA Credentialed Manager.

RELATED EXPERIENCE:

December, 2017 – Present: Senior Vice President, Executive Recruitment, Strategic Government Resources.
Provision of executive recruitment services to localities throughout the United States from initial recruitment of applicants through contract negotiations between successful candidates and localities; ongoing relationship building and support to both local government clients as well as potential candidates.

July 2007 – October 2017: City Manager, City of Harrisonburg.
Retired after 32+ plus years in Virginia local government as CAO of one of the fastest growing cities in Virginia. A full-service City, including public utilities (water, sewer and electric), the City Manager is responsible for preparation and administration of a $200+ million dollar budget (all funds), and direct leadership of 12 departments (including Police and Fire) and 754 FT employees.

Accomplishments and activities included:

- Numerous infrastructure projects including renovation of a new public safety building housing police, fire administration and the consolidated city/county emergency communications center and radio system; various other public buildings, utilities upgrades and expansions, road and bridge construction, development of new bike and pedestrian trails, downtown redevelopment and streetscape improvements and parks and recreation facilities.
- Enhancements to the City's financial management policies; achieved upgrades to the City's bond ratings; oversaw multiple successful bond issues; obtained multi-million dollar grant assistance in state and federal transportation funding.

- Growth of the local economy through new commercial and retail, corporate expansions such as Rosetta Stone, Anthem Data Center, Serco, Axon, and Walker/Tenneco. Establishment of economic revitalization zones and technology zones.

- Growth and development of staff through internal and external education and training opportunities; succession planning.

- Intergovernmental/regional cooperative efforts including establishment of City/James Madison University liaison committee meetings with the University's President and Senior staff, maintained positive intergovernmental relations with surrounding County of Rockingham via regularly scheduled City/County liaison meetings, also did the same with the City School Board and Administration.

- Served as Chairman of the joint City-County Emergency Communications Center Administrative Board;

- Coordination with Rockingham County on shared services including Sheriff, Courts, Commonwealth Attorney, Social Services and Libraries.

- Served on other regional Boards and Commissions; served as City's legislative liaison to General Assembly members and the Virginia Municipal League.

- Served as the City's Emergency Services Coordinator as per the Code of Virginia.

February 2001 – June 2007: Assistant City Manager, City of Harrisonburg.
Principal assistant to the City Manager. Performed duties of the city manager in his absence as well as all other duties assigned including liaison between City Manager and department heads; direct oversight of six departments; start-up and administration of City's CDBG Program; grant writing; special project management; staff development; report writing and presentations to City Manager and City Council. Also served as Deputy Emergency Services Coordinator.

Feb.1993 – Feb. 2001: Asst. County Admin./Dir. of Pub. Works, Botetourt County, Virginia.
Top-level administrative position in a rapidly growing County. Responsible for administration of multiple departments and activities including engineering, utilities, landfill and recycling, building and grounds maintenance, and parks and recreation. Administered departmental budget and capital projects budget. Duties also included grant writing and administration; long range planning; staff development; economic development; emergency services; report writing and presentations to county administrator and Board of Supervisors.

January 1988 - February 1993: Town Manager, Town of Narrows, Virginia.
Chief Administrative Officer of a full-service town. Prepared and administered the budget, oversaw all departmental operations as well as community development and planning activities, capital projects, water and sewer projects, street and sidewalk improvements. Prepared Council agendas, monthly financial reports, biweekly activity reports, and other reports and studies as required by council. Developed standard purchasing and budgeting policies; completed major water and sewer system improvements and upgrades. Other activities included grant writing and administration, and intergovernmental cooperation efforts.

Dec. 1986 – Jan.1988: Public Admin. Specialist, Mt. Rogers Planning District Commission.
Served as Circuit Riding Town Manager for the towns of Fries and Independence, Virginia. Oversaw departmental operations, wrote and administered CDBG, EPA and FmHA grants for community infrastructure projects.

January 1985 - August 1986: Asst. to the County Administrator, Alleghany County, Virginia.
Duties included assistance in preparation and administration of the operating budget, project management for the renovation of and movement to a new county office building. Prepared reports, assisted in day-to day operations, other duties as assigned by the County Administrator.

PROFESSIONAL MEMBERSHIPS:

International City and County Management Association (ICMA)
Virginia Local Government Management Association (VLGMA)

OTHER AFFILIATIONS:

Virginia Municipal League Insurance Program (served as Board member, Vice Chairman and Chairman)
Virginia Local Government Management Association (Executive Committee member)
Virginia Local Government Management Association Support Network Coordinator
Harrisonburg Rockingham Regional Sewer Authority Board of Directors
Middle River Regional Jail Board of Directors
Harrisonburg-Rockingham Emergency Communication Center Board Chairman
Harrisonburg-Rockingham Social Services District Administrative Board
Harrisonburg-Rockingham Metropolitan Planning Organization Board Member
Central Shenandoah Juvenile Detention Center Board of Directors
Community Criminal Justice Board, Board member
Virginia Commission on Local Government Annexation Study Committee member

Recruitment Methodology

A full-service recruitment typically entails the following steps:

1. **Organizational Inquiry and Analysis**
    - Develop Recruitment Plan and Timeline
    - Individual Interviews with Key Stakeholders
    - Development of Position Profile Brochure
2. **Advertising and Marketing, Communication with Applicants and Prospects**
3. **Initial Screening and Review**
4. **Search Committee Briefing to Facilitate Selection of Semifinalists**
5. **Evaluation of Semifinalist Candidates**
    - Written Questionnaires
    - Recorded Online Interviews
    - Media Searches - Stage 1
6. **Search Committee Briefing to Facilitate Selection of Finalists**
7. **Evaluation of Finalist Candidates**
    - Comprehensive Media Searches - Stage 2
    - Comprehensive Background Investigation Reports
    - DiSC Management Assessments (supplemental service)
    - First Year Game Plan or Other Advanced Exercise
8. **Interview Process**
    - Face-to-Face Interviews
    - Stakeholder Engagement (may occur earlier in process)
    - Deliberations
    - Reference Checks (may occur earlier in process)
9. **Negotiations and Hiring Process**
    - Determine the Terms of an Offer
    - Negotiate Terms and Conditions of Employment
    - Press Release (if requested)

Step 1: Organizational Inquiry and Analysis

Develop Recruitment Plan and Timeline

SGR will meet with the client at the outset of the project to finalize the recruitment plan and timeline. At this time, SGR will also request that the client provide us with photos and information on the community, organization, and position to assist us in drafting the position profile brochure.

Individual Interviews with Key Stakeholders

SGR devotes tremendous energy to understanding your organization's unique culture, environment, and goals to ensure you get the right match for your particular needs. Fully understanding your organizational needs is the most critical part of conducting a successful executive recruitment. In consultation with the Search Committee, SGR will develop a list of individuals to meet with about the position. Individual interviews may include members of the Search Committee, key staff members, peers in other organizations, and/or community leaders to find out more about the position, special considerations, and the political environment. These interviews last approximately 30-60 minutes each and identify issues that may affect the dynamics of the recruitment, as well as develop a composite understanding of the organization's preferences. This process helps with organizational buy-in and will assist us in developing the position profile.

Development of Position Profile Brochure

Following the individual interviews, SGR will develop a draft position profile brochure that is reviewed and revised in partnership with your organization until we are in agreement that it accurately reflects the sought-after leadership and management characteristics.

Step 2: Advertising and Marketing, Communication with Applicants and Prospects

Advertising and Marketing

The Executive Recruiter and client work together to determine the best ways to advertise and recruit for the position. SGR's Servant Leadership e-newsletter, where your position will be announced, reaches over 46,000 subscribers in all 50 states. We will also send targeted emails to opt-in subscribers to SGR's profession-specific Job Alerts. Your position will be posted on SGR's Website, GovernmentResource.com, and on SGR's Job Board, SGRjobs.com. SGR provides a comprehensive social media marketing campaign that includes custom-made graphics and distribution on Facebook, Twitter, Instagram, and LinkedIn. Ads are also typically placed in various state and national publications, targeting the most effective venues for reaching qualified candidates for that particular position.

Communication with Prospects

SGR communicates with interested prospects on ongoing basis during the recruitment process. Outstanding prospects often will not submit a resume until they have done considerable homework on the available position. A significant number of inquiries will be made, and it is essential that the executive search firm be prepared to answer those questions with fast,

accurate, and complete information, and in a warm and personal manner. This is one of the first places a prospective candidate will develop an impression about the organization, and it is an area in which SGR excels.

Communication with Active Applicants

Handling the flow of resumes is an ongoing and significant process. On the front end, it involves tracking resumes and promptly acknowledging their receipt. It also involves timely and personal responses to any questions or inquiries. SGR communicates frequently with applicants to ensure they stay enthusiastic and informed about the opportunity. SGR utilizes Google Alerts and sends weekly update emails to active applicants regarding the organization and community.

Step 3: Initial Screening and Review

SGR uses a triage process to identify high-probability, medium-probability, and low-probability candidates. The triage ranking is focused on overall assessment based on interaction with the applicant, qualifications, any known issues regarding previous work experience, and evaluation of cultural fit with the organization.

In contrast with the triage process described above, which focuses on subjective assessment of the resumes and how the candidates present themselves, we also evaluate each candidate to make sure that the minimum requirements of the position are met, and which of the preferred requirements are met. This sifting process assesses how well candidates' applications fulfill the recruitment criteria outlined in the Position Profile.

Step 4: Search Committee Briefing / Selection of Semifinalist Candidates

At this briefing, SGR will provide a comprehensive progress report and facilitate the selection of up to 12 semifinalists. The presentation will include summary information on the process so far, the candidate pool overall, and any trends or issues, as well as a briefing on each candidate and their credentials. No other firm offers this level of reporting detail and transparency.

Step 5: Evaluation of Semifinalist Candidates

Reviewing resumes is an important and valuable step in the executive recruitment process. However, the simple fact is that resumes can be misleading. They tell you nothing about the individual's personal qualities or his/her ability to get along with other people. Resumes can also exaggerate or inflate accomplishments or experience. SGR's responsibility is to go more in-depth than the resume to ensure that those candidates who continue in the process are truly outstanding. SGR's goal is to have a clear understanding of the person behind the resume and what makes him/her an outstanding prospect for you. The evaluation of semifinalist candidates includes follow-up when appropriate to ask any questions about underlying issues.

Written Questionnaires
SGR will ask semifinalist candidates to complete a comprehensive written exercise designed to provide greater insight into candidate thought processes and communication styles. SGR's written instrument is custom designed around the priorities identified by the Search Committee and usually includes questions focusing on key areas of particular interest to the client. This written instrument will be included in the semifinalist briefing book along with cover letters and resumes submitted by the candidates.

Recorded Online Interviews
SGR will ask semifinalist candidates to complete online interviews. This provides a very insightful, efficient and cost-effective way to gain additional insights to utilize in selecting finalists you want to invite for an onsite interview. The recorded online interviews allow the Search Committee to evaluate technological competence, demeanor, verbal communication skills, and on-camera presence. Online interviews also convey to candidates that the organization is using leading edge technology in its business processes and provide an opportunity for the Search Committee to ask candidates questions on specific topics of special interest. Links to view the online interviews are emailed to the Search Committee members for viewing at their convenience prior to selection of finalist candidates.

Media Searches - Stage 1
"Stage 1" of our media search involves a comprehensive review of all newspaper articles on the candidate in major news outlets within the previous two years. These media reports at the semifinalist stage have proven helpful by uncovering issues that were not previously disclosed by prospective candidates. The recruiter will communicate any "red flags" to the Search Committee immediately upon discovery.

Step 6: Search Committee Briefing / Selection of Finalist Candidates

Prior to this briefing, SGR will provide each member of the Search Committee with a briefing book on the semifinalist candidates. The briefing book includes cover letters, resumes, and completed questionnaires. The link to view the online interviews is emailed separately to Search Committee members. The purpose of this briefing is to facilitate narrowing the list to up to 5 finalists who will be invited for personal interviews.

Step 7: Evaluation of Finalist Candidates

Comprehensive Media Searches - Stage 2
SGR uses a proprietary media search process that goes far beyond automated Google/LexisNexis searches. SGR's process is customized to provide a comprehensive media search on each candidate. The search includes variations of the candidates' names and states/cities in which they have lived or worked, along with social media platforms. The Media Reports are put into an easy-to-read format, and the candidate's name is highlighted each time it appears.

These media reports have proven helpful to Search Committees by uncovering issues that were not previously disclosed by candidates and that would likely not have been discovered through an automated search. The Media Reports also give the Search Committee an overview of the type and extent of press coverage that a candidate has experienced over the course of his/her career. View a sample media report at: http://bit.ly/SGRSampleMediaReport.

Comprehensive Background Investigation Reports

Through SGR's partnership with a licensed private investigation firm, we are able to provide our clients with comprehensive background screening reports that include the detailed information listed below. View a sample background report at: bit.ly/SGRSampleBackgroundReport.

- Social Security number trace
- Address history
- Driving history/motor vehicle records
- Credit report
- Federal criminal search
- National criminal search
- County wants and warrants for previous 10 years
- Global homeland security search
- Sex offender registry search
- State criminal search (for current and previous states of residence)
- County civil and criminal search (for every county in which candidate has lived or worked) for previous 10 years
- Education verification
- Employment verification (if desired)
- Military verification (if desired)

DiSC Management Assessments (supplemental service)

SGR uses a DiSC Management assessment tool, which is among the most validated and reliable personal assessment tools available. The DiSC Management assessment analyzes and reports comprehensively on the candidate's preferences in five vital areas: management style, directing and delegating, motivation, development of others, and working with his/her own manager. View a sample report at: bit.ly/SGRDiscProfileSample. For assessments of more than two candidates, a DiSC Management Comparison Report is included, which provides a side-by-side view of each candidate's preferred management style. View a sample comparison report at: bit.ly/SGRDiscTeamReport.

First Year Game Plan or Other Advanced Exercise

SGR will work with your organization, if desired, to develop an advanced exercise for the finalist candidates. One example of such an exercise is a "First Year Game Plan," a process where finalist candidates are provided with the contact information for elected officials, key staff, and community leaders and then given free rein to make contact with all of them in advance and use those insights to develop a "first year game plan" based on what they know so far. Feedback is received from the key contacts on their impressions of the finalist candidates from

the interactions with the candidates prior to the interviews. This exercise provides the opportunity to evaluate candidates' written and interpersonal communication skills, as well as critical analysis skills.

Step 8: Interview Process

Face-to-Face Interviews

SGR will schedule interviews at a date/time convenient to your organization. This process can be as simple, or as complex, as your organization desires. SGR will help you determine the specifics and assist in developing the interview schedule and timeline. SGR will prepare sample interview questions and will participate throughout the process to make it smooth and efficient.

Stakeholder Engagement

At the discretion of the Search Committee, we will work closely with your organization to engage stakeholders in the recruitment process. Our recommendation is that we design a specific stakeholder engagement process after we learn more about the organization and the community. Different approaches work best in different communities. We will collaborate with your organization to determine which option, or combination of options, will be the most effective for the unique needs of the organization.

- Stakeholder survey (supplemental service, can be provided at an additional cost)
- Interviewing community leaders at the outset of the recruitment;
- Holding a public forum for citizen engagement at the outset of the recruitment;
- Community leader reception;
- Meet and greet;
- Search Committee and key community leader dinner meeting;
- "Round Robin" forum meetings with various community groups during a multi-day interview process.

Deliberations

SGR will facilitate a discussion about the finalist interviews and assist the Search Committee in making a hiring decision or in deciding whether to bring back one or more candidates for a second interview.

Reference Checks

SGR uses a progressive and adaptive automated reference check system to provide insights on candidates' soft skills from a well-rounded group of references. References may include elected officials, direct supervisors, direct reports, internal organizational peers, professional peers in other organizations, and civic leaders. SGR's reference check platform is anonymous, which is proven to encourage more candid and truthful responses, in turn providing organizations with more meaningful and insightful information on candidates. SGR provides a written summary report to the organization once all reference checks are completed. The timing of reference checks may vary depending on the specific search process and situation. If the names of the

finalists are made public prior to interviews, SGR will typically contact references prior to the interview process. If the names of the finalists are not made public prior to interviews, SGR will typically wait until the organization has selected its top candidate before calling references in order to protect candidate confidentiality.

Step 9: Negotiations and Hiring Process

Determine the Terms of an Offer

Upon request, SGR will provide appropriate employment agreement language and other helpful information to assist you in determining an appropriate offer to extend to your candidate of choice.

Negotiate Terms and Conditions of Employment

SGR will assist to whatever degree you deem appropriate in conducting negotiations with the chosen candidate. SGR will determine and define any special needs or concerns of the chosen candidate, including anything that could be a complicating factor. SGR is experienced and prepared to help craft win-win solutions to negotiation "log-jams."

Press Release (if requested)

Until you have "sealed the deal," you need to be cautious in order to avoid the embarrassment of a premature announcement that does not work out. You also want to try to notify all senior staff and unsuccessful candidates before they read about it in the newspaper. SGR will assist with this coordination and with drafting any announcements or press releases.

Satisfaction Surveys

SGR is committed to authentically following the golden rule by providing prompt, professional and excellent communication and always treating every client with honor, dignity and respect. We ask clients and candidates to complete a brief and confidential survey after the completion of their recruitment. This helps us strive to continuously improve our processes and meet the changing needs of the workforce.

Supplemental Service: Post-Hire Team Building Workshop

SGR can provide a customized team building workshop after you hire for the position. SGR utilizes I-OPT, which is a validated measurement tool that shows how a person perceives and processes information. Because people "see" different things when they assess a situation, they are motivated to take various courses of action, so understanding you and your colleagues' I-OPT Profiles will enable you to work much more effectively as a team. This service can be provided at an additional cost. View sample I-OPT reports at: bit.ly/sampleIOPTreports.

Projected Schedule

Schedule will be adjusted at the outset of the search to meet the organization's needs.

Task	Weeks
• Contract Executed • Develop Recruitment Plan, Timeline • Individual Interviews with Key Stakeholders	Week 1
• Deliverable: Position Profile Brochure • Search Committee Reviews and Approves Brochure	Weeks 2-3
• Advertising and Marketing • Accept Applications • Communication with Prospects and Applicants	Weeks 4-7
• Initial Screening and Review	Week 8
• Search Committee Briefing / Select Semifinalists • Questionnaires and Recorded Online Interviews • Media Searches - Stage 1	Week 9
• Deliverable: Semifinalist Briefing Books and Online Interviews	Week 10
• Search Committee Briefing / Select Finalist Candidates	Week 11
• Comprehensive Media Searches - Stage 2 • Comprehensive Background Investigation Reports • DiSC Management Assessments (supplemental service) • First Year Game Plan or Other Advanced Exercise	Weeks 12-13
• Deliverable: Finalist Briefing Books	Week 14
• Face-to-Face Interviews • Stakeholder Engagement (may occur earlier in process) • Deliberations • Reference Checks (may occur earlier in process) • Negotiations and Hiring Process	Week 15

Recruitment Costs & Service Guarantee

Not-to-Exceed Price: **$24,900**

Not-to-exceed price includes:

- **Professional Service Fee - $18,500**
- **Expenses:**
    - **Position Profile Brochure & Marketing - $1,500**
        - Production of a professional position profile brochure
        - Custom-designed graphics for social media and email marketing
        - Announcement in SGR's 10 in 10 Leadership and Innovation e-newsletter
        - Two (2) email blasts to SGR's opt-in Job Alert subscribers for the relevant job category
        - Featured job placement on SGR's website
        - Featured ad on SGR's job board
        - Promotions on SGR's social media pages – Facebook, Twitter, LinkedIn, and Instagram
    - **Semifinalist Recorded Online interviews** for up to twelve (12) semifinalists - **$225 each**
    - **Comprehensive Media Reports** for up to five (5) finalists - **$500 each**
    - **Comprehensive Background Investigation Reports** for up to five (5) finalists - **$400 each**
    - **Comprehensive Reference Checks** with individual reports for up to five (5) finalists - **$225 each**
    - **Up to Two (2) onsite visits** by the Recruiter to the Organization. Meals are billed back at a per diem rate of $10 for breakfast, $15 for lunch, and $25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead. **Travel will be dependent on COVID restrictions in place at the time and take into consideration the health and safety of team members of both SGR and the Organization.**

Supplemental Services

The supplemental services listed below are <u>not included</u> in the not-to-exceed price:

- **Ad placements, as approved by the organization, will be billed back at actual cost with no markup for overhead.**
- There may be an additional charge for changes made to the Position Profile Brochure after the brochure has been approved by the organization and the position has been posted online.

- Additional online interviews (over and above the twelve (12) included in the not-to-exceed price above) are offered for $225 per candidate.
- Additional comprehensive media reports (over and above the five (5) included in the not-to-exceed price above) are offered for $500 per candidate.
- Additional background investigation reports (over and above the five (5) included in the not-to-exceed price above) are offered for $400 per candidate.
- Additional reference checks via (over and above the five (5) included in the not-to-exceed price above) are offered for $225 per candidate.
- There is a cost of $175 per candidate for the DiSC Management Profile.
- Semifinalist and finalist briefing materials will be provided to the search committee via an electronic link (or a flash drive, if requested). Should the organization request printing of those materials, the reproduction and shipping of briefing materials will be outsourced and be billed back at actual cost. Flash drives are billed at $10 each, plus the cost of shipping.
- Additional in-person visits (over and above the two (2) in-person visit included in the not-to-exceed price above) by the Recruiter will be billed over and above the not-to-exceed price. Meals are billed back at a per diem rate of $10 for breakfast, $15 for lunch, and $25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead.
- Candidates are reimbursed directly by the organization for travel expenses.
- SGR will conduct a Stakeholder Survey for $1,000. SGR provides recommended survey questions and sets up an online survey. Stakeholders are directed to a web page or invited to take the survey by email. A written summary of results is provided to the organization.
- If desired, the Recruiter will travel to the communities of the finalist candidates to conduct onsite visits. Site visits will be charged at a day rate of $1,000 per day, plus travel expenses. Meals are billed back at a per diem rate of $10 for breakfast, $15 for lunch, and $25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead.
- A half-day onsite post-hire team building workshop is offered for $4,000, plus travel expenses and $150 per person for I-OPT reports.
- In the unexpected event the organization requests that unusual out of pocket expenses be incurred, said expenses will be reimbursed at the actual cost with no mark up for overhead.
- If the organization desires any supplemental services not mentioned in this section, an estimate of the cost and hours to be committed will be provided at that time, and no work shall be done without approval. Supplemental services will be billed out at $250 per hour.

Billing

The professional service fee for the recruitment is billed in three equal installments during the course of the recruitment. The initial installment is billed after the position profile brochure has been created. The second installment is billed after semifinalists are selected. The final installment is billed at the conclusion of the recruitment. Expenses and supplemental services will be billed with each of the three installments, as appropriate.

Service Guarantee

SGR guarantees that you will be satisfied with the results of the full service recruitment process, or we will repeat the entire process one additional time and charge only for expenses. Additionally, if you select a candidate (that SGR has fully vetted) who resigns or is released within 18 months of their hire date, SGR will repeat the process and charge only for expenses. If the organization circumvents SGR's recruitment process and selects a candidate who did not participate in the full recruitment process, the service guarantee is null and void. We also guarantee that we will not directly solicit a candidate we bring to you for another job.

References

City of Pearland, Texas
Population: 124,000
Clay Pearson, City Manager
cpearson@pearlandtx.gov
281-652-1663
Multiple recruitments, including Chief Financial Officer, in progress

City of Hartford, Connecticut
Population: 125,000
Thea Montanez, Chief of Staff
Thea.Montanez@hartford.gov
860-304-7823
Recruitments: Director of Development Services, in progress; Chief Financial Officer, 2020

City of Denton, Texas
Population: 136,000
David Gaines, Assistant City Manager/CFO
Phone: 940-349-8260
David.Gaines@cityofdenton.com
Multiple recruitments, including Assistant Director of Finance, 2019; City Secretary, 2019

City of Broken Arrow, Oklahoma
Population: 112,000
Jannette McCormick, Director of Human Resources
jmccormick@brokenarrowok.gov
918-259-2400 ext. 5342
Multiple recruitments, including Finance Director, 2018

City of Fort Smith, Arkansas
Population: 90,000
Carl E. Geffken, City Administrator
CGeffken@FortSmithAR.gov
479-784-2201
Multiple recruitments, including Deputy Director of Finance and Accounting, in progress; Finance Director, 2019

City of Lubbock, Texas
Population: 250,000
Jarrett Atkinson, City Manager
jatkinson@mylubbock.us
806-775-2003
Multiple recruitments, including Director of Internal Audit, in progress; Chief Financial Officer, 2017

Finance & City Secretary/Clerk Recruitments, 2016-Present

In Progress

- Allen, TX (pop. 107,000) - Chief Financial Officer
- Fort Smith, AR (pop. 90,000) - Deputy Director of Finance and Accounting *
- Hutto, TX (pop. 29,000) - Chief Financial Officer
- Lubbock, TX (pop. 250,000) - Director of Internal Audit
- Pearland, TX (pop. 122,000) - Chief Financial Officer
- Port St. Lucie, FL (pop. 189,000) - Budget Manager *

2021

- Marble Falls, TX (pop. 7,000) - Finance Director *

2020

- Addison, TX (pop. 15,000) - Chief Financial Officer
- Baytown, TX (pop. 82,000) - Finance Director
- Dallas County, TX (pop. 2.5M) - Budget Director
- Durango, CO (pop. 19,000) - Finance Director
- Hartford, CT (pop. 123,000) - Chief Financial Officer
- Johns Creek, GA (pop. 84,000) - Finance Director
- Lea County, NM (pop. 68,000) - Assistant Finance Director *
- Midland, TX (pop. 135,000) - Director of Finance
- Mount Pleasant, TX (pop. 16,000) - Director of Finance *
- Temple, TX (pop. 79,000) - Financial Analyst *
- Webster, TX (pop. 11,000) - Finance Director *

2019

- Bainbridge Island, WA (pop. 23,000) - Finance and Administrative Services Director
- Dallas County, TX (pop. 2.5M) - Purchasing Director
- Denton, TX (pop. 136,000) - Assistant Director of Finance *
- Denton, TX (pop. 136,000) - City Secretary
- Fort Smith, AR (pop. 90,000) - Finance Director *
- Shawnee, KS (pop. 66,000) - Finance Director *
- Taylor, TX (pop. 17,000) - Director of Finance *

2018

- Broken Arrow, OK (pop. 112,000) - Finance Director *
- Cape Girardeau, MO (pop. 39,000) – Deputy Finance Director *
- Fairview, TX (pop. 9,000) - Chief Financial Officer *
- Fernandina Beach, FL (pop. 12,000) - Comptroller *
- Johns Creek, GA (pop. 84,000) - Finance Director
- Portland, TX (pop. 21,000) - Director of Finance *
- Red Oak, TX (pop. 13,000) - Assistant Finance Director *
- Snoqualmie, WA (pop. 14,000) - Finance Director
- Springfield, OR (pop. 62,000) - Finance Director
- Taylor, TX (pop. 17,000) - City Clerk *
- Waco, TX (pop. 130,000) - Public Works Finance Officer *

2017

- Colleyville, TX (pop. 23,000) - Chief Financial Officer
- Lubbock, TX (pop. 240,000) - Chief Financial Officer
- Seagoville, TX (pop. 15,000) - City Secretary
- Springfield, MO (pop. 166,000) - Director of Finance *

2016

- Addison, TX (pop. 15,000) - Chief Financial Officer
- Anna, TX (pop. 11,000) - City Secretary *
- Anna, TX (pop. 11,000) - Finance Director *
- Bay City, TX (pop. 17,000) - Finance Director *
- Baytown, TX (pop. 75,000) - Finance Director *
- Fort Worth, TX (pop. 750,000) - Capital Budget Projects Manager *
- Fort Worth, TX (pop. 750,000) - Assistant Finance Director, Treasury *
- Garland, TX (pop. 235,000) - Chief Financial Officer
- Georgetown, TX (pop. 59,000) - Finance Director
- McKinney, TX (pop. 162,000) - Finance Director

** SGR conducted "front-end" of search that included development of position profile brochure, marketing, application management, initial screening of applications, virtual briefing with organization, and release of applicants not continuing in the process. At that point, the search was handed off to the organization.*

Population number is approximate population at the time the recruitment took place.

Finance Director

Johns Creek, Georgia

EXECUTIVE RECRUITMENT PROVIDED BY SGR

Johns Creek
GEORGIA
be the exception

The Community

The City of Johns Creek is ideally situated in north Fulton County, Georgia. The City is a northeastern suburb of Atlanta and home to 84,000 residents who enjoy convenient access to world-class amenities. North Fulton County is an employment center and has experienced tremendous growth in jobs, housing, retail, and restaurants. The area enjoys easy access to rivers, lakes, and mountains. Downtown Atlanta is just 27 miles to the southwest.

Established in 2006, Johns Creek is a relatively new city and is currently the 10th largest city in the state. This dynamic, thriving community has been widely recognized for its nationally-ranked schools, premier municipal services, safe neighborhoods, and cultural diversity. The City has received numerous awards and accolades for its livability, including a top ranking by USA TODAY as one of the "10 Best Cities to Live In" in 2017, and was more recently ranked 16th on Money Magazine's "Best Places to Live."

Johns Creek boasts abundant cultural, entertainment, and recreational opportunities. The City has metro Atlanta's only part-time, fully professional symphony orchestra, the Johns Creek Symphony Orchestra. The Johns Creek Arts Center offers classes and camps for aspiring artists in multiple media throughout the year.

There are also several festivals year-round, such as Founders Day in December, in which the community celebrates the City's incorporation with activities and a parade. The Fall Family Festival in October is a community get-together at Newtown Park. Johns Creek Arts Festival is a juried art show that features musical and stage performers. In 2018, the City held the inaugural International Festival celebrating good food and music honoring the diverse community of Johns Creek with over 20,000 people attending this event

The City has over 300 acres of parks and recreation facilities. There are six golf facilities (five private, one public) in Johns Creek, including the renowned Atlanta Athletic Club, home of the 2011 PGA Championship. The City is bordered by 13.5 miles of the Chattahoochee

River, providing endless opportunities for outdoor enthusiasts. Autrey Mill Nature Preserve and Heritage Center offers a replica of a Creek Indian hut, an 1800s historic village, and wildlife on 46 acres of woodlands. The City has plans to develop and connect trails throughout the City.

The public schools in Johns Creek are part of the Fulton County School System and not funded by the City. Johns Creek's public schools consistently place among the top in the nation. Chattahoochee High School, River Trail Middle School, Medlock Bridge Elementary, and Dolvin Elementary are National Blue Ribbon Schools of Excellence. Northview High School has won the Governor's Cup for the state's highest SAT scores three times.

Johns Creek has an estimated median household income of $109,576 and a median home value of $348,600.

Government & Organization

The City of Johns Creek operates under the Council-Manager form of government. The City Council consists of the Mayor and six Council members who are elected at-large and serve four-year terms. Elections are staggered every two years.

In December 2006, the effort to launch the City's government was expedited by hiring CH2M Hill (now Jacobs Engineering), a consulting firm that provided most day-to-day municipal services (except for police and fire) for the first four years of cityhood. This public-private partnership was one of the most extensive in the country at the time.

In September 2010, the Mayor and City Council voted to revise its public-private partnership and in-sourced Finance, IT, Facilities, and other administrative positions by converting those contractors to City employees.

With the adoption of the FY2018 Budget, the Mayor and City Council decided to in-source the Community Development Department. Public Works and Parks operations continue to be provided by Jacobs Engineering, while all others are provided by City employees or other contractors and sub-contractors.

Johns Creek City Council

About the Position

Under the supervision of the City Manager, the Finance Director manages and directs a wide variety of general and specialized finance and accounting, functions for the City. Responsibilities include creating accounting and monthly financial reports, securing and monitoring debt financing, preparing and monitoring the annual budget, preparing the comprehensive annual financial report, preparing presentations to City Council, and participating in a variety of administrative and operational duties involving the daily and long-term operations of the City.

Leadership and Innovation

Johns Creek is a rapidly growing community with many opportunities for development and the usual challenges typical of cities of a similar size. Because the rapid growth is expected to continue, the new Finance Director must work with a sense of urgency and focus in order to meet the high expectations of the City's residents.

Johns Creek has a highly engaged City Council. The new Finance Director will need to quickly establish and continually build relationships with the executive staff, department heads, other City employees, Finance team and City Council.

The new Finance Director will also be tasked with planning and overseeing the implementation of a new financial management system, as well as other software and system upgrades, including the continued development of a 10-year financial forecast and of the repair and replacement fund.

Ideal Candidate

The City of Johns Creek seeks an innovative, highly ethical leader with a strong sense of initiative to become its new Finance Director. The chosen candidate will be an approachable management professional who has an outgoing personality and enthusiasm for municipal government. It will be critical for the new Finance Director to operate with a high degree of integrity, honesty, trust, and openness and foster an environment of financial transparency and respect. A dedicated public servant with a collaborative management style, the Finance Director will be focused on team building and internal customer service and can serve as a change agent.

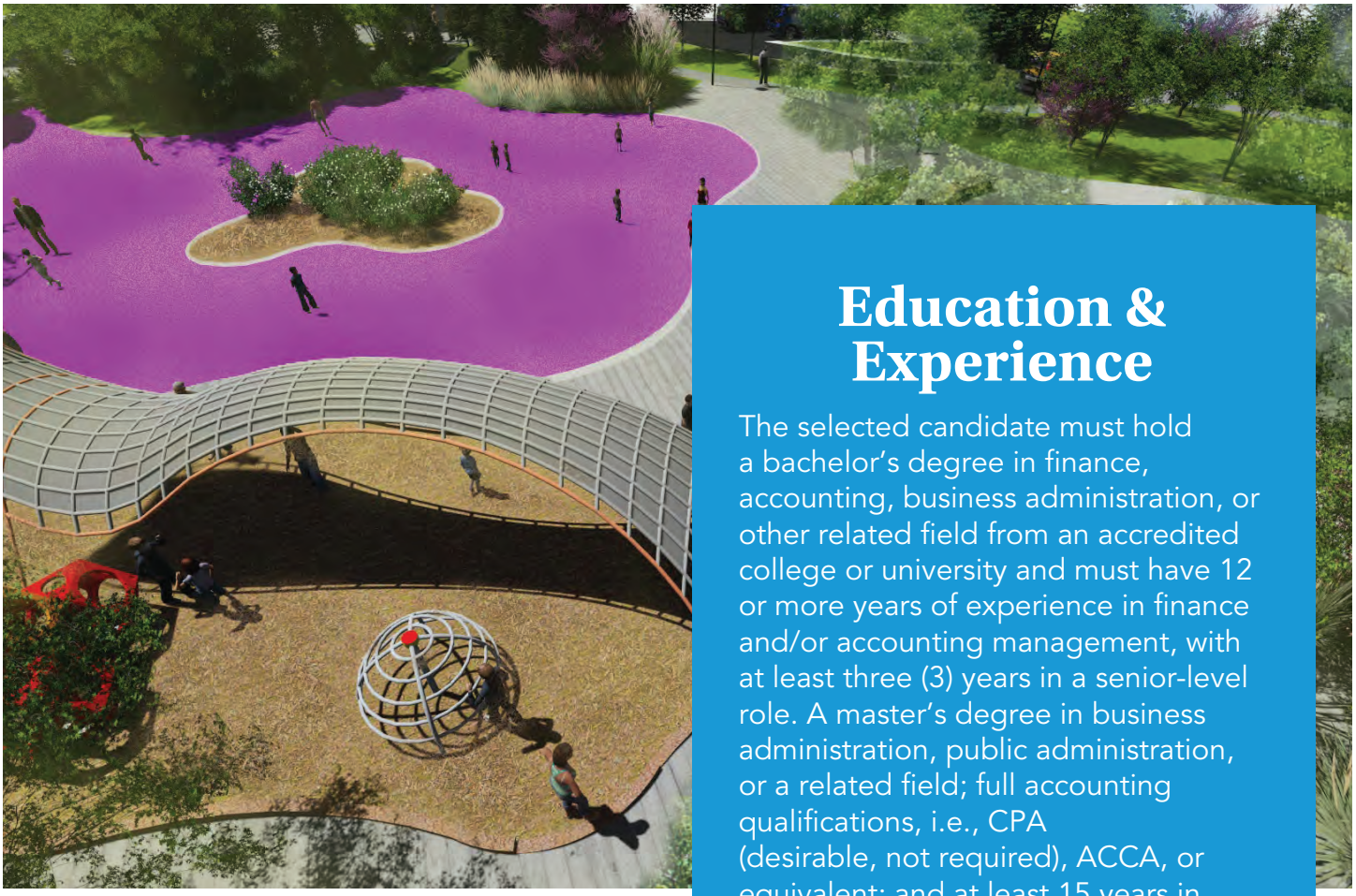
The next Finance Director should be an excellent communicator and advocate for the City. The ideal candidate will be a good listener who is forward-thinking, broad-minded, receptive to new ideas, and encourages an inclusive and collaborative working environment.

The new Finance Director should be able to speak effectively in high-pressure situations, explain financial systems in layperson terms, possess strong negotiation skills, and be able to assess complex proposals and contracts. Understanding the multifaceted integration between technology and accounting/financial systems will be crucial.

The new Finance Director must have the ability to strategically analyze a problem, recommend creative solutions, and make sound decisions. The ideal candidate will be detail-oriented but also able to see the big picture and utilize strong financial forecasting skills. The Finance Director must be able to work independently while also functioning effectively within the organizational structure.

The selected candidate should have thorough knowledge of and experience with economic development, municipal bonds, and financial management of public-private partnerships. An ability to expertly plan and manage multiple projects with changing priorities that have citywide financial implications will be essential. A forward-thinking, tech-minded candidate who will seek out innovative approaches to budgeting, staffing, and strategic planning is strongly desired.

Staff development, relationship building, coaching, and inspiring high-performing teams will be important priorities for the next Finance Director. A dedicated, approachable, and hard-working leader who can encourage accountability, delegate responsibilities appropriately, and treat team members fairly will be essential in taking the Finance Department to the next level. The chosen candidate must also be able to recognize and embrace the role of internal service provider to other departments.



Education & Experience

The selected candidate must hold a bachelor's degree in finance, accounting, business administration, or other related field from an accredited college or university and must have 12 or more years of experience in finance and/or accounting management, with at least three (3) years in a senior-level role. A master's degree in business administration, public administration, or a related field; full accounting qualifications, i.e., CPA (desirable, not required), ACCA, or equivalent; and at least 15 years in a senior financial management or administration management position are preferred qualifications. Any equivalent combination of education and experience that provides the required knowledge and skills will be considered. Both public and private sector applicants will be considered.

Compensation and Benefits

The City of Johns Creek offers a competitive salary depending on qualifications and experience. The City provides a generous benefits program including health, dental, life insurance, and paid vacation and sick leave. The City provides eligible employees with a 457 Plan for tax-deferred retirement savings and currently contributes 12% of the employee's base pay plus matches the employee's 457 Plan deferrals $1:$1 up to 5% into a 401(a) Plan.

The salary range for this position is $134,000 to $158,000 annually.

Application Process

Please apply online at:
http://bit.ly/JohnsCreekFinanceDirector

For more information on this position contact:

Kurt Hodgen
Senior Vice President
Strategic Government Resources
KurtHodgen@GovernmentResource.com
540-820-0531

This position is open until filled. To view the status of this position, please visit:
http://bit.ly/SGRCurrentSearches

The City of Johns Creek is an Equal Opportunity Employer and values diversity in its workforce.

Applicants selected as finalists for this position will be subject to a comprehensive background check.

Resources

City of Johns Creek
JohnsCreekGA.gov

Finance Department
JohnsCreekGA.gov/Residents/Finance

Johns Creek Chamber
JohnsCreekChamber.com

Johns Creek Advantage
JohnsCreekAdvantage.org

CITY OF DENTON

CITY SECRETARY
CITY OF **DENTON**

EXECUTIVE SEARCH PROVIDED BY STRATEGIC GOVERNMENT RESOURCES

THE JOB OPPORTUNITY

The City of Denton is seeking applications for the position of City Secretary. The selected candidate will join an established team of professionals who are recognized as leaders in their fields.

THE COMMUNITY

Denton, Texas, is a vibrant and growing community with many opportunities, no matter what your interest or passion. It is located in the Dallas-Fort Worth metroplex, one of the fastest growing regions in the nation, and offers ample quality-of-life amenities and professional opportunities. Denton is a unique cultural destination, where a small-city feel pairs with big-city amenities. A blend of history and culture creates a dynamic suburban environment, home to two thriving universities, a vibrant downtown, and a variety of choices in employment, lifestyle, and neighborhoods.

Denton is strategically located at the convergence of I-35E and I-35W and is the northern tip of the "golden triangle." The current population (est. 136,268) is rapidly growing, which has led to a focused effort to ensure the City's infrastructure is adequate, now and in the future. Additionally, Denton is close to major airports, being only 25 miles from DFW International Airport, 35 miles from Dallas Love Field, and 20 miles north of Alliance Airport, and offers public transportation options (bus and rail) through the Denton Country Transportation Authority.

Denton is home to two state universities, the University of North Texas and Texas Woman's University. With a combined enrollment of more than 50,000 students, the universities bring in a variety of cultural, sports, and entertainment amenities to the Denton community. Just south of Denton is a campus for North Central Texas College, the oldest continuously operating two-year college in Texas. Denton Independent School District is the primary public education system and serves more than 27,000 students and 17 cities in a 180 square-mile district.

Across Denton, there is a pulsating entertainment culture, featuring live performing arts venues, music and film festivals, museums, and historical sites. Additionally, Denton is home to 30 parks, featuring 300 acres of open space, three recreation centers, a water park and community swimming pools, and hike and bike trails throughout the City. Nearby lakes, hiking trails, and state parks also contribute to exciting outdoor recreation opportunities.

GOVERNANCE AND ORGANIZATION

The City of Denton is governed by the council-manager form of government. The mayor and six council members are the legislative body of the City and the community's decision makers. The Council focuses on community goals, major projects, and long-term considerations such as community growth, land use development, capital improvement plans, and strategic planning. The Council appoints a professional manager to oversee the delivery of public services. The City Manager serves as the Chief Executive Officer for the City, implements the Council policy directives, and ensures City services are provided to the entire community.

The City operates under a fiscal year. For FY 2018-19, the City Council adopted an operating and capital budget of $1.18 billion, with funding for 1667.66 full-time equivalent positions. Denton is a full-service city, providing general government services along with multiple utility/enterprise operations such as water, wastewater, electric, solid waste and recycling, drainage, and airport services.

The City has adopted a strategic plan and core values, which guide organizational priorities and ensure that the City fulfills its mission and vision. The FY 17-18 Strategic Plan was adopted by the City Council and is organized into five key focus areas: Organizational Excellence; Public Infrastructure; Economic Development; Safe, Livable, Family-Friendly Community; and Sustainable and Environmental Stewardship. The City Manager introduced the Core Values in FY 17-18 and they reflect the principles through which the City and staff operate. The Core Values are transparency, fiscal responsibility, integrity, and outstanding customer service.

To learn more about the City of Denton, visit www.cityofdenton.com.

CITY SECRETARY'S OFFICE

The City Secretary's Office supports the City Council and City Manager by maintaining and enhancing the records management process, ensuring efficient access to municipal records, conducting elections from start to finish, and providing daily assistance to internal and external stakeholders. The office coordinates and processes all open records requests. The City Secretary serves as the Chief Election Official conducting municipal, special, and bond elections.

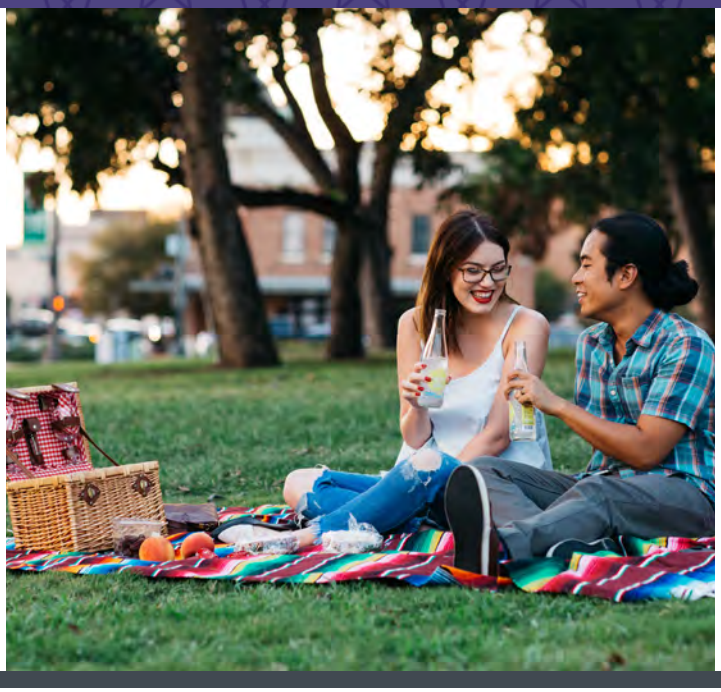
IDEAL CANDIDATE

The ideal candidate will be an approachable municipal professional with an outgoing personality and enthusiasm for municipal government. The candidate should operate with a high degree of integrity, honesty, trust, and openness, and foster an environment of transparency and accountability.

The candidate should be an excellent communicator. The ideal candidate will be a good listener who is forward-thinking, broad-minded, and receptive to new ideas, and who encourages an inclusive and collaborative working environment. The candidate should be able to speak effectively in high-pressure situations. Understanding the multifaceted integration between technology and record-keeping systems will be crucial.

As such, the candidate must have proficient knowledge of:

- Relevant City, state, and federal laws, regulations, and policies
- Rules, regulations, and laws governing city elections
- Development and administration of records retention systems
- State laws regarding records
- Texas State Library and Archives Commission regulations for records
- Texas Open Meeting Act
- Robert's Rules of Order and Parliamentary Procedure
- Texas Public Information Act
- Open Records procedures
- Modern office practices and procedures
- Computers and various software programs
- Training and supervision of personnel



The essential functions of this position include:

- Serves as Chief Election Official conducting municipal general, special, and bond elections in coordination with Denton County
- Serves as Records Management Officer as outlined by the Texas State Library to include maintaining policies and procedures for creation, receipt, storage, retrieval, and disposition of records and ensuring that all departments are in compliance
- Serves as Public Information Officer coordinating and responding to Open Records requests in compliance with the Public Information Act, ensuring that all departments are in compliance
- Works closely with the City Attorney's Office to request Attorney General opinions when necessary
- Attends all City Council meetings, prepares official minutes of the proceedings, and supervises setup of the meetings
- Directs the preparation and development of the City Council agendas and compiles and organizes information and materials necessary for the City Council agenda packets
- Coordinates the preparation of legal documents, executes required forms and notices, and directs the official publication of notices and legal documents
- Coordinates development and incorporation of Citywide document imaging system and associated regulations
- Establishes and administers indexing, maintenance, and retrieval of the official records of the City and for the City Manager's Office/City Secretary's Office; coordinates the document imaging of City records through the LaserFiche Imaging System; and supervises the development and implementation of computer software databases as needed for LaserFiche
- Coordinates the appointments and membership records of all City boards and commissions, coordinates application and appointment procedures, and supervises and assists in the preparation of a Board and Commission notebook for annual appointments
- Performs research work and prepares statistical and narrative reports
- Administers the City Secretary's Office, provides support and assistance to the Mayor and City Council and City Manager's Office, and supervises support staff for the City Secretary's Office
- Provides input on budget recommendations

QUALIFYING EDUCATION AND EXPERIENCE

The position requires broad knowledge and experience in public records management, municipal elections, and relevant open meeting and public information laws, processes, and procedures. Successful candidates should have a bachelor's degree from an accredited college or university with major coursework in public administration, business administration, political science, law, or a closely related field. The candidate should also have a minimum of six years of experience in an administrative office position (with one-year of experience being in municipal public relations), which included frequent public contact, making discretionary decisions, handling highly confidential matters, and completing complex secretarial duties. Any combination of related education, experience, certifications, or licenses that will result in a candidate successfully performing the essential functions of the job will also be considered.

Preferences:

- Master's degree from an accredited college or university with major coursework in Public Administration or Business Administration, or a Doctorate of Jurisprudence/Juris Doctorate with local government experience
- Certification in the Texas Municipal Clerks Certification program
- Significant familiarity with Granicus/Legistar agenda management system
- Bilingual in Spanish and English

COMPENSATION AND BENEFITS

The expected hiring range for the position is in the low $100K, depending on the experience and qualifications of the successful candidate. A superior benefits package is also offered, including relocation assistance; Texas Municipal Retirement System at the seven percent employee contribution level with a two-to-one match by the City upon retirement; medical, dental, vision, life, and disability insurance; vacation and sick leave; holidays; and other highly competitive benefits.

APPLICATION PROCESS

Please apply online at: http://bit.ly/SGRCurrentSearches

For more information on this position contact:

Ron Holifield, CEO
Strategic Government Resources
Ron@GovernmentResource.com
214-676-1691

Or:

Kristin Navarro, Director of Business Development and Recruitment
Strategic Government Resources
Kristinnavarro@governmentresource.com
817-637-3243

This position is open until filled. To view the status of this position, please visit:
http://bit.ly/SGRCurrentSearches

The City of Denton is an Equal Opportunity Employer and values diversity in its workforce. Applicants selected as finalists for this position will be subject to a comprehensive background check.

RESOURCES

City of Denton
www.cityofdenton.com

Chamber of Commerce
www.denton-chamber.org

Convention & Visitors Bureau
www.discoverdenton.com

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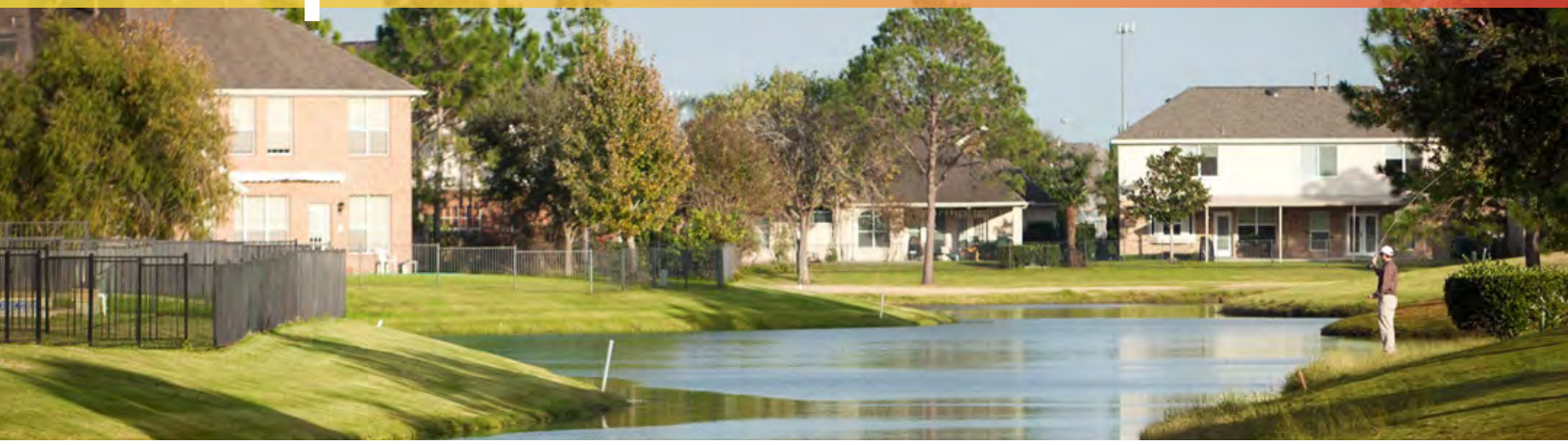

ABOUT THE COMMUNITY

Pearland has been among the top five fastest-growing cities in Texas, and among the top 10 fastest-growing cities in the country, according to the U.S. Census Bureau. The growth trajectory will continue, albeit at a slower place, thanks to an advantageous location adjacent the country's fourth-largest city, Houston, a dynamic and diverse economic dynamo on the Gulf Coast, part of the 'Texas Triangle.' All that makes Pearland a suburban force currently with significant upside potential.

This diverse community offers the best attributes of a cosmopolitan suburb - great neighborhoods, parks and recreational amenities; shopping and dining choices for every occasion; and a safe environment. In fact, Pearland has been named one of the safest cities in America by 24/7 WallSt.com. Pearland's proximity to downtown Houston, just 20 easy minutes away, on several highway corridors, provides access to world-class entertainment from theater and ballet to professional sports of every variety. Then just to the south, the Gulf Coast, anchored by Galveston (less than an hour away) offers beaches, boating, and ocean adventures.

Pearland is a broad geographic footprint, 46.5 square miles spanning three counties—Harris, Brazoria, and Fort Bend. The median income is $90,223, one of the highest per capita incomes of any city in Texas. The average home value is $269,400. That average obviously has ranges and choices above and below with a wide range of attractive, affordable housing in some of America's most well-planned neighborhoods. Pearland is proudly diverse with no single ethnic group having a majority.

Pearland's economic outlook is strong. The city offers a dynamic, diversified economy steeped in a pro-growth business environment, and skilled workforce. The economy offers a full spectrum of retail, health, transportation, and business services to meet the needs of the community. Some of the local employers include: Kelsey Seybold Clinic headquarters, the largest biotherapy manufacturer in the world in Lonza Houston, Merit Medical Systems, Inc., Mitsubishi Heavy Industries Compressor Corp., Tool-Flo Manufacturing, HCA Houston Healthcare Pearland, Memorial Hermann, and Dover Energy with Dow anchoring the southern part of Brazoria County's petrochemical base. Major employers in the area run the gamut from medical to manufacturing, and oil and gas to space exploration—including NASA's Johnson Space Center; the Port of Houston, and the world-renowned Texas Medical Center, the world's largest medical complex.

Public schools are extremely strong with choices of Pearland ISD, Alvin ISD, Clear Creek ISD, Fort Bend ISD, and Houston ISD. The University of Houston main campus is just minutes away and Rice University's leafy campus graces the area next to the Texas Medical Center and the Museum District.

MISSION / VISION

The City of Pearland is the innovative leader for delivery of quality services. We are:

RESPONSIVE | RESULTS ORIENTED | TRUST-BUILDERS | ACCOUNTABLE

CITY GOVERNANCE AND ORGANIZATION

The City of Pearland operates under a council-manager form of government and is comprised of a Mayor and seven Council Members. The City Council is responsible for enacting legislation, adopting budgets, determining policies, and appointing the City Manager to manage the day-to-day operations of the organization. Each Council Member is elected at-large and serves a three-year staggered term. Council Members are limited to two consecutive terms. The Mayor may serve without term limitations. Elections are held annually in May.

The general fund operating budget is $87 million, and the property tax rate is $0.741212 per $100 of valuation. The City is financially strong with an S&P and Fitch bond rating of AA, affirmation that the city has a "very high credit quality." The City's General Fund relies upon a mix of local property tax , sales tax, and other sources. There is a separate economic development group, the Pearland Economic Development Corporation, organized under Texas law as a Type B Corporation which has a dedicated ½ cent sales tax generating approximately $12 million/year. One of the largest and most successful Tax Increment Reinvestment Zone (TIRZ), currently at $3 billion in valuation, which expires in 2029, is located within the City. The TIRZ has been the catalyst for the highly desirable Shadow Creek Ranch planned development in Pearland.

City Manager Clay Pearson, who has more than 25 years of city management experience, joined the City of Pearland in 2014. He leads with an energetic leadership team of more than 800 employees. Under his leadership, the City of Pearland was named a 2019 Top Work Place in the Houston area. The City of Pearland has also been recognized with the Houston-Galveston Area Council's Diligence and Reach awards. In 2020, it was awarded the Government Financial Officers Association's Certificate of Achievement for Excellence in Financial Reporting for the 43rd consecutive year.

The Pearland City Council has established strategic priorities designed to guide the City to the next level of success as an economically, financially, and structurally sustainable city and a high-performing organization by linking long-term goals to day-to-day inputs and outputs and establishing an intentional connection between actions and outcomes. Those priorities include:

- Sustainable Infrastructure
- Fiscally Responsible Government
- Healthy Local Economy
- Engaged Community
- Safe Community
- Quality Parks, Recreation, and Events

CITY GOVERNANCE AND ORGANIZATION CONTINUED

The City is developing a High Performance Organization culture, emphasizing leadership at all levels, teamwork, and focus on sound public sector business practices achieved with continuous learning and improvement. The City has a large capital improvement program being implemented, more than $600 million through FY2026, to meet the current and future needs of the high-growth city. Major projects currently underway or recently completed include: Fire Station #1, Fire Station #8, Surface Water Treatment Plant, Clear Creek Trail (Green Tee Terrace Section), McHard Road extension, and SH 35 entryway and corridor enhancements.

ABOUT THE DEPARTMENT

The Finance Department's mission statement is to serve as fiscal stewards of the City's resources by providing financial services in an accurate, efficient, ethical, and innovative manner by building a bond of trust in accordance with best recognized practices and principles of governmental finance. The finance team is responsible for long-range financial planning, annual budget preparation, multi-year Capital Improvement Program, regular financial reporting, the annual audit, accounts payable and accounts receivable, fixed assets, payroll, cash management and investments, debt management, purchasing, and utility billing.

The current departmental budget is $2.3 million with 17 full-time employees in Finance and another 20.5 employees in Water Billing and Collections/Utility Billing Division. In addition to the Accounting and Budget divisions, the department also has a Purchasing Division, which is responsible for the procurement of materials, equipment, supplies and services necessary for City departments to perform their respective functions. The Water Billing and Collections/Utility Billing Division is responsible for providing timely, accurate meter reads to allow accurate billing and collection of water, sewer, and garbage services provided to City of Pearland utility customers.

Significant initiatives relevant to departmental activities include: AMI – Advanced Metering Infrastructure; timekeeping system; annual updates of overall financial management policies, city-wide data initiate, investment policies, and other internal policies (travel, procurement, cash handling, etc.); and development of the Finance Employees Sharepoint site (inward-facing for staff).

The Chief Financial Officer (CFO) interfaces with the City Council Audit Committee, the Tax Increment Reinvestment Zone Number 2 (TIRZ), and the Development Authority of Pearland.

ABOUT THE POSITION

The CFO guides city-wide strategic processes based on present and future service demands, including budget development, financial analysis and reporting, revenue forecasting, multi-year financial planning, and the collection of special assessments and service charges. The position is also responsible for ensuring regulatory compliance and serves as the City's representative for financial audits.

The CFO serves as the Director of the Finance Department and reports directly to the City Manager and is responsible for facilitating and contributing to development of city-wide policy initiatives and strategy. Direct reports include two Assistant Directors of Finance, responsible for accounting and budget/purchasing, respectively; a Utility Billing Manager, and an Executive Assistant.

The position directs the financial information systems for the City by preparing financial reports that analyze the cost of municipal operations and revenues generated; coordinates the compilation of fiscal information to outline the City's financial position for fund disbursements, interest earnings, and projected revenues based upon past, present, and future operations. He or she also coordinates the preparation of the municipal budget and all related financial forecasts to be presented to the City Manager and the City Council for final review and approval.

Primary responsibilities include leading and motivating a staff of 17 finance professionals, advising leadership on recommendations for operational or financial adjustments related to changing City expenditure patterns and revenue revisions; overseeing the City's cash and debt management, long- and short-term investment activities; as well as delegating authority and responsibility to division heads for administering activities and operations under their control.

ONGOING GOALS

- Safeguard the assets of the City of Pearland.
- Ensure accurate and prompt payment to all City vendors and employees.
- Accurately account for revenues and expenditures on a timely basis.
- Provide timely and accurate issuance of financial reports to the City Council, City Manager, and all other parties as necessary or required.
- Plan, coordinate, and facilitate the preparation of the annual budget and Comprehensive Annual Financial Report and Five-Year Capital Improvement Program.
- Facilitate and monitor purchases in compliance with State statutes and City policy and ensure that the City is getting the best value for the purchase of goods and services.
- Ensure the financial integrity of the City by developing and implementing policies and procedures.
- Maintain the debt program of the City, including the issuance of new debt, payment of annual debt service, and ensure compliance with bond and arbitrage covenants.
- Provide investment management for all City funds and bond proceeds in compliance with the City's Investment Policy.

IDEAL CANDIDATE

The ideal candidate will be an innovative leader and strong manager, with excellent communication skills and the ability to communicate complex financial information to different audiences both internally and externally. The selected candidate will work well in a high-performing environment, develop a strong team, and be able to set clear expectations for the finance team while working collaboratively with other departments. A well-rounded professional with knowledge of all areas of municipal finance and experience in process improvement and utility billing is highly desired.

The Pearland City Council and senior management place a priority on achieving success as an economically, financially, and structurally sustainable city and a high-performing organization by linking long-term goals to day-to-day inputs and outputs and establishing an intentional connection between actions and outcomes. The Finance Department is a cornerstone in the foundation to reach those priorities.

As an integral part of the management team, the CFO is well-positioned to help departments develop metrics and reports to improve performance. It will be important for the new CFO to develop a strategy to actively manage the City's debt portfolio, which is critical to support the CIP, with a long-range perspective, balancing debt with operational needs now and into the future. Recent legislative changes, along with ramifications of COVID-19, have impacted revenue growth, which can be especially challenging in a growing city. The ideal candidate will work multi-laterally to seek out and understand those factors that will impact the City's financial and operational well-being and proactively work with stakeholders to ensure the City's continued success.

Attributes of a successful candidate include:

- Leadership-oriented and flexible management style, with comprehensive knowledge of municipal finance processes and procedures, along with the ability and confidence to provide guidance and recommendations to improve organizational processes related to the financial direction, methodologies, and transparency, including budget preparation and administration. This should encompass knowledge of the principles, practices, and theories of municipal finance and all applicable federal, state, and local laws, statutes, and regulations.
- An ability to commit to the mission, vision, and values of the City of Pearland and the community it serves. This includes a desire to help build a High Performance Organization.
- An ability to communicate complex financial issues in a clear, concise, and user-focused manner in all written and oral communications.
- Highly developed problem solving, project management, performance management, and presentation skills, as well as an ability to identify and adapt best practices, embrace emerging technology, increase professionalism, and promote innovation.
- Driven to promote teamwork, fully articulate expectations, delegate responsibility with clarity, and create a culture of accountability and transparency in every facet of the department.
- Invested in the finance team and dedicated to employee growth and development.
- Dedicated to delivering a high level of customer service both to the public and within the organization.

EDUCATION AND EXPERIENCE

The CFO position requires a strong manager with a bachelor's degree in finance, public administration, or a closely related field (master's preferred) and 10 or more years of progressively responsible experience in municipal finance or management. Designation as a CPA is highly desired. The City seeks a candidate with a strong background in fund accounting, utility billing, debt management,and the technical aspects of leading a multi-division department.

COMPENSATION AND BENEFITS

The City of Pearland offers a competitive salary commensurate with qualifications and experience.

The City offers a full range of insurance, including a majority of payment for medical premiums for employees and covered dependents, as well as payment of all premiums for an employee's dental, long-term disability, and life insurance. Paid vacation and sick leave are provided as part of the benefit plan, as well as 11 paid holidays. The Finance Director also receives a car allowance and a City-issued cell phone.

The City participates in the Texas Municipal Retirement System (TMRS) at the seven percent employee deposit rate with a 2:1 municipal matching ratio and five-year vesting.

APPLICATION PROCESS

Please apply online at: bit.ly/SGROpenRecruitments

For more information on this position contact:

Heather A. Johnston
Senior Vice President, Executive Recruitment
HeatherJohnston@GovernmentResource.com
651-470-8886

The City of Pearland is an Equal Opportunity Employer and values diversity in its workforce. Applicants selected as finalists for this position will be subject to a comprehensive background check.

RESOURCES

City of Pearland
www.pearlandtx.gov/

Finance Department
www.pearlandtx.gov/departments/finance

Pearland Economic Development Corporation
www.pearlandedc.com

Pearland Convention and Visitors Bureau
www.visitpearland.com

Chamber of Commerce
www.pearlandchamber.com

FOLLOW US

City of Murfreesboro, Tennessee

Proposal to provide executive recruitment services

February 17, 2021

bakertilly

now, for tomorrow.

Baker Tilly US, LLP
2500 Dallas Parkway, Suite 300
Plano, TX 75093
T: +1 (972) 748 0300
F: +1 (214) 452 1165
bakertilly.com

February 17, 2021

Mr. Randolph Wilkerson
Assistant Director of Human Resources
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Dear Mr. Wilkerson:

Baker Tilly US, LLP (Baker Tilly) appreciates the opportunity to submit the following proposal for executive recruitment services to the City of Murfreesboro (the City) to help you identify your next City Recorder/City Treasurer. We believe that our record of successfully placing qualified and very accomplished professionals, along with our extensive experience providing executive recruitment services to cities, counties and other public-sector organizations nationwide, will be beneficial for your recruitment and will allow us to find the candidate who has the traits, skills, experience and overall competence you desire for your organization.

We know that you have options when it comes to selecting a recruitment firm. However, we believe that our unique approach, highly regarded customer service practices, and our record of identifying and recruiting top level executives in similar roles, sets us apart from our competitors. Additionally, we offer the following unique features:

- **Customized profile development:** working with the City's designated staff, we develop a customized candidate profile based on the required, desired and preferred qualifications, traits and attributes you seek in the individual you interview or hire for your next City Recorder/City Treasurer. We strive to understand how the City's current and anticipated needs and organizational priorities will shape your recruiting and selection requirements; then we collaborate with you to develop a nationwide or regional marketing, recruiting and outreach campaign. This approach has proven to effectively allow us to identify, attract and recruit highly qualified candidates for your review.
- **Proprietary management/leadership assessment:** relying on exclusively licensed predictive analytics tools (using data to determine patterns and forecast future outcomes and trends), we administer assessments to selected applicants to help us identify human potential in each of the candidates we present to you. Results are "Real," "Impactful," and "Powerful." Furthermore, these results can provide you with more profound insights into the candidate's management traits and leadership styles based on scientific data.
- **Recorded video interviews:** we ask selected candidates (semi-finalists) to complete a recorded, one-way video interview, using questions developed from your "candidate profile," which gives your review team an additional tool to evaluate the semi-finalists before inviting them to a face-to-face interview.
- **Proprietary online application management:** our exclusively licensed, proprietary online application system enables us to efficiently manage applicant flow, classification and allows us to communicate with each applicant quickly and effectively. We communicate in real time with applicants, thereby engaging and informing them of each step, search related assignment and corresponding timeline throughout the process. Our system also allows us to access, review and evaluate thousands of prior applicants or individuals who have manifested interest in similar positions. Generally, these are individuals who may not be actively seeking a job, but who may be open to "the right opportunity." This is another benefit and advantage we provide to our clients, which enables us to access a larger number of active and passive job seekers.

This proposal details about our approach, expertise, references and pricing for this executive recruitment. Our team would consider it a professional privilege to provide these services to the City of Murfreesboro.

Very truly yours,

BAKER TILLY US, LLP

Chuck Rohre
Firm Director
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Patty Heminover
Director
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now, for tomorrow.

1. General information

Firm introduction

Baker Tilly is a nationally recognized firm with a long history of service to clients located throughout the country. For more than 85 years, Baker Tilly has understood that our business demands absolute integrity, a belief in the value of trusted relationships and a willingness to collaborate with every client. We will strive to continue to deepen and enhance our relationship with the City as we seek to become your Value Architect™.

Executive recruitment for public and non-profit clients has been a part of Baker Tilly's portfolio of advisory services for more than 30 years. Within Baker Tilly, our executive recruitment team consists of ten recruitment consultants and project coordination staff available to meet your executive recruitment needs. Each consultant assigned to this recruitment has experience working with villages, cities, counties, special districts and school districts and the many different disciplines that comprise the City of Murfreesboro organization. Our consultants bring an experienced, participatory and energetic perspective to each engagement; our unique approach and personal touch are reflected in our internal standard to provide outstanding services that exceed your expectations. Our combined consultant team has conducted nearly 1,500 executive searches.

The Baker Tilly project team will collaborate with the City's designated staff as your technical advisor to ensure that the recruitment process for your next City Recorder/City Treasurer is conducted in a thorough and professional manner consistent with "best practices" in the public sector executive recruitment space. Our objective is to generate highly qualified candidates and assist you with the screening and evaluation of these candidates.

Since our firm's beginning, we have emerged as a leader in human resource management consulting and executive recruitment. It is our 30+ years of consulting experience, coupled with our unique approach and personal touch that drives our internal standard for delivering only outstanding services and leading-edge products.

Project contacts and locations

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2. Understanding and approach

The recruitment will be national and inclusive in nature, with a candidate pool of diverse, experienced and talented individuals.

Our understanding of Murfreesboro's needs

We understand the City is looking for a timely, effective, efficient, responsive, well-managed and thorough search process to recruit and identify highly qualified candidates for its next City Recorder/City Treasurer.

Baker Tilly will work with the City to understand the desired qualities and professional capabilities that are most important to your organization for this recruitment. This information helps us present the City of Murfreesboro and the vacancy to well-regarded candidates, emphasizing the opportunities for leadership and professional growth as well as presenting the City of Murfreesboro as a vibrant and thriving community in which to live.

We recognize that there is significant competition for experienced local government managers today. For this reason, we work with you to develop a recruitment strategy that includes an aggressive marketing, recruiting and candidate outreach campaign. As you know, a successful recruitment often depends upon the ability to reach successful executives who may not necessarily be in search of new employment opportunities. Thus, we use existing resources to inform and encourage qualified professionals to apply for opportunities with your organization. We believe that these efforts are critical to ensuring that the City receives a qualified candidate pool.

Baker Tilly manages and tracks applicant information and provides regular communications, updating the applicants on the status of the recruitment. Our communications are always professional and respectful.

We take pride in our ability to provide the City with comprehensive information about each candidate we present, expanding beyond applications and resumes, to better understand their professional experience, the leadership and management style they will bring to your organization, and their motivation for pursuing this career opportunity. We also assist you in the preparation of interview questions, interview day scheduling, planning and structuring as needed. Additionally, we are available to you and present throughout each interview session and are able to facilitate your deliberations and negotiations with the top candidate.

Recruitment solutions during the Covid-19 Pandemic

In response to the COVID-19 Pandemic, the Baker Tilly executive recruitment team leader will work closely with the Murfreesboro designated point of contact to develop alternative methods to complete all aspects of our established search processes using existing technologies and ensure the overall safety of all involved, which may include virtual or telephonic meetings, interviews, or conversations.

As such, we will creatively collaborate with your organization to provide you with access to critical information you may need to make your hiring decisions. Additionally, we can utilize our capability for video conferencing during meetings, candidate interviews, etc.

When the time arrives for the City ss to interview candidates, we may encourage and support the steps established or recommended by local, state or federal guidelines, public health and medical professionals, including social distancing guidelines and protocols.

Baker Tilly has successfully organized several successful virtual and on-site interview processes following the prescribed social distancing protocols and best practices. As such, Patty Heminover is able to provide corresponding on-site support and assistance, if requested.

Remote work

For Baker Tilly, the safety of our people is paramount. We are committed to playing our part in containing COVID-19 by practicing responsible social distancing. As of this writing, our firm is directing all professionals work remotely. Because Murfreesboro expects and deserves tailored, personalized service, we recognize that this policy may cause concern. **Please understand that we are prepared to deliver an exceptional service experience remotely if necessary**.

The City's engagement team has various tools enabling them to assist you from any location. Baker Tilly professionals each receive their own laptop and remote access credentials to connect to our internal network from outside the office. When Baker Tilly and the City are not able to meet in person, we have web conferencing software – including Zoom, WebEx and Microsoft Teams – to quickly set up online meetings.

Additionally, we use Huddle, a secure cloud collaboration software, to work together anywhere, anytime and on any device. Huddle provides a platform for the City and Baker Tilly to come together, share files, assign tasks, and track activity in a secure environment. Using Huddle as a central hub of activity means we all spend less time organizing documents, chasing approvals and searching through email – and more time achieving tangible results. The platform also enables real-time communication, meaning the status of your engagement will always be available. We also use Microsoft Teams, which facilitates easier communication and project management.

Proposed solution to meet Murfreesboro's needs

The recruitment will be conducted out of our Minnesota and Virginia offices. Patty Heminover will serve as the project team leader. Our proven process includes five major tasks:

1. **Recruitment brochure development and advertising**
   - We schedule and meet with your City's elected officials, appointed management team members and key stakeholders, as requested, to understand your desired needs, strategic directions, overall candidate expectations and to develop a candidate profile
2. **Execution of recruitment strategy and identification of quality candidates**
   - Using the approved profile, we develop a colorful, appealing brochure and embark on a national or regional targeted recruitment campaign

- Additionally, we simultaneously launch a direct applicant outreach campaign targeting eligible prospects identified via our extensive searchable applicant database
- Using our proprietary applicant tracking system, we communicate and update applicants on key processes and corresponding search progress

3. **Screening of applications, recommendation of semi-finalists and selection of finalists**
   - Once we identify the most promising applicants, we ask them to complete our due diligence questionnaire and a candidate questionnaire while the project team conducts a comprehensive web and social media scan to elicit information that could be relevant to employment
   - These applicants also complete a recorded, one-way video interview of selected questions designed to secure a different perspective on the applicant's overall qualifications
   - We provide you with a Semi-Finalists Report of the top candidates, which includes resumes, cover letters and due diligence questionnaire responses
   - Selected finalists complete a management and leadership style and strengths assessment (personality and behavior analysis) to provide us with important information about their styles, temperament, preference, etc.
4. **Conducting background checks (criminal, civil, credit and driving record), reference checks and academic verifications**
   - Background records checks and academic verification
   - References
5. **Final interview process**
   - Once your City identifies its top 3-5 finalists, we work with you and the finalists to coordinate all aspects of the interview process
   - Employment offer – assistance and feedback

Recruitment approach

Task I. Recruitment brochure development and advertising

The development of a comprehensive recruitment brochure that includes a profile of the ideal candidate is an important first step in your recruitment process. This profile includes the required academic training, professional experience, leadership, management and personal characteristics related to the success of the candidate in the position of City Recorder/City Treasurer. The recruitment brochure will also include a profile that captures the essence of the City of Murfreesboro as a highly-attractive venue for the successful candidate to live and work.

To prepare the recruitment brochure, the project team leader will come on site to meet with the City's designated staff to discuss the required background, professional experience, and management and leadership characteristics for your City Recorder/City Treasurer. We meet the City to broaden our understanding of the position's leadership and management requirements, current issues, your strategic priorities and your expectations for the City Recorder/City Treasurer. [See example of a recruitment brochure in **Appendix I**.]

Information obtained from these meetings, coupled with our review of the job description and other City documents, is used to prepare a position and candidate profile. The completed profile will be approved by the City before recruitment begins. The position and candidate profile will be central to our recruitment strategy and outreach to potential candidates.

The project team will also work with the City of Murfreesboro to develop an advertising and marketing strategy to notify potential candidates about the vacancy and conduct an open recruitment that encourages applications from a talented and diverse pool of candidates. Our team will place ads in appropriate professional publications, websites and local print media, if required, and coordinate with City staff to include information about the search on the City's social media platforms. Additionally, Baker Tilly has a high-traffic website which includes an exclusive location dedicated to encouraging potential candidates to upload their resumes. The aggressive advertising and marketing campaign for top talent will include national, state, regional and local elements as determined during our initial meetings with the City's representatives. Our customized mailing list, selected from our extensive database and contacts collected at appropriate public-sector conferences, will be utilized to further promote the City Recorder/City Treasurer position.

Project milestone	Deliverables	Timeline
Position profile and recruitment brochure development	– Interviews with the City – Baker Tilly receives information on the City's budgets, organizational charts, images, logos, etc. – Develop draft documents (recruitment brochure, advertisement, marketing letter and timeline)	2 weeks
Approve brochure, commence advertising and distribute marketing letter	– Brochure sent to the City for final approval – Commence advertising and distribution of recruitment brochure	1 week

Task II. Execution of recruitment strategy and identification of quality candidates

Utilizing the information developed in Task I, Baker Tilly will identify and reach out to individuals who will be outstanding candidates for the position of City Recorder/City Treasurer. Often, well-qualified candidates are not actively seeking new employment and will not necessarily respond to an advertisement. However, if a potential candidate is presented with the opportunity directly and in the proper manner, he or she may apply. We take pride in our ability to locate highly qualified candidates across the nation based on the professional contacts and relationships we have developed and maintained over many years.

These efforts will be supplemented by the creation of a customized database utilizing our extensive, interactive applicant database for the City Recorder/City Treasurer position. This will provide the Baker Tilly team with the ability to customize applicant flow and tracking, communication with applicants and conduct database inquiries for candidates based on characteristics important to the City such as geographic location, particular experience, expertise and credentials.

During this part of the process the project team will work with the City's designated staff to reach consensus on the leadership and management style for the ideal candidate. Our research will determine the key competencies, work values and leadership/management style for the City Recorder/City Treasurer and match the candidates to each attribute.

While recruitment is under way, the project team will work with a team of up to 10 subject matter experts (SMEs) who know what successful performance in the City Recorder/City Treasurer position looks like to reach consensus on the desired leadership and management style for the ideal candidate. We ask the SMEs to complete a 30-minute, on-line questionnaire. When aggregated, these responses generate a benchmark that prioritizes the key competencies, work values and leadership/management style attributes for this position, creating a

framework for assessing candidate fit with the City. Later in the process, finalists for the position are asked to complete a companion questionnaire that allows us to match candidates' competencies, work values and leadership/management style to the benchmark. [See sample excerpt of TTI report in **Appendix II**.]

Each candidate submitting a resume is sent a timely acknowledgement by our team, including an approximate schedule for the recruitment. Throughout the recruitment process, communications are maintained with each candidate regarding information about the recruitment progress and their status in the process. We take pride in the many complimentary comments made by candidates regarding the level of communication and the professional manner in which they are treated during our recruitments.

Project milestone	Deliverables	Timeline
Execution of recruitment strategy and candidate outreach	– Online data collection and profile development – Development of interactive, searchable applicant database for recruitment of the City Recorder/City Treasurer – Baker Tilly performs direct outreach to prospective candidates identified in the recruitment strategy – Utilization of extensive applicant database to identify applications and review applicant pool for competencies/demographics	4-5 weeks

Task III. Screening of applicants and recommendation of semi-finalists

In Task III the project team, under the direction of Patty Heminover, will screen the candidates against the criteria within the position and candidate profile and develop a list of semi-finalists for recommendation to the City. We will then narrow the list to a group of 10-15 semifinalists for review and select finalists on the basis of written candidate questionnaires, early due diligence information, consultant phone interviews and recorded, one-way video interviews.

Another unique aspect of our recruitment process is our use of online recorded interviews for the screening process. Responses are timed and questions are not provided in advance. This tool allows our team to develop a more comprehensive understanding of each candidate's ability to "think on their feet," as well as their personal and professional demeanor. Our team will provide an online link for the City, as well as others who have input into the hiring decision, allowing them to review and later discuss the recorded responses. This provides your organization with additional candidate assessment tools that can be customized to fit the unique needs of the City.

Throughout the process, you will have access to our Master Applicant List (MAL), which will provide pertinent data for each applicant.

Project milestone	Deliverables	Timeline
Applicant screening and recommendation of semi-finalists	– Baker Tilly compares applications to the approved candidate profile, developed in our searchable applicant database – Most promising applicants are asked to complete candidate questionnaires and provide due diligence information – Media, internet and social media scan for information pertinent to future employment – Top 10-15 candidates identified as semi-finalists	2-3 weeks

	– Semi-Finalist Report is prepared, including the brochure, master applicant list, cover letter and resume of candidates to be considered – Baker Tilly and the City review video interviews – Project team leader meets with the City to review recommended semi-finalists – The City selects finalists for on-site interviews – Finalists complete candidate management style assessment, responses are reviewed and interview questions are developed	

Task IV. Conducting background checks, reference checks and academic verifications

When the City approves of a group of finalists for on-site interviews, Baker Tilly will begin the process of conducting reference checks, background checks and academic verifications. A Confidential Reference Report is prepared for each finalist to complete our understanding of his/her management and leadership characteristics and professional work performance.

Background checks will include information from the following areas:	
Consumer credit	Bankruptcy
City/county – criminal	State district Superior Court – criminal
City/county – civil litigation	State district Superior Court – civil
Judgment/tax lien	Federal district - criminal
Motor vehicle driving record	Federal district – civil litigation
Educational verification	Sex offender registry

To ensure that our quality standards are maintained, we require a minimum of 10-15 business days between the time that you select the finalists for on-site interviews and when we submit the candidate documentation for your final interview process.

Project milestone	Deliverables	Timeline
Design final process with City for on-site interviews with finalists	– Baker Tilly confirms interviews with candidates – Travel logistics are scheduled for candidates	1-2 days
Background checks, reference checks and academic verification	– Baker Tilly completes background checks, reference checks and academic verifications for finalists	2-3 weeks

Task V. Final interview process

Upon completion of Task IV, we will work with the City to develop the final interview process, including the use of virtual platforms as requested. We customize the final interview process according to the needs and functions of the position and according to your preference, instructions and directives to include steps that are important to you, our client. As such, the final interview process may include meetings with the department heads, a City tour and the opportunity for a meet and greet, if requested by the City. In advance of the interviews, we will provide documentation on each of the finalists which will provide the highlights of their leadership/management profile (Gap Analysis) as well as a summary of the results of the reference checks, background checks and academic verifications. In addition, the Final Report will include guidelines for interviewing the candidates, suggested interview questions and a candidate assessment process for your interview panel(s).

The project team leader will be available during the final interview process to answer questions about the candidates and, if requested, assist with the final evaluation of the candidates. In addition, we will assist you with the development of a compensation package and related employment considerations and assist with the negotiation of an employment agreement.

Project milestone	Deliverables	Timeline
Final Report prepared and delivered to City	– Final Report is prepared; including brochure, interview schedule, cover letter, resume, candidate questionnaire, suggested interview questions, candidate assessment form and management style probing questions	1 day
On-site interviews with finalists	– Interviews are scheduled – Recruitment project team leader attends client interviews and is available to participate during deliberations of candidates	1-2 days
Offer made/accepted	– If requested, Baker Tilly participates in candidate employment agreement negotiations – Baker Tilly notifies candidates of decision – Baker Tilly confirms final process close out items with the City of Murfreesboro	1-2 days

Our strategy for recruitment of diverse candidates

Our corporate core values and work environment reflect our broader social aspirations for a diverse workforce, equal opportunity and cross-cultural respect. We have established strong and credible networks with minority and female leaders nationwide. In addition, we are corporate members of the National Forum for Black Public Administrators (NFBPA) and the Local Government Hispanic Network and are on their National Corporate Advisory Council. We participate in their membership events on a regular basis.

To that end, we take responsibility for diversity in our organization, our recruitment strategy and our candidate pools. In this recruitment, we will use our established networks to make direct and personal contacts with prospective minority and female candidates and encourage them to consider the City of Murfreesboro's City Recorder/City Treasurer position. Because of our performance record in presenting a diverse applicant pool, these prospective candidates know they will be fairly considered in the process.

Baker Tilly is committed to ensuring equitable participation in our business and employment opportunities without regard to race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation. As a leader in the executive recruitment industry, we take positive actions to prevent and to remedy any discriminatory effects of business and employment practices.

Commitment to diversity and inclusion

Diversity, inclusion and belonging is **who we are** rather than simply what we do. We take a holistic approach by embedding the philosophy and practices of diversity, inclusion and belonging into all aspects of our business.

Baker Tilly is a member of CEO Action for Diversity & Inclusion launched on June 12, 2017 through a steering committee of CEOs focused on making D&I a *business priority and conversation.* It is the

CEO ACT!ON FOR DIVERSITY & INCLUSION

largest collection of business leaders openly committed to sharing successful diversity and inclusion initiatives and lessons learned. This corporate exchange provides a unified hub to share successes and challenges.

As a member, we pledge to:

1. Continue to make our workplaces trusting places to have complex and sometimes difficult, conversations about diversity and inclusion.
2. Implement and expand unconscious bias education.
3. Share best—and unsuccessful—practices.

Growth and Retention of Women (GROW)

Baker Tilly believes that the education and advancement of women creates a more diverse and engaging culture. We believe that this makes our workplace, profession and industry stronger and better through a diverse, engaging and inclusive workplace where exceptional people thrive.

Through our GROW committee, Baker Tilly provides women valuable opportunities to network, share their stories, acquire skills, strengthen professional relationships and advance in their careers. Our commitment to GROW increases the number of women in management positions, enhances the retention of women at all firm levels, creates an environment where women feel empowered, supports our advocacy of advancing women in business, helps us to share knowledge gained through this initiative with clients and creates a workforce that is reflective of our client base.

grow
growth and retention of women

Supporting Opportunity, Advancement and Recognition for All (SOAR)

Baker Tilly's diversity and inclusion initiative, SOAR, focuses on bringing team members together from different backgrounds to create a more creative, innovative and productive workforce. Simply put, diversity makes each of our professionals unique; inclusion is how that unique team collaborates to achieve common goals. SOAR focuses on ensuring all team members are supported, valued and respected regardless of ethnicity, race, gender, age, physical ability, faith, sexual orientation, education, personality, skills or life experiences.

soar
supporting opportunity, advancement and recognition

SOAR was recently named Corporate Partner of the Year by the Washington, D.C. chapter of the National Association of Black Accountants, Inc. (NABA), recognizing our significant achievements in diversity within our organizations and in the industry.

Timeline

Below is an estimated timeline for the executive recruitment process. You will be asked during the first on-site meeting to review and approve a Timeline for the recruitment project. It is our intent to conduct the recruitment expeditiously, but not at the expense of finding high-quality candidates for you.

City of Murfreesboro, Tennessee Executive Recruitment Preliminary Timeline		
The following timeline represents a preliminary schedule for your executive recruitment based on a commencement date of March 1, 2021. Actual target dates will be developed in consultation with and approved by the City.		
Project milestone	**Deliverables**	**Target Date**
Profile development, advertising and candidate outreach	– Baker Tilly completes interviews to develop candidate profile and recruitment brochure; the City approves ad placement schedule and timeline – Baker Tilly sends draft recruitment brochure to the City – The City returns draft recruitment brochure (with edits) to Baker Tilly – Baker Tilly commences executive recruitment advertising and marketing – Online data collection and profile development	**March**
Applicant screening and assessment and recommendation of semi-finalists	– Baker Tilly commences formal review of applications; most promising candidates complete questionnaires – Candidates complete recorded interview online – Baker Tilly completes formal review of applications and sends selected resumes to the City for review – Candidates' recorded interviews are presented – Baker Tilly meets with the City and recommends semi-finalists; the City selects finalists for on-site interviews – Finalists complete candidate management style assessment and responses are reviewed and interview questions are developed	**April**
Comprehensive background check, academic verifications and reference checks completed for finalists	– Baker Tilly completes reference checks / background checks/ academic verification on finalists	**April**
On-site Interviews with finalists	– Baker Tilly sends documentation for finalists to the City – The City conducts on-site interviews with finalists	**May**
Employment offer made / accepted	– The City extends employment offer to selected candidate	**May**

Why Baker Tilly is ideally suited to serve Murfreesboro

There are many reasons Baker Tilly has distinguished itself from peers in public sector executive recruitment.

- **We are experienced and passionate about what we do.** Baker Tilly executive recruitment consultants are highly experienced and passionate about local government since all have spent a significant part of their professional careers in senior leadership positions for cities, counties and school districts. The Baker Tilly team has recruited and placed more than 1,500 executive-level positions within cities, counties, school districts and public and not-for-profit organizations.
- **We are focused on exceeding your expectations.** We believe in local government and want to assist the City of Murfreesboro organization in building a great team. We want your organization to hire us again based on the success we achieve the first time we work together.
- **We believe that "ethical business practices" are a catalyst for success.** These practices include operating with transparency, responsiveness and sensitivity to the culture of your organization while pursuing an unrelenting commitment to high quality and professional services.
- **We believe in diversity.** Our corporate core values and work environment reflect our broader social aspirations for a diverse workforce, equal opportunity and cross-cultural respect. We take responsibility for diversity in our organization, our recruitment strategy and our candidate pools. We are corporate members of the National Forum for Black Public Administrators (NFBPA) and the Hispanic Network and are on their National Corporate Advisory Council.
- **We conduct a timely, high-quality recruitment that is within budget.** For an all-inclusive, not-to-exceed professional fee that includes the cost of professional services by the project team leader, the project support staff and all project related expenses such as advertising, preparation of a recruitment brochure, background, reference and academic verification checks and travel expenses for up to three on-site visits. We work with you to establish a timeline, respond to the City's needs and to unexpected circumstances that may develop during the course of a recruitment in order to expedite the recruitment, but not at the expense of finding high quality candidates for the City of Murfreesboro.
- **We utilize the latest technologies that uniquely sets us apart.** Technology plays an important role in the Baker Tilly executive recruitment process. From our proprietary video interview system and our management/leadership style assessment analysis, to our proprietary online application system, we efficiently manage candidate information and provide the City with unique information about each candidate's leadership and management style and ability to respond extemporaneously to video questions.
- **We offer a "Triple Guarantee" that commits Baker Tilly to the City's success.**
  - We remain focused to assist with your executive recruitment until you make an appointment
  - We guarantee your executive recruitment for 12 months against termination or resignation for any reason – or we come back to fill the City Recorder/City Treasurer position for no additional professional fee
  - We will not directly solicit any candidates selected under this contract for another position while the candidate is employed with your organization

Benefits to Murfreesboro

Selecting Baker Tilly to conduct your executive recruitment provides you with the following benefits:

- **Comprehensive and structured process:** Our process is comprehensive and seamless, reflecting our years of interaction with local government employers and prospective candidates.
- **Transparency:** Baker Tilly comes to the City without having any preconceived notions or expectations about the Murfreesboro and prospective candidates. The Baker Tilly team works closely with the City to make sure the process is transparent.
- **Confidentiality:** Prospective candidates know that their application will be kept confidential, allowing them to express interest in the City Recorder/City Treasurer position without jeopardizing their current employment. Our reputation for ensuring candidate confidentiality as permitted by state and local law means that the City of Murfreesboro can count on maximizing the number of qualified candidates interested in the position.
- **Candidate recruitment:** Baker Tilly actively recruits qualified candidates, drawing from our extensive personal and professional connections with capable individuals around the state, region and nation and assuring the City of its access to established managers and rising stars. The ability to widely recruit for prospective candidates is one of the primary benefits of using Baker Tilly.
- **Focused use of the City's time:** Baker Tilly's comprehensive process incorporates the active participation of City staff members at key steps in the process. Our process keeps decision makers fully advised and informed of all aspects of the process without requiring them to expend large amounts of time on the recruitment process or to put aside other pressing issues facing the City.
- **Minimize staff disruption:** Baker Tilly's search process also minimizes disruptions to City staff, some of whom may have additional duties in this time of transition. Because conducting a thorough recruitment can be time-consuming, Baker Tilly's involvement allows staff to stay focused on their primary and assigned functions.
- **Thorough evaluation of candidates:** The City of Murfreesboro seeks a City Recorder/City Treasurer of sound professional and personal character. Baker Tilly's process includes a thorough evaluation of the final candidates, including detailed information from references and a careful review of background records.

3. Proposed fees

The all-inclusive professional fee to conduct the recruitment is provided below.

Professional fee

The all-inclusive professional fee includes the cost of professional services by the project team leader, the project support staff and all project-related expenses such as advertising, preparation of the recruitment brochure, printing, candidate background, reference and academic verification checks and travel expenses for on-site visits. Travel expenses incurred by candidates for on-site interviews with the client are not the responsibility of Baker Tilly and are handled directly by the client organization.

The all-inclusive professional fee will be billed in four installments: 30% of the fee will be billed at the beginning of the recruitment; 30% at the implementation of Phase I; 30% at the implementation of Phase II; and 10% upon acceptance of an offer by the candidate.

All questions regarding the professional fees and project-related expenses should be directed to Patty Heminover at patty.heminover@bakertilly.com or via phone at (651) 968 7841.

Phase	Description of professional services	Fee
Phase I	Task 1 Candidate profile development/advertising/marketing Task 2 Identify quality candidates	
Phase II	Task 3 Screening of applications and submission of recommended semi-finalists to client Task 4 Reference checks, background checks and academic verifications	
Phase III	Task 5 Final process/on-site interviews with finalists (includes two days on site by project team leader)	
Conclusion	Acceptance of offer by candidate	
	TOTAL ALL-INCLUSIVE PROFESSIONAL FEE	***$24,500***
Optional services for consideration		**Fee**
At the City's option, Baker Tilly will conduct a web-based survey to determine key community-wide issues and priorities that could be considered in the selection of a new City Recorder/City Treasurer. This survey is completed by community leaders, citizens and City employees and would alter the project timeline.		**$1,650**
On rare occasions, Baker Tilly is asked to provide additional search services that are not included in this scope of service or to provide more than three on-site visits to the City. Additional work specifically requested by the City which is outside of the scope of this project will be invoiced at the hourly rate of $220 plus expenses. Baker Tilly will submit a written explanation of the additional services to be provided and the estimated hours that will be required prior to commencing any additional services.		***$220*** per hour plus expenses

Triple guarantee

Our Triple Guarantee is defined as:

1. A commitment to remain with the recruitment assignment until you have made an appointment for the fees and tasks quoted in this proposal. If you are unable to finalize selection from the initial group of finalists, Baker Tilly will work to identify a supplemental group until you find a candidate to hire.
2. Your executive recruitment is guaranteed for 12 months against termination or resignation for any reason. The replacement recruitment will be repeated with no additional professional fee, but will include project-related expenses. Candidates appointed from within your organization do not qualify for this guarantee. This guarantee is subject to further limitations and restrictions of your state laws.
3. Baker Tilly will not directly solicit any candidates selected under this contract for any other position while the candidate is employed with your organization.

Negotiations

If selected, we will provide the City with our standard engagement terms. Should the City wish to provide alternate terms or proceed on the basis of its own format agreement, we would require the ability to negotiate mutually acceptable terms and conditions prior to executing a final contract.

4. Firm experience

References

Patty Heminover is the designated project lead for the City Recorder/City Treasurer recruitment. Feel free to contact any of the individuals listed below to verify the quality of work Baker Tilly provides to each client as part of these recently completed executive recruitment projects.

Johnson City, TN			
Name	Steve Willis	**Title**	HR Director
Phone	(423) 434 - 6016	**Email**	swillis@johnsoncitytn.org
City of Scottsbluff, NE			
Name	Rick Kuckkahn	**Title**	City Manager
Phone	(308) 630 - 6202	**Email**	CM@scottsbluff.org
City of Lake Elmo, MN			
Name	Kristina Handt	**Title**	City Administrator
Phone	(651) 747 - 3905	**Email**	khandt@lakeelmo.org

Experience

The following is a list of finance executive recruitments recently conducted by members of the Baker Tilly team.

List of finance projects: 2016 to present

Year	Client	State	Project	Population
Current	Evansville	WI	City Administrator/Finance Director	5,378
Current	Oakdale	MN	Finance Director	28,083
Current	Richland County	SC	County Assessor	415,759
2020	Brooklyn Center	MN	Director of Fiscal Services	31,006
2020	Gainesville	FL	City Auditor	132,249
2020	Gloucester County	VA	Chief Financial Officer	37,292
2020	Gloucester County	VA	County Assessor	37,292
2020	Lake Elmo	MN	Finance Director	9,100
2020	League of Minnesota Cities	MN	Assistant Finance Director	
2020	Orange County	NC	Director of Asset Management	140,352
2020	Shakopee Public Utilities Commission	MN	Director of Finance and Administration	
2019	Cincinnati Metropolitan Housing Auth	OH	Director of Revenue	301,301
2019	Olathe	KS	Internal City Auditor	131,885

List of finance projects: 2016 to present

Year	Client	State	Project	Population
2019	Stafford County	VA	Chief Financial Officer	136,788
2018	Avondale	AZ	Director of Finance and Budget	82,881
2018	Dunn County	WI	Chief Financial Officer/County Auditor	44,122
2018	Greene County	NC	Finance Director	21,134
2018	Metropolitan Council	MN	Director of Internal Audit	2,980,000
2018	NE Metro Int School District No. 0916	MN	Director of Finance	
2017	Albemarle County	VA	Finance Director (Partial)	103,000
2017	Allegan County	MI	Executive Director of Finance	112,531
2017	Culpeper	VA	Finance Director	17,145
2017	Norfolk	VA	City Assessor	246,139
2017	Raleigh	NC	Budget Director	431,746
2017	Salina	KS	Director of Finance	47,867
2017	Virginia Railway Express (VRE)	VA	Chief Financial Officer	
2016	Carrboro	NC	Director of Finance	20,908
2016	Catawba County	NC	Chief Financial Officer	154,810
2016	Dallas	TX	Chief Financial Officer	1,258,000
2016	Denton	TX	City Auditor	123,099
2016	Dona Ana County	NM	Finance Director	213,460
2016	Minneapolis	MN	Chief Financial Officer	400,070
2016	Wyoming Municipal Power Agency	WY	Manager of Accounting and Finance/CFO	16,500

The following is a list of additional department head executive recruitments recently conducted by members of the Baker Tilly team.

List of relevant projects: 2016 – present

Year	Client	State	Project	Population
2020	Baker University	KS	Dean of Nursing	
2020	Baxter	MN	Building Official	8,278
2020	Bellevue	WA	Parks and Recreation Director	144,444
2020	Belton	MO	Public Works & Asst Public Works Director	23,480
2020	Blue Springs	MO	Human Resources Director	55,104
2020	Denton	TX	Municipal Court Judge	123,099
2020	DeSoto	TX	Public Utilities Director	53,568
2020	Edina	MN	Park & Recreation Director (partial search)	51,958
2020	Fort Collins	CO	Chief Judge	167,830
2020	Fulton County	GA	Clerk of the Commission	1,064,000
2020	Gloucester County	VA	Human Resources Director	37,292
2020	Lake Elmo	MN	Building Official (partial)	9,100
2020	Lake Ozark	MO	Asst City Admin/Comm Eco Dev Director	1,792
2020	Lancaster County	SC	Director of Development Services	80,458

List of relevant projects: 2016 – present

Year	Client	State	Project	Population
2020	Lenexa	KS	City Attorney	55,294
2020	Lenexa	KS	Information Technology Director	55,294
2020	Marshall Municipal Utilities	MN	General Manager	13,710
2020	MD-Natl Cap Park & Planning Comm	MD	Director, Parks and Recreation	
2020	MD-Natl Cap Park & Planning Comm	MD	Division Chief, Public Affairs and Marketing	
2020	MD-Natl Cap Park & Planning Comm	MD	Youth & Countywide Sports Division Chief	
2020	Minneapolis	MN	Chief Information Officer	400,070
2020	Minot	ND	Economic Development Specialist	47,822
2020	Orange County	NC	Director of Housing and Human Rights	140,352
2019	Commonwealth of Virginia	VA	Deputy Commissioner of Human Services	8,326,000
2019	Commonwealth of Virginia	VA	Physician Manager I	8,326,000
2019	Dallas Area Rapid Transit Authority	TX	Ent Business Intelligence Platform Leader	1,258,000
2019	Dallas Area Rapid Transit Authority	TX	IT Executives	1,258,000
2019	Hanover County	VA	County Attorney	105,923
2019	Independence	MO	Chief Human Resources Officer	117,306
2019	Independence	MO	Utility Chief Financial Officer	117,306
2019	Johnson City	TN	Assistant Director of Water/Wastewater	66,677
2019	Lake County	IL	Director of Facilities and Construction	703,910
2019	Local Government Info Systems	MN	Application Devel and Support Manager	
2019	Manatee County	FL	Human Resources Director	342,106
2019	MD-Natl Cap Park & Planning Comm	MD	Div Chief, Park Planning and Development	
2019	Minneapolis	MN	Total Compensation Manager	400,070
2019	Overland Park	KS	Chief Information Officer	191,278
2019	Roanoke	VA	Director of Economic Development	99,837
2019	Salisbury	NC	Planning and Comm Development Director	33,604
2019	Scottsdale	AZ	City Attorney	249,950
2019	Stafford County	VA	Landfill Director	136,788
2019	Stafford County	VA	Zoning Administrator	136,788
2019	Wright County	MN	Information Technology Director	131,311
2018	Asheville	NC	City Attorney	89,121
2018	Brooklyn Center	MN	Information Technology Director	31,006
2018	Charlottesville	VA	City Attorney	46,597
2018	Commonwealth of Virginia	VA	Chief Government Affairs Officer	8,326,000
2018	Commonwealth of Virginia	VA	Dept of ABC CERS	8,326,000
2018	Commonwealth of Virginia	VA	Human Resources Director	8,326,000
2018	Dallas	TX	City Secretary	1,258,000
2018	Denton	TX	City Attorney	123,099
2018	Dumfries	VA	Community Development Director	5,168
2018	El Paso	TX	City Attorney	674,433
2018	Gloucester County	VA	Human Resources Director	37,292

List of relevant projects: 2016 – present

Year	Client	State	Project	Population
2018	Housing Authority of Spartanburg	SC	Chief Executive Officer	37,498
2018	Johnson City	TN	Development Services Director	66,677
2018	Lake County	FL	Office of HR and Risk Management Director	123,996
2018	Lake County	FL	Public Works Director	123,996
2018	Lakeville	MN	Director of Public Works	58,562
2018	Mesquite	TX	City Attorney	143,736
2018	Metropolitan Council	MN	Director of Community Development	2,980,000
2018	Metropolitan Council	MN	Director of Equal Opportunity	2,980,000
2018	Mora	MN	City Admin/Public Utilities General Manager	3,453
2018	New Smyrna Beach	FL	CEO/General Manager	25,796
2018	Palm Beach County	FL	Traffic Director	1,372,000
2018	Pinellas County	FL	Total Rewards Manager	929,048
2018	Raleigh	NC	City Attorney	431,746
2018	Raleigh	NC	Human Resources Director	431,746
2018	Richmond RHA	VA	Chief Executive Officer	214,114
2018	Stafford County	VA	Central Purchasing Division Administrator	136,788
2018	Stafford County	VA	Economic Development Director	136,788
2018	Stafford County	VA	Public Works Director	136,788
2017	Albemarle County	VA	Economic Development Director	105,703
2017	Brooklyn Center	MN	Public Works Engineer	31,006
2017	Commonwealth of Virginia	VA	Senior Project Mgr	
2017	Commonwealth of Virginia	VA	Trans Workforce Development Manager	8,326,000
2017	Dallas	TX	Managing Dir of Homeless Solutions	1,258,000
2017	Denton	TX	Chief Building Official	123,099
2017	Denton	TX	Chief Procure Officer/Compliance Director	123,099
2017	Denton	TX	City Engineer	123,099
2017	Dona Ana County	NM	Information Technology Director	213,460
2017	Dumfries	VA	Public Works Director	5,168
2017	Fauquier Co Water and Sanitation Auth	VA	General Manager	
2017	Gainesville	FL	Clerk of the Commission	135,591
2017	Hampton Roads Regional Jail	VA	Superintendent	
2017	Lake County	IL	Chief Information Officer	703,910
2017	Lancaster County	SC	County Engineer	80,458
2017	Littleton	CO	City Attorney	44,275
2017	Madison Metro Sewerage District	WI	Director of Eco System Services	340,000
2017	Madison Metro Sewerage District	WI	Director of Operations and Maintenance	340,000
2017	Mecklenburg County	NC	Family Services Director	990,977
2017	Minneapolis	MN	Director of Labor Relations	400,070
2017	Norfolk	VA	Chief Marketing Officer	246,139
2017	Norfolk	VA	Human Resources Director	246,139

List of relevant projects: 2016 – present

Year	Client	State	Project	Population
2017	Orange County	NC	Dir of Hsg, Human Rights and Comm Dev	140,352
2017	Orange County	NC	Health Director	140,352
2017	Orange County	NC	Solid Waste Director	140,352
2017	Palm Beach County	FL	Engineer/Public Works Director	1,372,000
2017	Sumter County	FL	County Planner	105,056
2017	Wallingford	CT	Director of Public Utilities	45,135
2016	Arlington County	VA	Deputy Director Human Services	224,906
2016	Brevard County	FL	Director of Information Technology	550,823
2016	Chesterfield County	VA	Capital Programs Division Chief	327,745
2016	Commonwealth of Virginia	VA	Chief of Transit	8,326,000
2016	Commonwealth of Virginia	VA	Transit Planning Director	8,326,000
2016	Dallas	TX	Chief Building Official	1,258,000
2016	Dumfries	VA	Town Attorney	5,168
2016	Fairfax County	VA	County Attorney	1,131,000
2016	Fairfax County	VA	Human Resources Director	1,131,000
2016	Frederick	MD	Human Resources Director	66,893
2016	Greenville	SC	Parks and Recreation Director	61,397
2016	Knoxville's CDC	TN	Chief Executive Officer	183,270
2016	Lancaster County	SC	Economic Development Director	80,458
2016	Leesburg	VA	Utilities & Engineer Director	47,673
2016	Loudoun Water	VA	General Manager	398,080
2016	Manatee County	FL	Dir of Redev & Economic Opportunity	342,106
2016	Mankato	MN	Director of Public Utilities	40,641
2016	Mesa	AZ	Chief Information Officer	457,587
2016	Missouri City	TX	Municipal Court Director	70,185
2016	Montana Association of Counties	MT	Trust Operations Director	1,024,000
2016	North Richland Hills	TX	City Attorney	67,317
2016	Olathe	KS	Planning Director	131,885
2016	Rapid City	SD	Dir of Comm Planning and Devel Services	70,812
2016	Roswell	NM	Director of Museum and Art Center	48,611
2016	Shakopee	MN	Dir of Planning and Economic Development	39,167
2016	Stafford County	VA	Chief Information Technology Officer	136,788
2016	Stafford County	VA	Parks and Recreation Director	136,788
2016	Virginia Retirement System	VA	Customer Services Director	
2016	Waterloo	IA	Waste Water Mgmt Services Manager	68,366
2016	West Travis Co Public Utility Agency	TX	General Manager	

5. Project team members

The Baker Tilly project team is designed specifically for the City of Murfreesboro.

The project team represents experienced professionals who will be working on this City Recorder/City Treasurer recruitment. Our service team is selected to meet four very specific objectives for the City: 1) it represents the staff who will be directly responsible for your projects; 2) it provides a range of expertise to cover the range of service requirements; 3) it provides a national perspective of experience and institutional knowledge to achieve your future objectives; and 4) it represents the commitment to take personal and professional responsibility for the services and outcomes for the City of Murfreesboro.

Project team leader

Patricia Heminover, Director
T: +1 (651) 223 3058
E: patty.heminover@bakertilly.com

Additional project team members

Chuck Rohre, Firm Director
T: +1 (214) 466 2436
E: chuck.rohre@bakertilly.com

Art Davis, Director
T: +1 (816) 868 7042
E: art.davis@bakertilly.com

Sharon Klumpp, Director
T: +1 (651) 223 3053
E: sharon.klumpp@bakertilly.com

Edward G. Williams, Ph.D., Director
T: +1 (214) 842 6478
E: edward.williams@bakertilly.com

Anne Lewis, Director
T: +1 (703) 923 8214
E: anne.lewis@bakertilly.com

Michelle Lopez, Senior Recruitment Analyst
T: +1 (651) 223 3061
E: michelle.lopez@bakertilly.com

Patricia Heminover

Patty Heminover, a director with Baker Tilly, has more than 20 years of experience in local government.

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Director
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United States

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M +1 (651) 968 7841
patty.heminover@bakertilly.com
bakertilly.com

Education
Master of Education, Administration
Minnesota State University – Mankato

Mini MBA Program, Human Resources Management
University of Saint Thomas (Saint Paul, Minnesota)

Bachelor of Science, Consumer Science, Business Administration
Minnesota State University – Mankato

Patty has been with the firm since 2010. Prior to joining Baker Tilly, she was a superintendent, assistant superintendent, director of human resources and director of finance. She brings considerable experience identifying management talent, leading organizational and process improvements, and developing and administering budgets.

Specific experience

- Executive Recruitment, employee development, benefits administration, strategic planning, performance management, market compensation studies, workforce planning, recognition programs and process improvement
- Experience identifying management talent, leading organization and process improvements, and developing and administering budgets
- Understanding of human resources and finance
- Experience working with governing boards
- Served as superintendent, co-superintendent of schools, director of human resources and finance, director of human resources and business services for two Minnesota school districts
- Facilitated discussions with legislators at the state level regarding education funding, securing new funding for a Minnesota school district

Industry involvement

- Minnesota Association of School Administrators (MASA)
- American Association of School Administrators (AASA)
- Minnesota Association of School Business Officials (MASBO)
- River Heights Chamber of Commerce, Member
- State Negotiators Association,
  Minnesota School Board Association
- Patty has received a School Finance Award, technology leadership awards and helped establish the first K-12 International Baccalaureate School District in Minnesota

Continuing professional education

- Human Resource Certificate, University of St. Thomas
- Superintendents Licensure, State of Minnesota

Charles A. Rohre

Chuck Rohre, a firm director at Baker Tilly, has more than 35 years of experience managing and consulting in both the private and public sectors.

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Firm Director
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bakertilly.com

Education
Master's Degree, Human Relations and Management
Abilene Christian University (Dallas, Texas)

Bachelor of Science, Career Development
Abilene Christian University (Dallas, Texas)

Chuck is responsible for managing and conducting executive recruitment engagements for the firm to ensure their integrity, timeliness and adherence to budget parameters. He also directs the professional and support staff of the executive recruitment practice to ensure best practices, quality control and customer service goals are met.

Specific experience

- Manager of the executive recruitment practice
- Extensive and successful track record of completed recruitments across the nation, especially in Texas, Colorado, Arizona, and the Midwestern states
- Has led more than 400 recruitment engagements in 27 states for key executives such as city and assistant city managers, police chiefs, fire chiefs, library directors, chief information officers, city/county attorneys, parks & recreation directors, finance directors and public works directors, as well as executive directors of not-for-profit and quasigovernmental organizations
- Conducted management consulting assignments in a number of disciplines including public safety, career development and strategic planning
- Written and presented training in a variety of subject areas including personnel assessment, leadership and management skills, and career development for public sector employees
- Prior to beginning his consulting career, served as police chief and director of public safety for North Texas municipalities with populations ranging from 9,000 to 200,000 plus

Continuing professional education

- Certified Behavior Analyst by TTI, Inc.
- Advanced management training at the Institute for Law Enforcement Administration
- Federal Bureau of Investigation, LEEDS course
- Annual participation in the International City/County Management Association Conference
- Annual participation in state and municipal league conference

Art Davis

Art Davis, a director with Baker Tilly, has pursued his passion to improve local government and create great communities for more than 30 years.

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Director
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Suite 104
Kansas City, MO 64114-3311
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art.davis@bakertilly.com
bakertilly.com

Education
Master of Public Administration
University of Kansas (Lawrence, Kansas)

Bachelor of Arts, Political Science
and Public Administration
William Jewell College (Liberty, Missouri)

Art specializes in providing executive recruitment and organizational management consulting services for cities, counties and not-for-profits.

Specific experience

- Successfully launched and expanded his own local government consulting firm over the course of 10 years
- Nearly 15 years' experience in executive recruitment
- Community leadership program facilitation
- Leadership and management development
- Strategic goal setting and strategic planning facilitation
- Organizational assessment, design and development
- Organization and community facilitation
- Served more than six years as associate director for the Civic Council of Greater Kansas City, a nonprofit, 501c4 membership organization comprised of CEOs representing some of the largest companies in the region
- Coordinated and organized a strategic and master planning process (and an update of the plan after four years) focused on re-developing downtown Kansas City, involving hundreds of stakeholders
- Served nearly six years as city administrator for Lee's Summit, Missouri and in other local government positions in Kansas
- Served as assistant to the Mayor of Dallas, Texas
- Led and participated in a wide variety of community initiatives; served on a major hospital board for 13 years and on other not-for-profit boards
- Presented with the L.P. Cookingham Award by the Greater Kansas City Chapter of the American Society for Public Administration, recognizing his long-term and outstanding contributions in the field of public administration

Industry involvement

- International City/County Management (ICMA), member since 1984

Sharon G. Klumpp

Sharon Klumpp, a director with Baker Tilly, has worked on behalf of local governments for more than 35 years and partnered with them to build strong organizations.

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Director
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sharon.klumpp@bakertilly.com
bakertilly.com

Education
Master of Public Administration
University of Kansas (Lawrence, Kansas)

Bachelor of Arts, Political Science
Miami University (Oxford, Ohio)

Sharon specializes in providing executive recruitment, organizational management and facilitation services to local governments and nonprofits.

Specific experience

- More than 15 years' experience in executive search and organizational management consulting
- Served as associate executive director for the League of Minnesota Cities
- Appointed executive director of the Metropolitan Council, a seven-county regional planning agency for the Minneapolis-Saint Paul metropolitan area
- Served as city administrator in Oakdale, Minnesota and assistant city manager for St. Louis Park Minnesota and Saginaw, Michigan
- Private sector experience includes serving as the chief administrative officer for the Minneapolis office of a major global engineering and design firm
- Served as an adjunct instructor at Walden University, teaching public administration and organizational change in the University's School of Management

Industry involvement

- International City/County Management Association (ICMA)

Anne Lewis

Anne Lewis, a director with Baker Tilly, has worked for local governments for nearly 20 years.

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Tysons, VA 22182
United States

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anne.lewisl@bakertilly.com
bakertilly.com

Education
Master of Science, Organizational Leadership and Public Administration
Shenandoah University (Winchester, Virginia)

Bachelor of Science, Business Administration and Management
Shenandoah University (Winchester, Virginia)

Prior to joining Baker Tilly, Anne served as an Assistant County Administrator for a Virginia county, a Deputy City Manager and an Assistant City Manager for two Virginia cities. Over the last 17 years, her experience in local government has also included positions as an Emergency Management Deputy Director, Public Information Officer, Human Resources Manager, Parking Authority Executive Director, Housing Director, Transit Director and Convention & Visitors Bureau Executive Director. She also has had responsibility for parks, recreation and community services, information technology, animal services, general services and legislative programs.

Industry involvement

- International City/County Management Association, Credentialed Manager (ICMA)
  - Task Force on Recruitment Guidelines Handbook
  - Task Force on Women in the Profession
  - Task Force on Internship Guidelines
- Virginia Local Government Management Association (VLGMA), former member of Executive Board
- Virginia Women Leading Government
- Government Finance Officers Association (GFOA)

Community involvement

- Shenandoah University Alumni Association, Executive Committee
- Shenandoah Apple Blossom Festival©, Board of Directors

Continuing professional education

- Graduate Certificate in Public Management
- Senior Executive Institute and LEAD graduate, The Weldon Cooper Center, University of Virginia

Edward G. Williams, Ph.D.

Edward Williams, a director at Baker Tilly, brings character, competence and expertise to every search.

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edward.williams@bakertilly.com
bakertilly.com

Languages
English
Spanish

Education
Ph.D., Educational Leadership and Policy Analysis
University of Missouri (Columbia, Missouri)

Master of Higher Education Administration
University of Missouri (Kansas City, Missouri)

Bachelor of Arts, Education
University of Missouri (Kansas City, Missouri)

Edward has more than 20 years of collective experience in human resources and organizational development at various levels, and across various disciplines including, state and local government, community and educational institutions.

Specific experience

- Human resources executive (municipal and state government)
- Executive recruitment, employee development, benefits administration, strategic planning, Performance management, market compensation studies, workforce planning, recognition programs and process improvement

Industry involvement

- Society for Human Resources (SHRM)
- Institute for Management Studies (IMS), advisory board
- Texas Municipal Human Resources Administration (TMHRA)

Community involvement

- Ft. Bend Habitat for Humanity, president, vice-president, secretary and member, board of (2014-2019)
- AAU basketball coach – middle school boys

Continuing professional education

- Institute for Management Studies - Houston
- International Personnel Management Association

Michelle Lopez

Michelle Lopez, a senior recruitment analyst at Baker Tilly, has been with the firm since 2017.

Baker Tilly US, LLP
Senior Recruitment Analyst
380 Jackson Street
Suite 300
Saint Paul, MN 55101
United States

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michelle.lopez@bakertilly.com
bakertilly.com

Education
Currently pursuing Bachelor of Science, Project Management
Colorado State University – Global Campus

Associate in Arts, Liberal Arts
Minneapolis Community College (Minneapolis, Minnesota)

Michelle assists in the organizational management of the executive recruitment process. Along with coordinating internal workflow, she also works with clients and candidates to ensure objectives are met throughout the process.

Specific experience

- More than 10 years of administrative support experience for multiple departments, including human resources and marketing
- Four years of experience in information technology help desk and support
- Survey and data reporting
- Reference checks for potential candidates
- Interview coordination and scheduling
- Recruitment marketing research and organization

Appendix I: sample brochure

THE TOWN OF MIDDLEBURG IS SEEKING AN EXPERIENCED AND PROFICIENT LEADER TO SERVE AS ITS NEXT FINANCE DIRECTOR/TOWN TREASURER

ABOUT THE COMMUNITY

Middleburg is a historic community situated in southwestern Loudoun County. The Town is home to approximately 800 residents, who treasure its sense of authentic community and quaint, small-Town feel. As the commercial hub for southern Loudoun and northern Fauquier Counties, Middleburg boasts a diverse service, retail, and hospitality-based economy. Examples include the recently awarded 5-star Salamander Resort & Spa, as well as the Red Fox Inn & Tavern, America's oldest original Inn.

The Middleburg economy includes numerous restaurants, boutique retail options, and locally-owned businesses who support the community's needs. Middleburg is known for its picturesque countryside, with horses and stone walls being a common sight in the surrounding areas. The Bull Run and Blue Ridge mountains create a scenic backdrop that perfectly complement the Town's charm and warmth you'll receive.

Find out more about our Town at: www.middleburgva.gov

Middleburg is a full-service Town government with 15 full-time Town employees, including a 24/7 police force. The annual Town budget is approximately $4.8 million, which includes the general fund and the utility system operations. Meals Tax and Lodging Tax account for 50% of the Town's General Fund revenues, primarily driven by tourism and visitor spending.

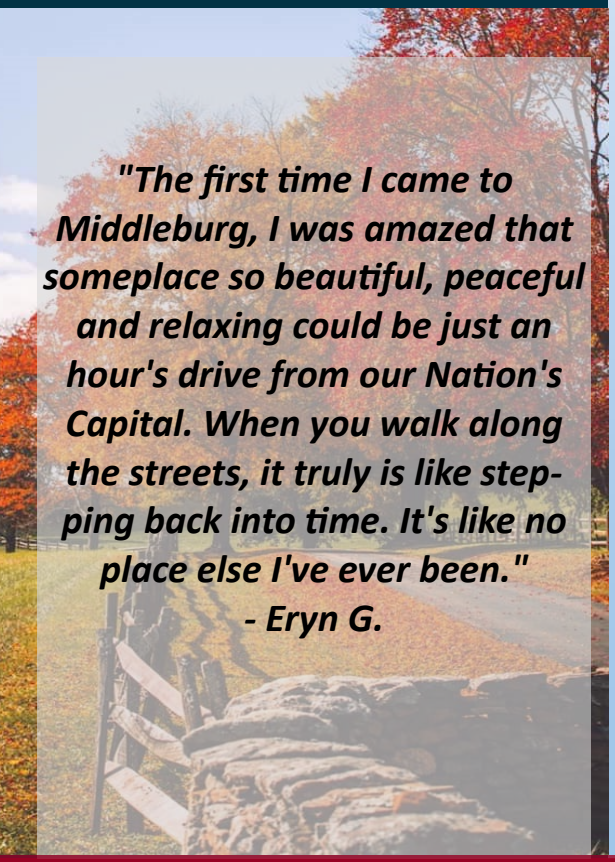
In addition to police, the Town provides water and wastewater utilities, solid waste and recycling collection, planning and zoning, business and economic development services, and other citizen services. The Town is governed by a Mayor and 7 Councilmembers, who also appoint numerous advisory Boards and Committees. The Town Council is focused on strategic planning, innovation, business enhancement, protecting quality of life, and customer service.

The Town is embarking on a number of key initiatives, including long-term financial planning, development of a true Capital Improvement Program, and business process improvements. The Town is planning for the construction of a new Town Office building, which will be the largest capital project in the Town's history.

The Salamander Resort & Spa, shown below, was recently awarded the prestigious 5-Star Rating by Forbes Travel Guide, making it the only destination resort in the DC region to achieve this designation. Its revenues are a key driver of the local economy.

POSITION PROFILE

The Town of Middleburg has an immediate opening for a full-time Finance Director who will also function as the Town Treasurer. This key leadership position is responsible for financial planning and analysis, budgeting, cash management, accounting and financial reporting, debt management, procurement, and other municipal finance-related tasks. The Town is seeking a dynamic leader with a desire to make a positive impact on a historic, tight-knit community.



"The first time I came to Middleburg, I was amazed that someplace so beautiful, peaceful and relaxing could be just an hour's drive from our Nation's Capital. When you walk along the streets, it truly is like stepping back into time. It's like no place else I've ever been."
- Eryn G.

PRIMARY JOB DUTIES & RESPONSIBILITIES

- Manage the receipt and accounting of all taxes and other monies and revenue due and payable to the Town, and make the deposits in such bank or banks as the Council may direct.
- Ensure all expenditures are appropriate and accounted for, properly recording all disbursements of Town funds.
- Provide strategic analysis and regular reports on the current and future financial status of the Town, to include long-term planning to ensure the ongoing fiscal health of the Town.
- Partner with Department Heads to ensure that the annual budget process is conducted in a strategic and purposeful manner, to include development of key performance measures.
- Prepare monthly financial statements, report the statements to the Council on a monthly basis, and ensure that the Departments are within the authorized budget amounts.
- Prepare bi-weekly Town payroll, including receipt of employee time sheets and payment of all payroll taxes and insurance premiums.
- Manage the water/sewer accounts, record any changes, and oversee the preparation of bi-monthly water/sewer bills.
- Implement continuous process improvement by using technology and evaluating business practices.
- Provide supervision to the Office Manager/Accounting Assistant, who is the primary customer service representative of the Town.

KNOWLEDGE, SKILLS & ABILITIES

- Minimum of 3 years experience in accounting practices and procedures, payroll and benefits management, revenue and accounts payable management.
- Experience with government financial systems and budgeting strongly preferred. The Town uses Southern Software Financial Management System (FMS).
- Experience as a Treasurer or Deputy Treasurer preferred.
- Proficiency in word processing, database management, and financial management software.
- Exceptional accuracy required.
- Good oral and writing skills.
- Customer service skills, including ability to handle difficult situations.
- Supervisory experience of front desk or customer service functions is desirable.

EDUCATION & TRAINING REQUIREMENTS

- Bachelor's degree in business administration, finance or a related field.
- Treasurer certification or training is desirable. The Town provides professional development support for those seeking to achieve certifications.

APPLICATION & SELECTION PROCESS

Qualified candidates should submit their cover letter and resume online at: https://bakertilly.recruitmenthome.com/postings/2481.

This position is open until filled; however interested applicants are encouraged to **apply no later than December 16, 2019**. Following this date, candidates will be screened against criteria outlined in this brochure. On-site interviews with the Town will be offered to those candidates named as finalists, with background checks conducted after receiving the candidates' consent. **For more information, contact Steve Miner at richmond@bakertilly.com or (804) 726-9748.** NOTE: This job description is not intended to be all-inclusive. The chosen candidate will also perform other reasonably-related job responsibilities as assigned and required by the Town Administrator. The Town reserves the right to revise or change job duties as the need arises. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential tasks of this job. This job description does not constitute a written contract of employment.

The Town of Middleburg is an Equal Opportunity Employer (EOE).

bakertilly

now joined with
Springsted and Umbaugh

9097 Atlee Station Road
Suite 200
Mechanicsville, VA 23116

Phone: 804.726.9748
Fax: 804.277.3435

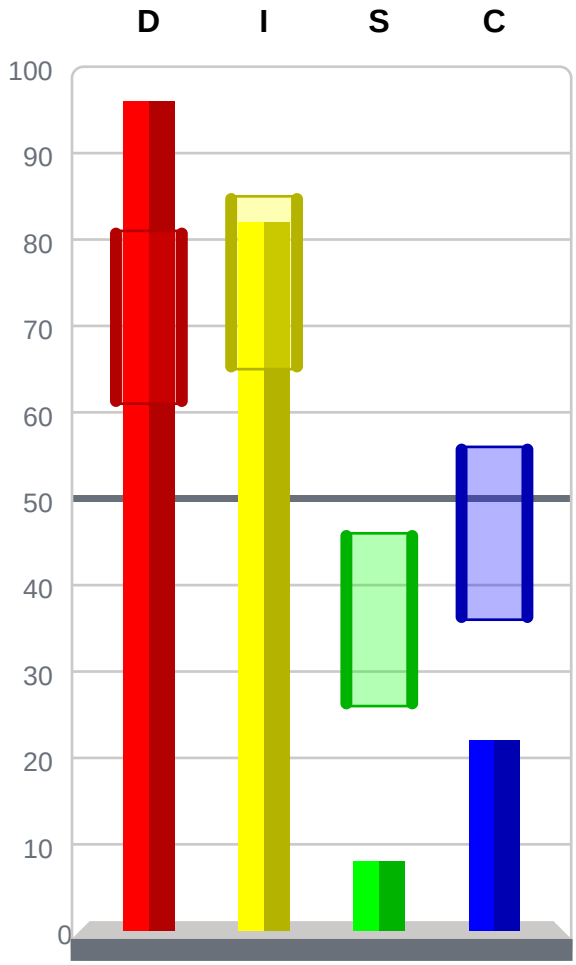
380 Jackson Street
Suite 300
Saint Paul, MN 55101

Phone: 651.223.3000
Fax: 651.223.3002

Appendix II: sample excerpt of TTI report

Workplace Behaviors® Candidate Name

The following graph is designed as a visual comparison between the position and the applicant for each behavioral factor. The highlighted area denotes the position-related score for each behavioral factor. The applicant's score is denoted by the darker red, yellow, green and blue line. The closer the applicant's score aligns to the position's score, the better the applicant will perform in the position with respect to behavior.



	D	I	S	C
Candidate Name	**96**	**82**	**8**	**22**
Job	**71**	**75**	**36**	**46**

Job Range (20 point range)

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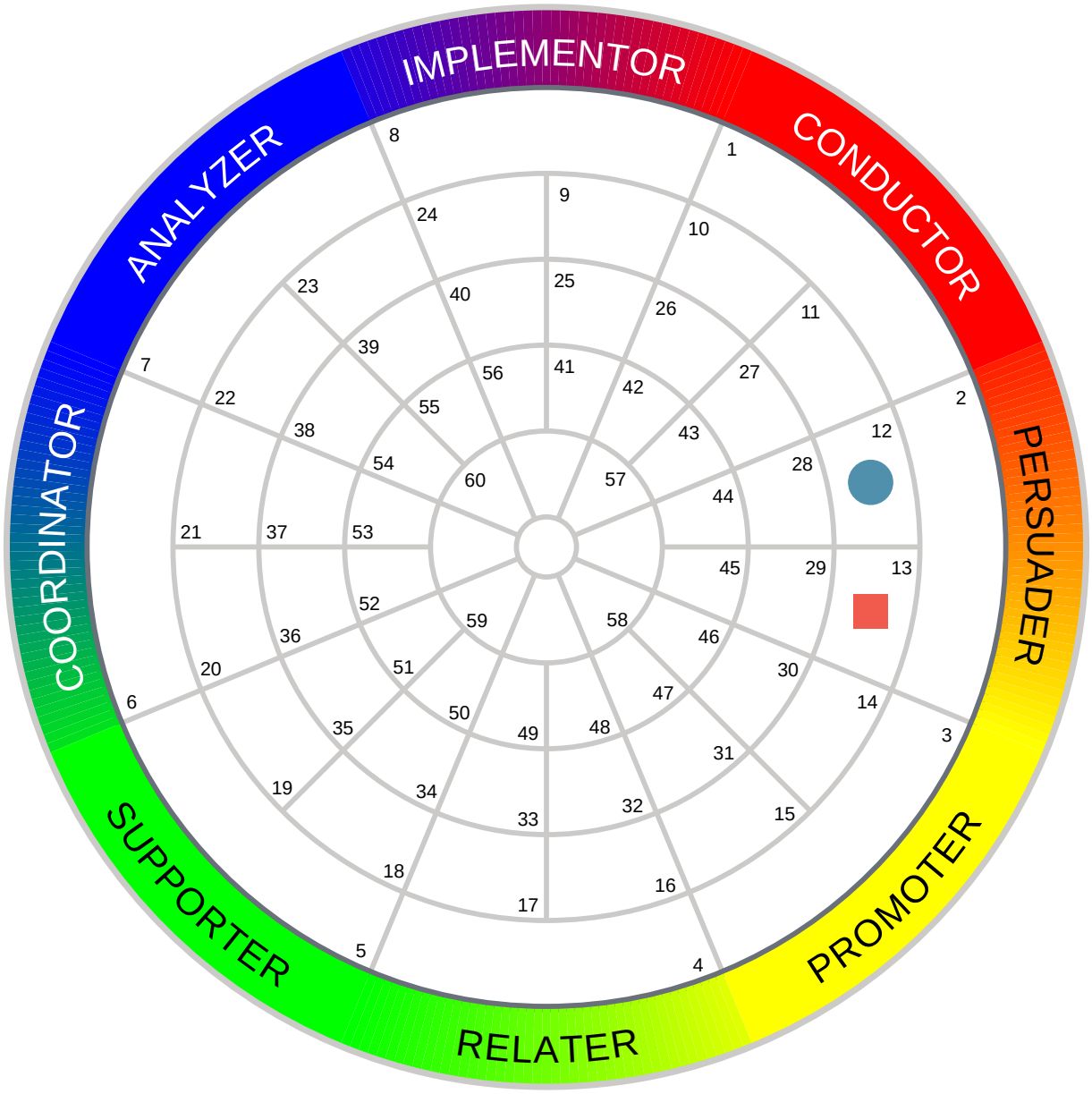
The Success Insights® Wheel



Job - (13) PROMOTING PERSUADER

Candidate - (12) CONDUCTING PERSUADER

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TTI SUCCESS INSIGHTS®
DISCOVER • ENGAGE • ADVANCE • PERFORM

Comparison Analysis For Consulting and Coaching

Job Competencies Hierarchy	Zone Range	Person
1. Customer Focus	91 — 100	**50**
2. Teamwork	74 — 100	**67**
3. Interpersonal Skills	72 — 92	**73**
4. Influencing Others	86 — 100	**68**
5. Flexibility	83 — 100	**78**
6. Creativity and Innovation	66 — 84	**62**
7. Leadership	75 — 93	**85**

Primary Driving Forces Cluster	Zone Range	Person
1. Collaborative	35 — 57	**6**
2. Selfless	40 — 62	**61**
3. Harmonious	35 — 57	**0**
4. Receptive	22 — 45	**29**

Job Behavioral Hierarchy	Zone Range	Person
1. Competitive	73 — 100	**90**
2. Interaction	60 — 84	**90**
3. Versatile	54 — 74	**100**
4. Frequent Change	52 — 72	**92**

Exact match
Fair compatibility
Good compatibility
Poor compatibility
Over-focused

Candidate Name

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COLIN BAENZIGER & ASSOCIATES

EXECUTIVE RECRUITING

CITY OF MURFREESBORO, TN

PROPOSAL TO CONDUCT THE SEARCH FOR THE FINANCE DIRECTOR

Volume I: Proposal

Colin Baenziger & Associates

Project Manager and Contact Person:

Colin Baenziger & Associates
2055 South Atlantic Avenue
Daytona Beach Shores, FL 32118
e-mail: ***Colin@cb-asso.com***
Fax: (888) 635-2430

…Serving Our Clients with a Personal Touch…

EXECUTIVE RECRUITMENT SERVICES
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February 17, 2021

Attn: Pam Russell, Human Resources Director
111 West Vine Street
P.O. Box 1139
Murfreesboro, TN 37130

RE: Finance Director Proposal

Dear Ms. Russell:

Colin Baenziger & Associates (CB&A) appreciates the opportunity to submit a proposal to assist in finding your next Finance Director. While selecting key personnel is never easy, CB&A has developed a problem-free process that has been tested nationwide and found to be extremely effective.

CB&A is a municipal recruiting firm with a national reach. We have conducted assignments from Florida to Alaska and Maine to California. We pride ourselves on providing not just high-quality results, but, equally important, providing a great deal of personal attention to each of our local government clients. To conduct a proper recruitment, we feel the project manager must do more than just drop by occasionally. He/she must get to know the appropriate government officials and the community firsthand. That effort takes time, but it is the only way to ensure the candidates we recommend are well qualified and a good fit for your community. As a result, we only take a few clients at a time and focus on getting the job done properly. Further, we routinely complete our work in sixty to ninety days. This timeframe includes preparation of recruitment and advertising materials, candidate outreach, candidate screening, finalist interviewing, and manager selection. We also offer one of the best warranties in the industry.

Not only do we offer unparalleled service at a reasonable price, we focus on finding just the right people for your organization. We say people, and not person, because our goal is to bring you five finalists who are so good that you will have a difficult time choosing among them. The proof is in the fact that six of our local government clients have passed resolutions thanking us for our outstanding efforts in finding their key staff. We do not know how often *you* have passed a resolution thanking a consulting firm for its efforts, but we have rarely seen it happen. Our goal, in fact, would be for you to be our next client to pass such a resolution.

Some of our recent searches include Director of Finance for the City of Petersburg, VA, Roanoke, VA., Director of Management and Financial Services for Loudoun County, VA, and the Director of Finance and Administration for the Roanoke VA Regional Airport. Some of our searches for City Managers/CEOs in Washington include: Bellevue, Burien, Mill Creek, Mountlake Terrace, Sequim, Sunnyside, and Tacoma. We have sought the County Administrators / Managers / CEOs for Clackamas County, OR, Polk County, IA, Emmet County, MI, James City County, VA, St. Johns County, FL, Union County, NC, and York County, VA, as well as the Borough Manager for Matanuska-Susitna Borough, Alaska (a county the size of West Virginia).

Some of our current searches include City Managers for Islamorada, Village of Islands, FL, Lady Lake, FL, Mascotte, FL, and Port Orange, FL, a City Attorney firm for Naples, FL, a Planning and Community Development Director for Bradenton, FL, and an Executive Director for the Cape Fear Public Utility Authority, Wilmington, NC.

Those authorized to bind the company are myself, Colin Baenziger, and Lynelle Klein, Vice President for Operations.

We look forward to formally presenting our credentials and working with you in the near future. If you have any questions, please feel free to contact me at (561) 707-3537.

Sincerely,

Colin Baenziger
Principal / Owner

…Serving Our Clients with a Personal Touch…

I. Qualifications and Experience of the Firm

The Firm, Its Philosophy, & Its Experience

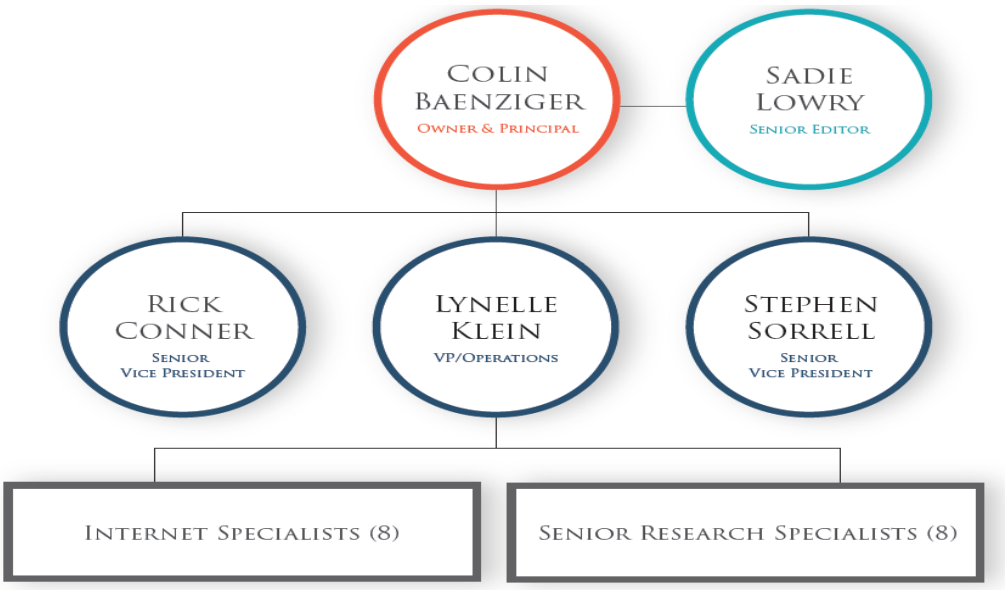
Colin Baenziger & Associates (CB&A) is a nationally recognized executive recruiting firm established in 1997 and owned and operated by Colin Baenziger. We are a sole proprietorship headquartered in Volusia County, FL with a satellite office in Redmond, WA. As a sole proprietorship, we are not registered with any state as a corporation, foreign or otherwise.

Colin Baenziger & Associates' outstanding reputation is derived from our commitment to the quality of our product and the timeliness of the delivery. Our work is not done until you are fully satisfied. That means we go the extra mile and, at times, expend more effort and energy than originally anticipated in our action plan. When we do so, we do not ask for more than the originally quoted price. We feel you are hiring us as your experts and once a contract is signed, we have an obligation to fulfill its requirements with excellence, on time, and within budget, regardless of the circumstances.

Since beginning our search practice in 1998, we have conducted searches for clients in thirty-four states. Overall, we have sought over 225 CEOs for cities, counties, and special districts. We have also conducted over 150 local government searches for assistant managers and department heads. The basic approach outlined herein has been refined to the point where it is problem-free.

Technical Capabilities and Organizational Structure

Colin Baenziger & Associates has developed its business model over the past 23 years and it has proved to be extremely effective. Our work has focused primarily on Executive Search and Organizational Reviews. Our staff is extremely experienced and capable. See Section III for more details. The structure of our firm is outlined below.



Completion of Projects within Budget

Colin Baenziger & Associates is proud of its record of completing searches within budget. Once we quote a price to the client, that price is what the client will pay, no matter how difficult the search is or what unforeseen circumstances may develop. ***We have never requested anything beyond the originally quoted price, even when we were probably entitled to do so.***

Completion of Projects on Schedule

Colin Baenziger & Associates routinely completes its assignments within ninety days. Further, since CB&A began performing recruitments, ***it has never missed a significant project milestone***.

Diversity

CB&A has extensive contacts with individuals and organizations representing women and minorities. We are thus able to identify and bring a diverse group of finalists to the City. The proof is that from the beginning of 2009, 29% of our placements have been females and/or minorities with the high in any given year being 47%.

Prior Names and Litigation

Colin Baenziger & Associates has always operated under its current name and has never been involved in any litigation, except to testify as an expert witness on behalf of one of the parties. Our performance has never been questioned nor have we or any of our clients been involved in any legal action as a result of our work.

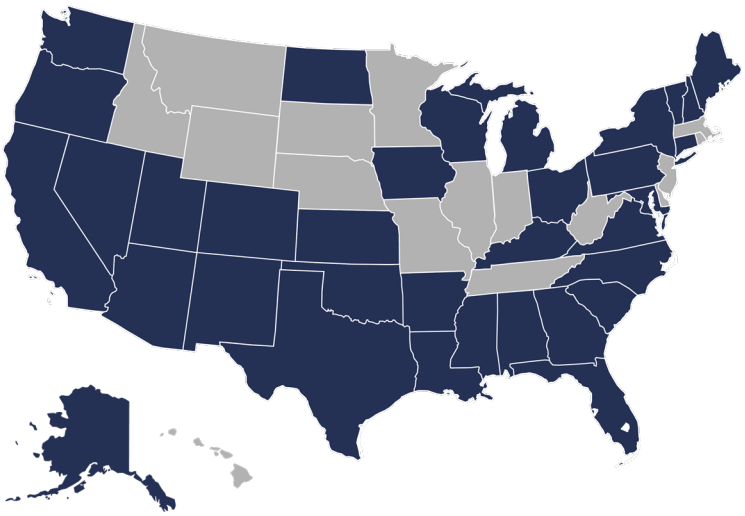
Insurance

To protect our clients, Colin Baenziger & Associates maintains the following insurance coverages: (1) general liability insurance of $1 million combined single limit per occurrence for bodily injury, personal injury, and property damages, (2) automobile liability insurance of $1 million per accident, and (3) professional liability insurance of $1 million per occurrence. As a small firm, predominantly utilizing independent contractors, we are not typically subject to the requirements for workers compensation and employer liability insurance. If required by the client, and if it is available to us, we will obtain these two coverages prior to contract execution.

Geographic Reach

Since initiating its search function in 1998, CB&A has become a nationwide recruiting firm. See Figure I below. A complete list of our searches can be found in Appendix A.

Figure I: We have served clients in the states highlighted in blue.



Some of CB&A's Clients...

City of St. Petersburg, FL

Finance Director
Budget Director
Water Resources Manager
(Director, Water & Wastewater)

City of Danville, VA

Finance Director
City Manager
Community Development Director
Deputy City Manager
Power & Light Director
Utility Director
Water and Gas Director

Fulton County, GA

County Attorney
Registrations & Elections Director
Personnel Director
County Manager (partial search)

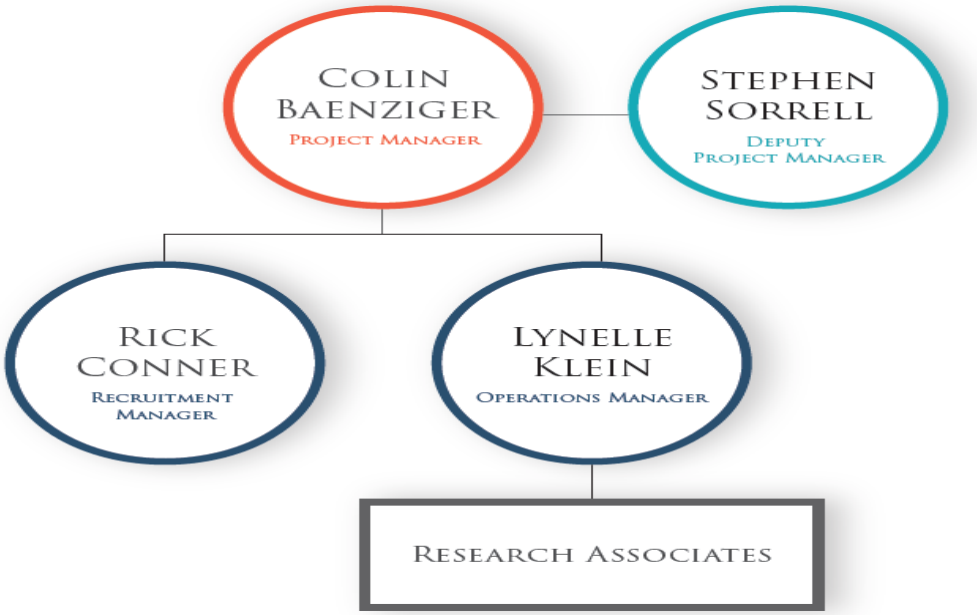
Matanuska-Susitna Borough, AK

Borough Manager

II. Proposed Project Team

Project Team and Involvement

Colin Baenziger & Associates has assembled a strong project team to serve your needs. The team, each member and their roles are briefly described below.



Colin Baenziger will serve as your project manager. He will conduct the interviews with the elected officials, search for strong candidates, discuss the position with those candidates, recruit them, conduct the interviews with the candidates, conduct the background investigations, oversee the interview process, and assist with the contract negotiations. In addition to twenty-five years as a consultant, Mr. Baenziger spent ten years in government as a senior manager. Additionally, he has conducted operational reviews for a number of governmental agencies including an operational review of Tamarac, FL's water utility, a business practices review for a division of Martin County government, an operational reconciliation for Palm Beach County Water, development of an automated system to pay royalties to featured recording artists for the Recording Industry Association of America, and a review of financial procedures for a division of the Marriott Corporation. Mr. Baenziger has a master's degree with distinction in public administration from Cornell University's Graduate School of Management, and a Bachelor of Arts degree from Carleton College. He is also active in the International City Management Association and the Florida City and County Management Association.

Stephen Sorrell, senior vice president, will be the Deputy Project Manager and support for Mr. Baenziger. Mr. Sorrell will assist in virtually every aspect of the search effort but will focus on the search for strong candidates and candidate evaluation. He brings over 35 years of management and technical experience in municipal, county, state, and special district agencies to Colin Baenziger & Associates (CB&A). Some of the leadership positions Steve has held include serving as Executive Director, Emerald Coast Utilities Authority in Pensacola, Florida, and as City Manager, Director of Public Safety, Assistant City Manager, and Director of Finance, all for Hamilton, Ohio. He is a P.E. and earned a Bachelor of Science in Civil Engineering Degree from the University of Dayton, Ohio, and Master of Public Administration Degree from the University of Cincinnati, Ohio. He is a member of the International City/County Management Association, Florida City/County Management Association, Florida Finance Officers Association, American Water Wastewater Association, President of the Exchange Club, President of the Safety Council, Chairman of the Neighborhood Watch Program, and served on the Board of Directors for Senior Services and the Chamber of Commerce. One day, he hopes to slow down – just not yet.

Rick Conner, vice president, will serve as the recruitment manager and assist with the identification and screening of candidates. He has over 30 years of experience in executive recruiting and in local government (serving as a city manager in Florida and Texas) as well as a public works and utilities director. That experience provides him with an excellent perspective of the needs of local government operations and staffing. Rick earned Bachelor of Science Degrees in Business Administration and Engineering from the University of Missouri. He is a Registered Land Surveyor and a Professional Engineer in Missouri, as well as a Professional Engineer in Florida, Tennessee and Texas. In his spare time, he invents scuba diving equipment and accessories.

Lynelle Klein, vice president for operations, will be responsible for coordinating the advertising and production of the materials we will present to you as described in the Recruitment Approach. She is a skilled professional with expertise in special projects, compensation surveys, and background checks for our executive search candidates. Since joining Colin Baenziger & Associates in 2010, she has been involved in virtually every search the firm has conducted. Prior to joining the firm, she worked primarily in the private sector providing financial and administrative services. Ms. Klein has an Associate's Degree from Brigham Young University in Rexburg, Idaho. She currently resides in King County, WA.

III. Proposed Work Plan

The following methodology has been refined over the past twenty-three years and now is virtually foolproof. We will modify it to integrate your ideas into the process. Our goal is to ensure you have the right people to interview as well as the information you need to make the right decision.

Phase I: Information Gathering and Needs Assessment

Task One: Needs Assessment

An important part of the recruiter's work is selling the community to the very best candidates (including those that are not actively looking for the next job) while also providing an accurate portrayal of the community and the opportunity. In order to do this, CB&A must first determine the needs of the client and the characteristics of the ideal candidate. Our approach is as follows:

- Compile background information from the jurisdiction's website and other sources;
- Interview the City Manager and others such as designated staff;
- Determine the characteristics of the ideal candidate. These will likely include experience, longevity, education, personality, demeanor, management style, and achievements as well as other items the City considers important;
- Develop a position profile and/or job description that addresses duties, responsibilities, operational issues, education, experience, and leadership qualities;
- Develop selection criteria and evaluation formats; and
- Determine a reasonable compensation package by gathering information from comparable jurisdictions/housing authorities.

As part of our interviews, we will also finalize the timeline so candidates can mark their calendars well in advance and will be available when the City wishes to conduct the interviews.

As part of this Task, we will evaluate the current job description and salary and benefit package. We will use data available publicly but actually anticipate contacting at least ten other comparable jurisdictions for information.

We will assist the City Manager in assuring that the process is compliant with all applicable laws, rules, and regulations.

Task Two: Develop Position Description and Recruitment Materials

Based on the information we gather, CB&A will next develop a position description and comprehensive recruitment profile. We will provide our draft for your review and comment. Your suggestions will be incorporated, and the final documents prepared. A sample of our work is included as Appendix B. Other samples can be found on our firm's website under the "Executive Recruitments" / "Active Recruitments" tabs.

Phase II: Recruitment

Task Three: Recruit Candidates

CB&A uses a number of approaches to identify the right people for your position. We say people (and not person) because our goal is to provide you with six to ten outstanding semi-finalists. You then select the top three to five people to interview and ultimately choose the candidate who is the best fit with you and your community. The approaches we use are:

- ***Networking*:** The best approach is diligent outreach. We will network with our colleagues and consult our data base. As we identify outstanding candidates (many of whom are not in the market), we will approach them and request that they apply. Often excellent candidates are reluctant to respond to advertisements because doing so may alienate their current employers. When we approach them, their credentials are enhanced rather than diminished. We also utilize LinkedIn.
- ***Advertising*:** While we will seek out the best, we will not ignore the trade press as it often yields strong candidates. We intend to contact the members of organizations such as the Government Finance Officers Association (GFOA), International City Managers Association (ICMA) and so on.
- ***Website:*** We will also post the recruitment on our website, ***www.cb-asso.com***. With our reputation, many candidates consult it regularly.
- ***Email:*** We will e-mail the recruitment profile to our listserv of almost fourteen thousand managers and professionals who are interested in local government management. One of the advantages of e-mail is that if the recipient is not interested, he/she can easily forward the recruitment profile to someone else who may be interested.

We do not use local, newspapers, national newspapers or generic websites because while they produce large numbers of applications, they generally do not produce the caliber of candidates we are seeking. If the City wants to have ads placed in these venues, it will need to bear the cost.

Phase III: Screening and Finalist Selection

Task Four: Evaluate the Candidates

Based on our most recent recruiting efforts, we anticipate receiving resumes from forty to sixty applicants. We will use the information we developed in Phase I of our efforts to narrow the field. Selecting strong candidates is, in reality, more an art than a science and a mixture of in-depth research and subjective evaluation. While we consider standard ranking factors and the elements of the job, ultimately the most important factor is who we believe will be a good fit with the City and the community.

Specifically, our efforts will involve:

Step One. Resume Review. CB&A will evaluate all resumes and identify the eight to fifteen candidates of the highest quality.

Step Two. Screening Interview. Our lead recruiter, and possibly other senior representatives of the firm, will interview each of the top candidates. Using what we learned in Phase I and our experience as managers and recruiters, as well as our unique ability to assess candidates, we will determine whether to consider them further.

Step Three. Evaluate the Best Candidates. We will conduct thorough research in the backgrounds of the best eight to twelve candidates. Specifically, CB&A will:

- **Ask the Candidates to Prepare a Written Introduction:** We will ask the candidates to answer a series of questions about themselves as an adjunct to their resumes and cover letters. By so doing, (1) the candidates can tell their own story and balance the negativity that is so often characteristic of the press, and (2) the City to evaluate the candidates written communication skills.

- **Interviews of References:** We tell the candidate with whom we wish to speak. These include current and former Council Members, the municipal attorney, the external auditor, staff members, peers, news media representatives, the director of the local chamber of commerce, community activists, and others who know the candidate. We also attempt to contact some individuals who are not on the candidate's list. Typically, we reach eight to twelve people and prepare a written summary of each conversation.

- **Legal Checks:** Through our third-party vendor, American DataBank, we will conduct the following checks: criminal records at the county, state and national level; civil records for any litigation at the county and federal level; and bankruptcy and credit. As an aside, it is important to recognize that only police departments have access to the gold standard for criminal records (the NCIC data base), our vendor has developed a very reliable substitute.

- **Search the Internet, Newspaper Archives, and Social Media:** Virtually every local newspaper has an electronic archive that provides stories about perspective candidates, the issues they have dealt with, how they resolved them and the results. These articles can also provide valuable insights into the candidate's relationship with the public and the governing body. Of course, not all news sources are unbiased, and we consider that in our evaluation.

- **Verification of Education and Work History:** We will verify claimed educational degrees and work history (for the past 15 years) to assure the candidate has been totally forthright.

- **Candidate Disclosure Statement:** We ask candidates to disclose anything controversial in their background that we need to be aware of. While it is unlikely they will disclose anything we are not already aware of at this point, we believe redundant checks are beneficial.

As part of our efforts, we will crosscheck sources, search for discrepancies, and resolve them. When sensitive or potentially embarrassing items are discovered, they are thoroughly researched. Depending on what we discover, we may decide to drop the candidate or to present them with an explanation.

> *Note: We firmly believe that all background work we have outlined above should be completed relatively early in the process. That way you will know the individuals to be interviewed are all top performers and do not have anything embarrassing in their pasts that might come to light after selection. It also means that once you have made a selection, you can move forward promptly, negotiate a contract and make an announcement.*

Task Five: Preparation and Presentation of Candidate Materials

CB&A will select six to ten finalists and present them for your review. For each of these, we will provide a complete written report which will include: the candidates' resumes, introductions, references, background checks and internet / newspaper archive search results. A complete sample candidate report is included as Appendix C. We will also provide advice on interviewing, a series of questions the elected officials may wish to ask (as well as some areas that it is not wise to get into), and some logistical information. The preceding information will be forwarded to you electronically.

Task Six: Finalist Selection

Approximately a week after the City has received the candidate materials, CB&A will meet with the elected officials to discuss our findings and make a final determination concerning who will be invited to interview. The City will then select, ideally, five candidates to interview as well as an alternate.

Task Seven: Notify All Candidates of Their Status

We will notify the finalists by telephone and give them the opportunity to ask additional questions. We will also provide them with information concerning the interviews and travel if necessary.

CB&A will also notify those not selected for an interview via phone or email. Part of the notification will include advice concerning their application materials, even though they were not selected to go forward, they will have gained something valuable from participating in the process.

Phase IV: Coordinate the Interview Process and Finance Director Selection

Task Eight: Coordinate the Candidate Assessment Process

Prior to the interviews, we will recommend an interview/assessment process for the City's review including means to evaluate the candidates' communication skills, interpersonal skills, and decision-making skills. As part of the process, we will recommend the City observes the finalists in a number of settings. We will also recommend you invite the finalists' spouses so they can spend time in and evaluate your community.

> **Day #1:** The finalists are given a tour of the community and its facilities by a knowledgeable staff member. Later, senior staff members meet briefly with the candidates. This opportunity allows the finalists to ask questions and the senior staff to assess the candidates.
>
> **Day #2:** We suggest panel interviews with members of the senior staff, one-on-one interviews with the City and with key staff, some role playing, a PowerPoint presentation on a current topic such as a recent GASB pronouncement and so on.

Task Nine: Debriefing and Selection

Once the selection has been made, CB&A will notify the finalists of their status. Candidates are eager to know and we feel it is important to keep them informed.

Phase V: Negotiation and Continuing Assistance

Task Ten: Notification, Contract Negotiations and Warranty

Should the City wish, we will assist in the employment agreement negotiations. Generally, a member of the City's staff and the attorney conduct the actual negotiations while we provide advice and assistance concerning the compensation package.

Since the basic parameters will have been discussed with the candidates and the candidates have been thoroughly vetted, we expect a relatively prompt agreement.

Task Eleven: Continuing Assistance

Our work is not done when the contract is executed. We will stay in touch with you and your new Finance Director. Our goal is to be there to assist in resolving any issues that arise before they become intractable.

The City's Obligations

The City will be responsible for providing the facilities for the interview process, coordinating lodging for candidates from outside the area, and making arrangements for the reception. The City will also be responsible for reimbursing the candidates (and spouses, if invited) for all expenses associated with their travel, meals, and incidentals for the interview process.

Proposed Project Schedule

The following is the project schedule we suggest for this recruitment.

Phase I: Needs Assessment / Information Gathering

March 10th: CB&A interviews key city officials about the position and the challenges the next Finance Director will face.

March 16th: CB&A submits the draft of the full recruitment profile to the City for its review.

March 23rd: City provides comments on the recruitment profile.

Phase II: Recruiting

March 26th: CB&A posts the full recruitment profile on its website and submits it to the appropriate publications. It is also e-mailed to around 13,800 local government professionals.

April 23rd: Closing date for submission of applications.

April 30th: CB&A reports on the results of the recruitment.

Phase III: Screening, Reference Checks and Credential Verification

May 24th: CB&A forwards complete candidate reports for the top candidates to the City. These will include for each candidate, the resumes, candidate introduction, reference checks, background checks and the results of our Internet/newspaper archives checks.

May 31st: City selects finalists for interviews.

Phase IV: Interview Process Coordination and Selection

June 10th and 11th: Finalist Interviews and decision.

Phase V: Negotiation, Warranty & Continuing Assistance

Post Selection: If requested by the City, CB&A works with the City and the selected on an employment agreement or offer letter.

Fee

CB&A offers a firm, fixed fee of $26,500 which ***include all our expenses and costs.*** In other words, the only thing the City will pay CB&A is the agreed upon fee. The only other costs the City will be responsible for are the costs associated with the candidates' (and spouses, if invited) travel, accommodations and meals for the interview process.

For the Finance Director search, we will bill the fee as the phases are completed and according to the following schedule:

Finance Director Search	
Phase I: Needs Analysis / Information Gathering	$3,000
Phase II: Recruiting	$11,000
Phase III: Screening	$10,000
Phase IV: Interview Process Coordination and Selection	$1,500
Phase V: Negotiation, Continuing Assistance and Warranty	$1,000

If the City asks us to perform work that is clearly beyond the scope of this proposal, it will be billed at a rate of $150 per hour. No such work will be performed without your written authorization. Please note, as previously stated, that we have never billed nor requested additional funds beyond our originally quoted fee even when circumstances suggested we were entitled to them.

Warranty

Colin Baenziger & Associates offers one of the best warranties in the industry. We can offer it because we have confidence in our work. Provided the City instructs us with conducting a full search (Phases I-V), follows our recommendations, and selects from among the candidates we recommend, we warrant the following:

1) We will not approach the selected candidate for any other position as long as the individual is employed by the City.
2) If the selected individual leaves for any reason other than an Act of God (such as total incapacitation or death) within the first year, CB&A will repeat the search for the reimbursement of our expenses only.
3) If you are not satisfied with the candidates we present, CB&A will repeat the search until you are satisfied.
4) Our price is guaranteed and will not be exceeded for any reason, even if conditions change after the contract is executed.

More CB&A Clients…

Oregon City, OR

Finance Director

City of West Palm Beach, FL

Finance Director
Assistant City Manager
Deputy City Manager for Utilities
Employee Relations Manager
Fire Chief
Parks & Recreation Director

City of Tamarac, FL

Finance Director
Assistant City Manager
Building Official
Community Development Director
Public Works Director

City of Durham, NC

Deputy City Manager – Community Building
Economic and Workforce Development Director

The staff at Colin Baenziger & Associates has completed over 225 CEOs for cities, counties, and special districts. We have also conducted over 150 local government searches for assistant managers and department heads. We have selected the following for your review.

1) Finance Director, City of Gainesville, FL (Estimated population: 133,857)

Contact: City Manager Lee Feldman at (352) 393-8601.

CB&A was hired in January 2020 to find Gainesville's next **Finance Director**. Gainesville is an internationally recognized designation for leisure, and as a place to receive world class education and medical treatment. Our efforts involved searching the country for strong candidates, conducting extensive background checks, recommending a strong field of candidates, and overseeing the interviews**.** Despite the developing pandemic, we met the client deadlines and adhered to the recruitment schedule. *Cintya Ramos, Director of Financial Services for Hollywood, FL* was selected in May 2020. Ms. Ramos remains with the City. ***We also assisted the City in finding a City Manager and a Human Resources Director.***

2) Finance Director, City of Groveland, FL (2016 estimated population: 12,493)

Contact: City Manager Michael Hein at (352) 429-2141, ext. 2001

CB&A was hired in March 2018 to find Groveland's next **Finance Director**. Groveland is the state's fastest growing city. It is a combination of rural greenspace and residential neighborhoods. It is a thriving paradise, situated among and surrounded by many beautiful inland lakes. We met with City staff to gather information, produced the recruitment profile, scoured the nation to find the people (not person but people – we feel the client should have more than one outstanding person to choose from), performed the background checks, presented candidates and coordinated the interview process. *John Ter Louw, Director of Budget and Financial Reporting for the Georgia Municipal Association* was selected in October 2020. Mr. Ter Louw remains with the City. ***We also assisted the City in finding a City Manager.***

3) Director of Finance, City of Roanoke, VA (estimated population: 99,000)

Contact: Mayor Sherman Lea at 540-853-2444 or City Manager Bob Cowell at (540) 853-2333.

CB&A was hired in February 2014 to find Roanoke's next **Director of Finance**. While Roanoke has the traditional Council Manager form of government, the Director of Finance reports directly to the Mayor and City Council. The City's Treasurer and Commissioner of Revenue are elected separately and the Director of Finance interacts daily with these individuals. Our efforts involved searching the country for strong candidates, conducting extensive background checks, recommending a strong field of candidates, and overseeing the interviews**.** Interviews were held the May 30 and 31, 2014. *Barbara Dameron, Director of Finance for Danville, VA* was selected. ***We also assisted the City in finding a City Manager, City Attorney, an Economic Development Director, Human Resources Director, and a Planning, Building and Development Director.***

4) Deputy City Administrator, City of Dickinson, ND (population 20,800)

Contact: Former City Administrator Shawn Kessell at (701) 690-7776

Dickinson is a beautiful smaller city located in Southwestern North Dakota. It has a variety of home-grown industry. The City is in excellent financial condition and its facilities are state-of-the-art. We were asked to find a Deputy City Administrator with a strong background in finance as the position also serves as Finance Director. We were also asked to move very quickly – the position had been vacant for over six months. We began work on April 18, 2016. It was a difficult recruitment for two reasons: people with strong financial backgrounds are in short supply. Further, people were somewhat skeptical about moving to and living in North Dakota. We employed some innovative approaches to marketing the position, presented a number of excellent candidates and on June 27th, the City selected *Linda Carlson, then the Deputy Administrative Support Director / Finance Director for Casper, WY.* Ms. Carlson remains with the City. ***We also assisted the City in finding a City Administrator.***

5) Finance Director, City of St. Petersburg, FL

Contact: Anne Fritz, Finance Director, at (440) 570-5454
Note: Normally we do not list the candidate we placed as a reference but she has been with the City so long that everyone else who participated directly in the recruitment has retired.

In February 2008, CB&A was selected to find St. Petersburg's next **Finance Director**. After a national search, interviews were held in late April with candidates from around the Country. *Anne Fritz, then Director of Finance for Westlake, OH,* was selected and remains with the City. Colin Baenziger was the lead consultant on this and other the other searches listed for St. Petersburg. Ms. Fritz remains with the City. ***We also assisted the City in finding a Budget Director and a Water [and Wastewater] Resources Director.***

6) Finance Director, City of Oregon City, OR (population 32,220)

Contact: Former City Manager David Frasher at (503) 863-8606

We began our search for Oregon City's Finance Director in mid-January 2012. We conducted a national recruitment but focused our efforts on the Pacific Northwest and Oregon state in particular. Our feeling was the learning curve would be less steep for someone who was already familiar with the area. Our work included through screening and examinations of the candidates backgrounds and experiences. Ultimately, the City interviewed four candidates, all from Oregon. The interviews were postponed at the City's request until the end of April. *Wyatt Parno, the Finance Manager for Gresham, OR,* was selected shortly thereafter. Mr. Parno resigned in October 2020 to become chief executive officer of the South Fork Water Board.

7) Director, Management and Financial Services, Loudoun County, VA

Contact: County Administrator Tim Hemstreet at (703) 777-0200.
tim.hemstreet@loudoun.gov

Mr. Hemstreet has worked with other recruiting firms and can compare our work to theirs. CB&A first met with County Officials to discuss the **Director of Management and Financial Services** (which oversees accounting, budget, finance, human resources, procurement and research) in July 2012. The sought candidates nationally and the closing date for applications was August 31, 2012. The finalists were interviewed on early November and *Ben Mays, an internal candidate,* was selected. Mr. Mays retired in 2016 and remains highly respected by those he worked with. ***We have also assisted the City in finding a General Services Director, a Human Resources Officer, an Economic Development Director, Management & Financial Services Director, and a Building and Development Director.***

COLIN BAENZIGER & ASSOCIATES

EXECUTIVE RECRUITING

CITY OF MURFREESBORO, TN

PROPOSAL TO CONDUCT THE SEARCH FOR THE FINANCE DIRECTOR

Volume II: Appendices

Colin Baenziger & Associates

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PROPOSAL TO BE THE CITY'S EXECUTIVE RECRUITING FIRM

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Appendix A

Searches by
Colin Baenziger & Associate' Staff

Governmental Search Assignments

Current Searches

Village Manager, Islamorada, FL (population 6,433)
Town Manager, Lady Lake, FL (population 15,954)
City Manager, Mascotte, FL (population 5,873)
City Manager, Port Orange, FL (population 67,494)

Chief Administrative Officer, Renton, WA (population 100,953)
City Attorney firm, Naples, FL (population 22,367)
Planning and Community Development Director, Bradenton, FL (population 60,888)

Executive Director, Cape Fear Utility Authority, Wilmington, NC

Completed Searches Prior to 2021

City/Town/Village Manager/Administrator

City Manager, Albany, GA (population 75,600) in 2011
City Manager, Ankeny, IA (population 45,600) in 2013
City Manager, Ashland, KY (population 21,000) in 2013
City Manager, Auburn, AL (population 58,582) in 2017
City Manager, Aventura, FL (population 37,724) in 2017 and 2018
Village Manager, Bal Harbour, FL (population 3,300) in 2013
City Manager, Bartow, FL (population 16,000) in 2007 in 2017
Town Manager, Bay Harbor Islands, FL (population 5,628) in 2003, 2007 and 2020
City Manager, Bellevue, WA (population 122,400) in 2014
City Manager, Brighton, CO (population 41,254) in 2020
Town Manager, Buckeye, AZ (population 32,000) in 2006
City Manager, Burien, WA (population 55,188) in 2017
City Manager, Cape Canaveral, FL (population 10,200) in 2010
City Manager, Cape Coral, FL (population 194,570) in 2012 and 2020
City Manager, Carnation, WA (population 1,873) in 2017
City Manager, Casselberry, FL (population 25,000), in 2005
City Manager, Chamblee, GA (population 17,000) in 2011
City Manager, Clewiston, FL (population 7,270) in 2019
City Manager, Cocoa Beach, FL (population 11,200) in 2012, 2015 and 2016
City Administrator, Connell, WA (population 4,200) in 2014
City Manager, Cooper City, FL (population 32,000) in 2008
City Manager, Coral Gables, FL (population 43,000) in 2009
City Manager, Cottonwood Heights, UT (population 34,000) in 2004
City Manager, Covington, VA (population 5,802) in 2016
City Manager, Crescent City, FL (population 1,542) in 2020
Town Manager, Cutler Bay, FL (population 35,000) in 2006
City Manager, Dania Beach, FL (population 28,000) in 2009
City Manager, Danville, VA (population 43,000) in 2016
City Manager, Deerfield Beach, FL (population 78,000) in 2019
City Manager, Delray Beach, FL (population 64,100) in 2014
City Manager, Deltona, FL (population 83,000) in 2006 and 2008
City Manager, Destin, FL (population 12,000) in 2003 and 2011
City Administrator, Dickinson, ND (population 22,300) in 2018
City Manager, Doral, FL (population 24,000), in 2004
City Manager, Doraville, GA (population 10,896) in 2013, 2017 and 2020
Town Manager, Dundee, FL (population 3,000) in 2006 and 2009
City Manager, Ellensburg, WA (population 18,350) in 2014
City Manager, Elmira, NY (population 29,200) in 2014
Village Manager, Estero, FL (population 26,600) in 2015
City Manager, Fairborn, OH (population 33,200) in 2017
City Manager, Fayetteville, NC (population 208,000) in 2012

City/Town/Village Manager/Administrator (continued)

City Manager, Fernandina Beach, FL (population 11,000) in 2006 and 2015
City Manager, Fife, WA (population 8,700) in 2010 in 2017
City Manager, Fort Myers, FL (population 68,190) in 2016
Town Manager, Fort Myers Beach, FL (population 6,900) in 2006 and 2008
City Manager, Fort Pierce, FL (population 41,900) in 2012
City Manager, Fort Smith, AR (population 87,650) in 2016
City Manager, Fruitland Park, FL (population 4,100) in 2013
Village Manager, Islamorada, Village of Islands, FL (population 7,500) in 1999 and 2005
City Manager, Gainesville, FL (population 133,857) in 2016 and 2019
City Manager, Greensboro, NC (population 259,000) in 2009
City Manager, Groveland, FL (population 12,493) in 2018
City Manager, Hallandale Beach, FL (population 39,000) in 2010 and 2012
City Manager, Holly Hill, FL (population 13,000) in 2008 (partial search)
City Manager, Homestead, FL (population 62,000) in 2010
City Manager, Indianola, IA (population 15,108) in 2015
City Manager, Jacksonville Beach, FL (population 23,387) in 2018
Town Manager, Juno Beach, FL (population 3,600) in 2005
Village Manager, Key Biscayne, FL (population 11,000) in 2007 and 2011
City Manager, Key West, FL (population 24,600) in 2012
Town Manager, Lake Park, FL (population 9,100) in 2001 and 2003
Town Manager, Lantana, FL (population 9,600) in 2000
City Administrator, Lake Forest Park, WA (population 13,059) in 2018
City Manager, Lake Worth, FL (population 37,000) in 2003 and 2007
City Manager, Lauderdale Lakes, FL (population 32,000) in 1998 and 2002
City Manager, Leesburg, FL (population 20,390) in 2013
City Manager, Madeira Beach, FL (population 12,300) in 2011
Town Manager, Mangonia Park, FL (population 1,400) in 2001
City Manager, Marathon, FL (population 11,500 in 2002 and 2004
City Manager, Marco Island, FL (population 15,000) in 2014
City Manager, Medina, WA (population 3,000) in 2013
City Manager, Melbourne, FL (population 72,500) in 2012
City Manager, Miami Gardens, FL (population 101,000) in 2004
City Manager, Mill Creek, WA (18,828) in 2015
City Manager, Miramar, FL (population 122,000) in 2013
City Manager, Monroe, NC (population 33,500) in 2013
City Manager, Montverde, FL (population 1,675) in 2020
Town Manager, Mooresville, NC (population 41,995) in 2019
City Manager, Mount Dora, FL (population 12,000) in 2005
City Manager, Mount Pleasant, MI (population 26,000) in 2014
City Manager, Mountlake Terrace, WA (population 20,700) in 2014 and 2016
City Manager, Naples, FL (population 21,800) in 2018
City Manager, New Smyrna Beach, FL (population 23,000) in 2009
City Manager, Normandy Park, WA (population 6,335) in 2013 and 2015

City/Town/Village Manager/Administrator (continued)

City Manager, North Miami, FL (population 62,000) in 2010 and 2014
Village Manager, North Palm Beach, FL (population 12,500) in 2004, 2005, 2007 and 2012
City Manager, North Port, FL (population 55,800) in 2011
Town Manager, North Topsail Beach, NC (population 734) in 2018
City Manager, Norwich, CT (population 40,500) in 2016
City Manager, Oakland Park, FL (population 42,800) in 2014
City Manager, Ocala, FL (population 52,000) in 2008 and 2015
City Manager, Opa-Locka, FL (population 2,180) in 2019
City Manager, Orange City, FL (population 10,000) in 2010 and 2016
City Manager, Orange Park, FL (population 9,100) in 2010
City Manager, Oviedo, FL (population 33,000) in 2008
City Manager, Palm Bay, FL (current population 101,000) in 2002 and 2015
City Manager, Palm Coast, FL (population 71,000) in 2006
Village Manager, Palmetto Bay, FL (population 24,000) in 2003
City Manager, Panama City Beach, FL (population 12,776) in 2012 and 2019
City Manager, Parkland, FL (population 30,177) in 2017
City Manager, Petersburg, VA (population 32,701) in 2017
Village Manager, Pinecrest, FL (population 19,300) in 2011
City Manager, Pompano Beach, FL (population 101,000) in 2007
City Manager, Port Richey, FL (2,869) in 2020
City Manager, Port St. Lucie, FL (population 174,100) in 2016
City Manager, Portland, ME (population 65,000) in 2011
City Manager, Prosser, WA (population 5,802) in 2016
City Manager, Riviera Beach, FL (population 37,000) in 2009
City Manager, Roanoke, VA (population 98,465) in 2009 and 2017
City Manager, Sammamish, WA (population 64,548) in 2019
City Manager, Sarasota, FL (population 55,000) in 2012
City Manager, Satellite Beach, FL (population 10,100) in 2013
City Manager, Savannah, GA (population 142,800) in 2016
City Manager, Scottsdale, AZ (population 217,400) in 2013
City Manager, Sebastian, FL (population 24,772) in 2018
City Manager, Seminole, FL (population 17,800) in 2015
City Manager, Sequim, WA (population 6,700) in 2015
Town Manager, Sewall's Point, FL (population 2,000) in 2006
Township Manager, Spring Garden Township, PA (population 12,963) in 2018
Township Manager, Springettsbury Township, PA (population 26,700) in 2014 and 2016
City Manager, St. Pete Beach, FL (population 10,000) in 2014 and 2019
City Manager, Stuart, FL (population 17,000) in 2006 and 2017
City Manager, Sunny Isles Beach, FL (population 17,000) in 2006 and 2011
City Manager, Sunrise, FL (population 84,400) in 2012
City Manager, Sunnyside, WA (population 15,860) in 2013 and 2018
Town Manager, Surfside, FL (population 6,000) in 2014
City Manager, Tacoma, WA (population 200,000) in 2011 and 2017

City/Town/Village Manager/Administrator (continued)

City Administrator, Tavares, FL (population 11,000) in 2006
City Manager, Titusville, FL (population 43,940) in 2014
City Manager, Treasure Island, FL (population 6,937) in 2017
City Manager, Vero Beach, FL (population 16,751) in 2019
City Manager, West Melbourne, FL (population 15,000) in 2009
City Manager, West Park, FL (population 12,000) in 2005 and 2010
City Manager, Weston, FL (population 70,015) in 2019
City Manager, Winchester, VA (population 28,108) in 2014 and 2020
City Manager, Winter Haven, FL (population 37,900) in 2017
City Manager, Yakima, WA (population 91,000) in 2011 and 2012

County Administrator / Manager - Completed Searches

County Manager, Alachua County, FL (population 251,400) in 2014
County Manager, Baker County, FL (population 27,000) in 2006
County Administrator, Bay County, FL (population 158,000) in 2005
County Manager, Brevard County, FL (population 536,000) in 2009
County Administrator, Broward County, FL (population 1,800,000) in 2006
County Administrator, Clackamas County, OR (population 383,900) in 2013
County Manager, Clay County, FL (population 212,230) in 2005, 2011 and 2019
Chief Administrator, El Paso County, TX (population 827,700) in 2014 and 2016
County Administrator, Emmet County, MI (population 32,900) in 2014
County Manager, Flagler County, FL (population (83,000) in 2007
County Manager, Fulton County, GA, (partial search) in 2015 (population 894,300) in 2015
County Administrator, Hernando County, FL (population 172,800) in 2012
County Administrator, Highlands County, FL (population 98,000) in 2008
County Administrator, James City County, VA (population 69,000) in 2014
County Manager, Lee County, FL (population 600,000) in 2009
County Administrator, Martin County, FL (population 140,000) in 2005
Borough Manager, Matanuska-Susitna Borough, AK (population 85,000) in 2011
County Administrator, Monroe County, FL (population 80,000) in 2004
County Administrator, Nassau County, FL (population 60,000) in 2004
County Administrator, Okaloosa County, FL (population 183,500) in 2013
County Administrator, Okeechobee County, FL (population 39,000) in 2008
County Manager, Osceola County, FL (population 235,000) in 2003 and 2007
County Administrator, Polk County, IA (population 400,000) in 2007 and 2011
County Manager, Seminole County, FL (population 410,000) in 2006
County Administrator, St. Johns County, FL (population 162,000) in 2007
County Administrator, St. Lucie County, FL (population 284,000) in 2014
County Manager, Union County, NC (population 198,600) in 2010
County Administrator, York County, VA (population 66,269) in 2015

Completed Searches – Other Municipal CEO

Executive Director, Bartow Municipal Airport Development Authority, Bartow, FL in 2017
Chief Executive Officer, Chatham Area Transit, Savannah, GA (population served 286,900) in 2016
General Manager, Chittenden Solid Waste District, Williston, VT (population 157,461) in 2016
General Manager, Holiday Park Recreation District, FL (population 4,500) in 2007
General Manager, Island Water Association, Sanibel, FL in 2018
Executive Director, Lakewood Ranch Inter-District Authority, Manatee County, FL (population 15,000) in 2011
Executive Director, Northern Palm Beach Improvement District, Palm Beach Gardens, FL (population 200,000) in 2003
Executive Director, South Correctional Entity (SCORE), Des Moines, WA (population served 406,000) in 2018

Community Association CEOs and Assistant CEOs

Chief Operating Officer, Amelia Island Plantation Community Association, FL (population 3,000) in 2016
Executive Director, Lakewood Ranch Inter-District Authority, Manatee County, FL (population 15,000) in 2011 (The Executive Director also managed five community associations.)
Executive Director, Sun City Summerlin Home Owners Association, Las Vegas, NV (population 14,000) in 2015 and 2017
Vice President for Administration, Ocean Reef Communication Association, Key Largo, FL in 2017
Vice President, Public Works & Operations, Ocean Reef Community Association (population 2,000), Key Largo, FL, in 2001

Completed Searches – Assistant/Deputy Managers

Assistant City Manager / Operations, Corpus Christi, TX (population 308,000) in 2013
Assistant City Manager / Utilities, Corpus Christi, TX (population 308,000) in 2014
Deputy City Manager, Danville, VA (43,000) in 2016
Deputy City Administrator, Dickinson, ND (population 22,300) in 2016
Deputy City Manager for Community Building, Durham, NC (population 220,000) in 2009
Assistant Town Manager, Jupiter Island, FL (population 654) in 2010
Assistant Village Manager, Islamorada, Village of Islands, FL (population 7,500) in 1998
Assistant City Manager, Lake Worth, FL (population 37,000) in 2004
Assistant County Administrator, Martin County, FL (population 140,000) in 2006
Deputy City Manager, Sammamish, WA (60,000) in 2016
Assistant City Manager, Tamarac, FL (population 55,500) in 2001
Assistant City Manager, West Palm Beach, FL (population 101,000) in 2004 and 2013

Completed Searches – City or County Attorneys

County Attorney, Clay County, FL (population 196,400) in 2016
City Attorney, Daytona Beach, FL (62,300) in 2016
City Attorney, Fort Lauderdale, FL (population 178,752) in 2018
City Attorney, Fort Pierce, FL (population 41,590) in 2016 and 2018
County Attorney, Fulton County, GA (population 996,319) in 2015
City Attorney, Lawton, OK (population 94,653) in 2020
Chief Labor Negotiator, Orlando, FL (population 270,934) in 2018
City Attorney, Port St. Lucie, FL (population 185,132) in 2016 and 2019
County Attorney, Prince William County, VA (population 438,580) in 2015
City Attorney, Roanoke, VA (population 96,000) in 2012
Fire District Attorney, St. Lucie County Fire District, FL (population 298,600) in 2017
City Attorney, Vero Beach, FL (population 16,751) in 2019
City Attorney, West Melbourne, FL (population 15,000) in 2008

Completed Searches – Community Development/Growth Management/Planning

Growth Management Director, Collier County, FL (population 357,305) in 2015 and 2017
Community Development Director, Danville, VA (population 43,000) in 2016
Director, Building and Development, Loudoun County, VA (population 336,900) in 2014
Community Development Director, Miami, FL (population 408,000) in 2008
Director of Planning, Building and Development, Roanoke, VA (population 96,000) in 2012
General Manager, North Sarasota Redevelopment District, Sarasota. FL (population 53,000) in 2008
Growth Management Director, St. Lucie County, FL (population 261,000) in 2005
Community Development Director, Tamarac, FL (population 55,500) in 2007
Growth Management Manager, Wellington, FL (population 55,000) in 2009

Completed Searches – Economic Development / Redevelopment

Executive Director, Camden County (GA) Joint Development Authority (pop. 51,400) in 2014
Economic Development Director, Collier County, FL (population 328,000) in 2012
Assistant City Manager for Community Building, Durham, NC (population 220,000) in 2009
Economic Development Director, Concord, NH (population 42,444) in 2017
Economic Development Director, Roanoke, VA (population 96,000) in 2012
Director, Office of Economic & Workforce Development, Durham, NC (pop. 220,000), 2009
Economic Development Director, Loudoun County, VA (population 326,000) in 2010
Economic Development Director, St. Johns County, FL (population 162,000) in 2011

Completed Searches – Engineers

City Engineer, Gulfport, MS (population 90,000) in 2008
Director/Engineering/Public Works /Utilities, Hallandale Beach, FL (population 39,000) 2013
Deputy County Engineer, Martin County, FL (population 140,000) in 2006
Assistant City Engineer, Melbourne, FL (population 75,000) in 2008
City Engineer, Sunny Isles Beach, FL (population 17,000) in 2006
Staff Engineer, Wellington, FL (population 55,000) in 2009

Completed Searches – Facilities Management

Director, Performing Arts & Convention Center, Federal Way, WA (population 92.700) in 2015
Director, Landscaping, Weston, FL (population 65,300) in 2013

Completed Searches – Finance and Budget

Finance Director, Altus, OK (population 19,800) (background check) in 2012
Finance Director, College Park, MD (population 32,256) in 2016
Procurement Director, Collier County, FL (population 357,305) in 2016
Finance Director, Danville, VA (population 43,000) in 2014
Finance Director, Daytona Beach, FL (population 31,860) in 2012
Finance Director, DeLand, FL (population 28,230) in 2016
Finance Director, Escambia County (FL) Housing Authority (population served: 302,700), 2014
Finance Director, Fort Walton Beach, FL (population 20,000) in 2006
Finance Director, Gainesville, FL (population 133,857) in 2020
Finance Director, Groveland, FL (population 12,493) in 2018
Director, Management & Financial Services, Loudoun County, VA (population 326,000) in 2012
Manager, Office of Management and Budget, Lake Worth, FL (population 37,000) in 2010
Finance Director, Lauderdale Lakes, FL (population 32,000) in 1998
Finance Director, Miami, FL (population 408,000) in 2013
Finance Director, Miramar, FL (population 130,300) in 2016
Treasurer, Miami, FL (population (408,000) in 2013
Finance Director, Oregon City, OR (population 31,860) in 2012
Finance Director, Petersburg, VA (population 32,701) in 2017
Finance Director, Roanoke, VA (population 99,000) in 2014
Director of Finance and Administration, Roanoke Regional Airport, Roanoke, VA, in 2014
Revenue Operations Director, Savannah, GA (population 142,800) in 2017
Budget Director, St. Petersburg, FL (population 248,000) in 2009
Finance Director, St. Petersburg, FL (population 248,000) in 2010
Finance Director, Sunny Isles Beach, FL (population 17,000) in 2010
Finance Director, Surfside, FL (population 5,700) in 2012
Finance Director, Tamarac, FL (population 55,500) in 2005 and 2009
Finance Director, West Palm Beach, FL (population 101,000) in 2007

Completed Searches – Fire/EMS/Dispatch

Fire Chief, Cape Coral, FL (population 154,300) in 2013
Fire Chief, Lauderdale Lakes, FL (population 32,000) in 1999
Executive Director, South Sound 911 (serves a population of 808,000), Tacoma, WA, in 2013
Fire Chief, St. Lucie County Fire District, FL (population 298,600) in 2018
Fire Chief, West Palm Beach, FL (population 101,000) in 2005

Completed Searches – General Services / Administration

General Services Director, Loudoun County, VA (population 349,700) in 2015

Completed Searches – Housing/Building

Building Official, Jupiter Island, FL (population 580) in 2005 and 2010
Building Official, Miami Beach, FL (population 91,000) in 2005
Building Official, Sewall's Point, FL (population 2,000) in 2006
Building Official, Tamarac. FL (population 55,000) in 2008

Completed Searches – Human Resources

Human Resources Director, Boca Raton, FL (population 84,000) in 2006
Human Resources Director, Cape Coral, FL (population 154,300) in 2013
Director, Human Resources, Gainesville, FL (population 125,000) in 2014
Director of Personnel, Fulton County, GA (population 992,000) in 2010
Director, Human Resources, Hillsborough County, FL (population 1,292,000) in 2015
Human Resources Office, Loudoun County, VA (population 326,000) in 2011
Human Resources Administrator, Martin County, FL (population 140,000) in 2007
Personnel Director, North Miami, FL (population 56,000) in 2001
Director, Human Resources, Sunrise, FL (population 88,800) in 2015
Director, Human Resources, Roanoke, VA (population 99,000) in 2014
Personnel Director, Vero Beach, FL (population 17,900) in 2003
Human Resources Director, West Palm Beach, FL (101,900) in 2013 and 2014

Completed Searches – Health and Human Services

Director, Health and Human Services, St. Johns County, FL (population 162,000) in 2010

Completed Searches – Information Technology

Information Services Director, Cooper City, FL (population 33,382) in 2017
Information Services Director, Lauderdale Lakes, FL (population 32,000) in 1998
Information Services Director, Palm Beach County Tax Collector (population 1,300,000), Palm Beach County, FL in 2012 (partial search)
Chief Information Officer, Weston, FL (population 65,300) in 2015

Completed Searches – Parks/Recreation/Libraries

Parks and Recreation Director, Cape Coral, FL (population 179,804) in 2018
Parks and Recreation Director, Deerfield Beach, FL (population 78,041) in 2017 and 2019
Director, Parks, Recreation, & Conservation, Hillsborough County, FL (pop. 1,292,000) in 2015
Director, Parks and Recreation, Hobbs, NM (population (35,000) in 2014
Libraries and Information Services Director, Newport News, VA (population 183,000) in 2017
District Manager, Holiday Park Recreation District, Palm Bay, FL (population 1,400) in 2007
Library Services Director, St. Johns County, FL (population 162,000) in 2007
Parks and Recreation Director, West Palm Beach, FL (population 101,000) in 2006
Parks and Recreation Director, Weston, FL (population 70,015) in 2019

Completed Searches – Police

Police Chief, Golden Beach, FL (population 355) in 2011 (partial search)
Police Chief, Farmington, NM (population 45,900) in 2014
Police Chief, Lauderhill, FL (population 66,900) in 2011 (partial search)
Police Chief, Melbourne, FL (population 76,000) in 2011 (partial search)
Chief of Police, Mooresville, NC (population 35,300) in 2016
Police Chief, Petersburg, VA (population 32,701) in 2017
Director of Administration – Public Safety, Ocean Reef Community Association, Key Largo, FL in 2016
Police Chief, Sewall's Point, FL (population 2,000) in 2007
Police Chief, St. Augustine Beach, FL (population 6,200) in 2012
Police Chief, Sunny Isles Beach, FL (population 17,000) in 2010
Police Chief, Winchester, VA (population 27,216) in 2017

Completed Searches – Public Works

Public Works Director, Aventura, FL (population 37,200) in 2016
Public Works Director, Camden County, GA (population 53,044) in 2019
Solid Waste Director, Camden County, GA (population 53,044) in 2018
Public Works Director, Chandler, AZ (population 250,000) in 2007
General Manager, Chittenden Solid Waste District, Williston, VT (population 157,461) in 2016
Executive Director, Northern Palm Beach Improvement District, Palm Beach Gardens, FL (population 200,000) in 2003
Vice President, Public Works & Operations, Ocean Reef Community Association (population 2,000), Key Largo, FL, in 2001
Executive Director, Environment and Infrastructure, Pinellas County, FL (pop. 917,000) in 2012
Public Works Administrator, Renton, WA (population 100,953) in 2020
Public Works Director, Sammamish, WA (60,000) in 2016
Director/Capital Projects Manager/City Engineer, Sunny Isles Beach, FL (pop. 17,000) in 2007
Assistant Public Works Director, Sumter County, FL (107,000) in 2015

Completed Searches – Public Works continued

Assistant Public Works Director, Sunny Isles Beach, FL (population 17,000) in 2008
Public Works Director, Tamarac, FL (population 55,500) in 2003
Solid Waste Director, Tampa, FL (population 335,700) in 2014
Director, Landscaping, Weston, FL (population 65,300) in 2013

Completed Searches – Transportation

Chief Executive Officer, Chatham Area Transit, Savannah, GA (population served 286,900) in 2016

Completed Searches – Utilities

Water Resources Director, Asheville, NC (population 87,200) in 2015
Utility Director, Danville, VA (population 43,000) in 2015
Power & Light Division Director, Danville, VA (population 43,000) in 2015
Water and Gas Director, Danville, VA (population 43,000) in 2016
Utilities Manager, Deerfield Beach, FL (population 78,041) in 2017
Watershed Management (Water and Wastewater) Director, DeKalb County, GA (population 691,900) in 2011 and 2013
Executive Director, Des Moines (IA) Water Works (serves a population of over 500,000) in 2012 and 2020
Executive Director, Emerald Coast Utilities Authority, Pensacola, FL in 2020
Executive Director, Florida Keys Aqueduct Authority, Key West, FL (pop. 90,000) in 2003
Utilities Director, Lake Worth, FL (population 37,000) in 2009
Waterworks Director, Newport News, VA (population 183,000) in 2017
Executive Director, Onslow Water & Sewer Authority, Jacksonville, NC, (pop. 160,000) in 2009
Utilities Director, Palm Bay, FL (population 101,000) in 2005
Utilities Director, Panama City, FL (population 38,286) in 2017
Executive Director, Environment and Infrastructure, Pinellas County, FL (pop. 917,000) in 2012
Executive Director, Sewerage and Water Board of New Orleans, LA (population 369,000) in 2013 and 2020
Director, South Martin Regional Utilities, FL (population 22,000) in 2013
Water (Wastewater) Resources Director, St. Petersburg, FL (population 248,000) in 2008
General Manager, Tampa Bay Water, FL (population served 2,400,000) in 2008

Completed Searches – Work Force Management

Director, Office of Economic & Workforce Development, Durham, NC (pop. on 220,000), 2009

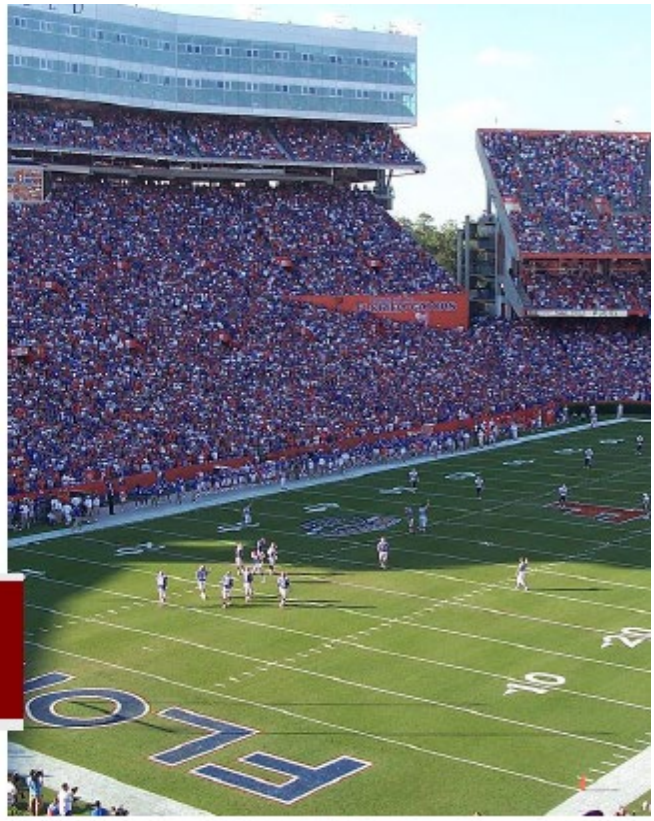
Completed Searches – Other

Chief Operating Officer, Amelia Island Plantation Community Association, FL (population 3,000) in 2016
City Clerk, Lauderdale Lakes, FL (population 32,000) in 1998
Clerk to the County Commission, Fulton County, GA (population 1.02 million) in 2018
Director, Registrations and Elections, Fulton County, GA (population 992,000) in 2009
Environmental Resources Director, St. Lucie County, FL (population 261,000) in 2009
Executive Director, Sun City Summerlin Home Owners Association, Las Vegas, NV (population 14,000) in 2015 and 2017
Special Projects Coordinator, Islamorada, Village of Islands, FL (population 7,500) in 1998
Vice President for Administration, Ocean Reef Communication Association, Key Largo, FL in 2017

Appendix B

Sample Brochure:
Finance Director Search
Gainesville, FL

Gainesville.
Citizen centered
People empowered



FINANCE DIRECTOR POSITION AVAILABLE

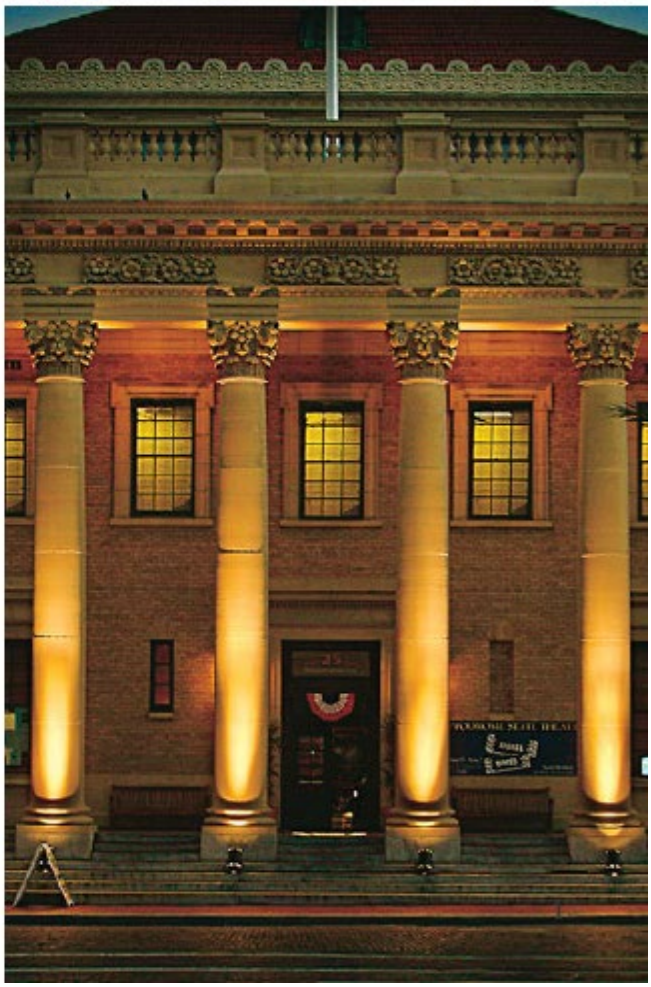
Apply by February 28, 2020

Welcome to the City of Gainesville

Gainesville is the center of Alachua County and is home to approximately half the county's overall population. It is the hub of North Central Florida—adjacent to 1-75, Gainesville is 90 minutes southwest of Jacksonville, two (2) hours north of Tampa, and two (2) hours northwest of Orlando and its theme parks. Miami and Fort Lauderdale are five (5) hours southeast and Atlanta is five (5) hours north.

Gainesville is a wonderful city and internationally recognized designation for leisure, and as a place to receive world class education and medical treatment. It and its surrounding environments are a dream destination for outdoor enthusiasts. The climate is outstanding, perfect for water activities like world-class fishing, canoeing, diving and kayaking are accessible year-round. Or, stay on the land for birding, hiking, biking, and the unique adventure of climbing trees with a local company that provides fun, safe, year-round tree-climbing events.

The area is blessed with parks like Paynes Prairie State Park, the San Felasco Hammock Preserve State Park, and Sweetwater Wetlands—just three of the many such places



that offer incredible sanctuary to wildlife. Marvel at the unusual Devil's Millhopper Geological State Park, where boardwalks are placed over streams that flow into a limestone sinkhole, and then watch the water disappear underground. Another popular spot is the Kanapaha Botanical Gardens, where giant Victoria lilies grow in the wetlands, with some leaves reaching up to three meters in circumference! The city has numerous active and specialty parks as well. Depot Park located in the downtown is symbolic of the best Gainesville has to offer for family leisure. This onetime contaminated industrial site now includes 32 acres of ponds, trails, a kids' splash pad, picnic tables, pavilions, low green hills, a splash pad, the Pop-A-Top general store, a boxcar beer and wine garden, and the Cade Museum for Creativity and Invention. The Santa Fe College Teaching Zoo allows for an up-close look at the wildlife, during a student led tour that showcases what working with zoo animals is all about.

Gainesville's downtown is the heart of the city, with a quintessentially quaint gathering of shops, restaurants, theatres and parks. This is a city that feels lively, yet personal. During the day, take a stroll down tree-lined streets, where Spanish moss drapes from 100 year old trees, and then stop for live music at the Bo Diddley Community Plaza. Wednesdays on the Plaza offers vendors selling locally grown vegetables and fresh-baked pastries at the Union Street Farmer's Market (an open-air collection of mainstream retailers as well as unique boutiques). As night approaches, browse the one-of-a-kind and fun shops around the Union Street Station. Mouth-watering cuisine will tempt your palate at the area's many restaurants ranging from Cuban pastries to sushi. Then, take in a play or movie at the well-known Hippodrome State Theatre. Or visit a local theater such as the Acrosstown Repertory Theater or the Gainesville Community Playhouse, the latter being the oldest community theater in Florida.

The city boasts many festivals. In April, Santa Fe College hosts the Spring Arts Festival, where you can view and purchase high-quality artwork and enjoy jazz and blues concerts. In October, Gainesville transforms its downtown into an outdoor arts showcase for the Downtown Festival and Arts Show. The event hosts more than 250 artists annually and adds food, music and a kids' "Imagination Station" to its well-attended attractions.

Another side of Gainesville involves rugged sports centering around the city's beloved University of Florida Gators. The university's teams are consistently nationally ranked and a powerhouse in the Southeastern Conference. Attendance at UF's Ben Hill Griffin Stadium, also known as "The Swamp," regularly exceeds 90,000 football fans. Watching other Gator sports, including women's soccer, gymnastics and volleyball, is popular. Notably, in 2007, the university became the only school in NCAA history to win the men's basketball and football national championships in the same year.

Gainesville hosts a large number of racing competitions. The Gainesville Raceway is one of the fastest tracks on the National Hot Rod Association (NHRA) circuit. Each March, it hosts the Association's Gatornationals, one of the sport's most revered events.

Education thrives in Gainesville. In 2019, U. S. News and World Report ranked the University of Florida number 7 among the top 10 Public Universities. In terms of enrollment, the University of Florida (UF) is the fifth largest public university in the United States with over 50,000 students. By campus land area, it is the third largest. Santa Fe College adds another 17,000 students to the community. As a result, the median age in the city is 26, and young people play an enormous role in the social and commercial aspects of Gainesville. Together, with the educational institutions, they create a vibrancy, curiosity and progressiveness seldom found in a community.

The result is Gainesville is recognized as a great place to live! In 2018, Livability.com ranked Gainesville 38th on its list of the "Top 100 Best Places to Live, while Thrillist.com recognized Gainesville as the best college town in America. In 2007, Gainesville was ranked as one of the

"best places to live and play" in the United States by National Geographic Adventure. Having a strong university presence means the community is diverse, energetic and very welcoming. Newcomers are quickly embraced and valued for what they bring to the community rather than how long they have lived in the city. Housing prices are reasonable—the average home sales price being a little over $180,000. The city is very safe, and the local public schools provide an excellent education.

Technology is important here and start-ups have a helping hand from the Innovation Hub (housed in Innovation Square, in midtown Gainesville). It is part of a national trend where research and development districts are being created near college campuses. Just two blocks away lies UF helping to support the Hub offers access to venture capital, innovative thinking and legal advice. The start-ups have been very successful in creating jobs and attracting residents to the surrounding midtown area. The Hub has helped 61 companies which in turn have created over 750 jobs and attracted over $50 million in private investment. Thanks to their success, the surrounding midtown area is seeing new restaurants and housing, with older buildings being renovated.

The city is well known for its medical facilities. UF Shands Healthcare is a medical network and its hospital facilities have been recognized as among the 50 best hospitals in the nation. Gainesville is also proud of being recognized as the "Healthiest Community in America" by the Wellness Councils of America.

The Gulf of Mexico and the Atlantic Ocean are only 90 minutes away. If you need to go further, the Gainesville Regional Airport is serviced by multiple airlines, and you can easily catch a cruise ship from Port Canaveral (the second largest cruise port by passenger volume in the world), Jacksonville, and Tampa for that dream vacation.

All in all, Gainesville is simply a great place to live, work, play, and raise a family so please dust off your resume and apply to be our next finance director!

HISTORY

Gainesville was founded in 1853 on the proposed route of the Florida Railroad Company which would stretch from Fernandina Beach to Cedar Key (a point on Florida's west coast about halfway between Tallahassee and Tampa). Following the Civil War, the city prospered as an important agricultural hub involving first cotton, and later citrus and vegetables. Two more railroads reached Gainesville by the 1880s. When the great freezes of 1894–95 and 1899 destroyed the citrus crop, the industry moved south. Phosphate mining and lumbering then became important parts of the local economy. A manufacturing area also grew up south of downtown, near the railroads.

Major changes came to Gainesville early in the 20th century. In 1905 the city offered its first bond issue and the money was used to start a sewer system and pave important streets. The University of Florida opened with 136 students in the fall of 1906. When private companies were unable to provide adequate electric service to Gainesville, the city built a generating plant, which became operational in 1914. It was the forerunner to Gainesville Regional Utilities (GRU).

Gainesville participated in the national economic boom that followed the end of World War I. It remained solvent throughout the Great Depression and unemployment was lower than in most of the country. Agriculture continued to be a mainstay and, along with the University of Florida, stabilized the local economy.

Changes in city government occurred in the 1920s. The city revised its charter to add a city manager. The police force was increased from three men to nine, and a desk sergeant was added to answer a telephone 24 hours a day. Increasing demand for electricity led the city commission to consider contracting with Florida Power and Light rather than issuing bonds to expand the city generating capacity. The voters, however, disagreed and passed an amendment to the city charter forbidding it. World War II brought further economic prosperity and population growth to Gainesville. Even before the United States entered the war, the opening of Camp Blanding brought soldiers and their families to the city. The airport, which was built with New Deal money, in the 1930s was improved and became Alachua Army Airbase. Agriculture prospered and local business received contracts to produce military supplies. Building construction increased. The university was used to train enlisted men, air cadets and officers.

After World War II, the G.I. Bill meant a major boom in enrollment at the University of Florida. In fact, the population of Gainesville doubled from 1940 to 1950 and Gainesville Regional Utilities (GRU) had to dramatically expand its water, sewer and electric capacity. By the end of the century, the University of Florida had an enrollment of 44,000 students, was considered a premier university, and had become one of the major research institutions in the South.

The surrounding areas of the county also changed dramatically in the postwar years. By 1970 Alachua County had 104,000 inhabitants with three-fourths of them residing in or around the Gainesville city limits. As the retail stores and merchants moved to large malls around I-75 and outside the city, the population began to shift there as well, and Gainesville's downtown area became a professional and government center.

In the 1980s a number of its neighborhoods became historic districts, preserving their unique residential character and protecting the Victorian homes. The city

Table 1: Principal Employers, Gainesville, FL

Employer	Industry	Employees
University of Florida	Education	28,118
UF Health	Healthcare	12,959
VA Medical Center	Healthcare	6,250
Alachua County School Board	Education	3,943
City of Gainesville	Government	2,120
North Florida Regional Medical Center	Healthcare	2,098
Gator Dining Services	Food Service	1,200
Nationwide Insurance	Insurance	973
Alachua County	Government	812
Publix Supermarkets	Retail	783

Source: Bay County, FL 2018 CAFR

sponsored and supported financially significant restoration projects like the Thomas Center, the Hippodrome, the Seagle, and the American Legion buildings. A new courthouse, new library, and the five-story Union Street Station were built, while older buildings like the Star Garage, the Florida Theater and the Bethel Gas Station were restored.

Today, Gainesville continues to prosper primarily due to the university, health care, and entrepreneurs. See next section.

Commerce

See Table 1 (above) for Gainesville's Principal Employers.

Demographics

Gainesville continues to grow steadily. The Census Bureau estimated its population in 2018 to be 133,857, an 8% increase over the 2010 population of 124,354. As previously noted, the city's demographics are heavily influenced by the large student population. Examining Table II (on page 6) shows that those between the ages of 15 and 25 compose 36.8% of the city's total population.

Overall, Gainesville composes almost exactly 50% of Alachua County's total population.

Climate

Gainesville's climate is defined as humid subtropical. Summers are wet and warm with high temperatures in the 90's. From October through May, however, the Gainesville area has a climate distinct from much of peninsular Florida with occasional freezing temperatures at night and sustained freezes every few years. The all-time record low of 10°F was reached on January 21, 1985, and the city was struck by a substantial snow and ice storm on Christmas Eve, 1989. Snow was also recorded in 1976, 1996, 2010 and most recently in January of 2016. Tropical storms (that is, hurricanes) rarely have any significant impact on the area.

Geography

Gainesville is located in North Central Florida at roughly the same latitude as Houston, TX. It is county seat for

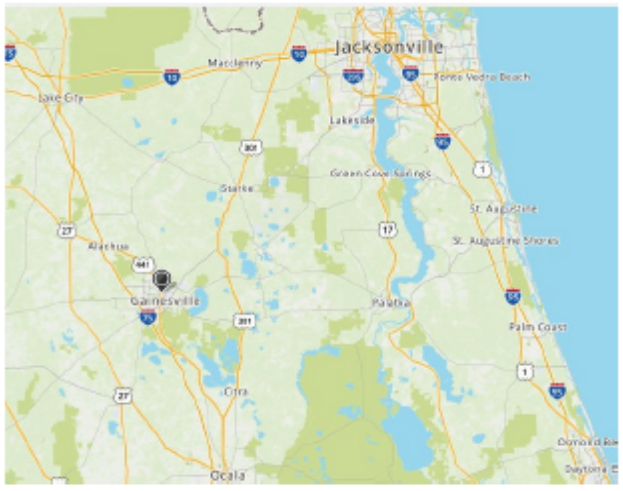


Table 2: Gainesville Demographics

Estimated Population: 133,857			
Distribution by Race		Distribution by Age	
White	66.0%	0 to 15	10.5%
Black	22.0%	15 to 25	36.8%
Asian	6.9%	25 to 45	25.8%
Native American	0.3%	45 to 65	17.1%
Two or More Races	4.8%	65 to 85	8.3%
Total	100%	Over 85	1.5%
Hispanic Ethnicity (all races)	10.7%		

Educational Achievement (Over Age 25)	
High School or Higher	91.5%
Bachelor's Degree or Higher	43.1%

Educational Achievement (Over Age 25)	
Median Age—Gainesville	26.0
Median Age—U.S.	37.8
Median Household Income	$51,019
Poverty Rate	33.6%

Source: U.S. Census Bureau

Alachua County and the hub of North Central Florida—90 minutes southwest of Jacksonville, two hours north of Tampa, and two hours northwest of Orlando. Miami and Fort Lauderdale are five hours southeast. The City has a total area of 49.1 square miles of which 48.2 square miles is land and 0.9 square miles is water. The area is characterized by gently rolling hills and is an average of 170 feet above sea level.

The Government

Gainesville operates under the traditional council-manager plan of government whereby the City Commission makes policy and the City Manager oversees the city's day-to-day operations. The Commission is comprised of a Mayor and six commissioners. All serve three-year terms and are limited to two terms. The Mayor and two commissioners are elected at large while the other four commissioners represent geographic districts.

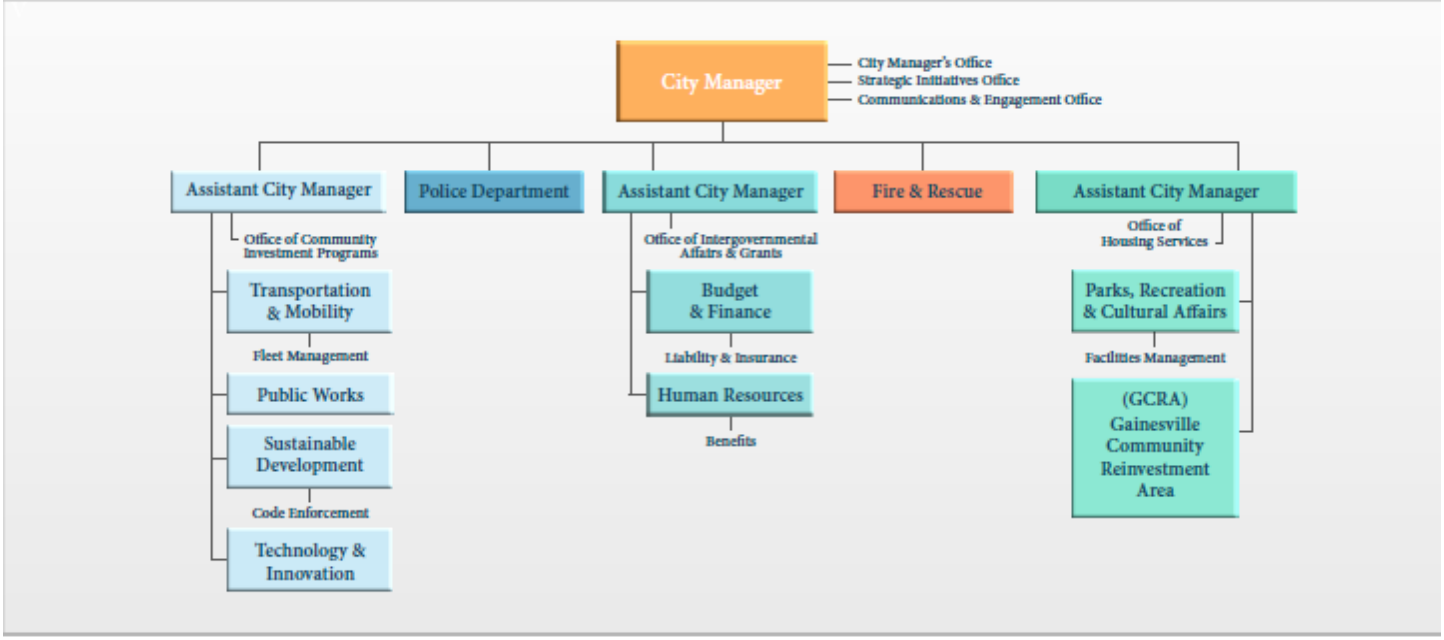
The city government has six charter officers and they include the City Manager, City Attorney, City Auditor, Director of the Office of Equal Opportunity, General Manager of Gainesville Regional Utilities (GRU) and the Clerk to the Commission. See Figure 2 (below) for more detail.

Gainesville provides all the typical city services with water, sewer, gas, electric and communications being provided through GRU (which reports directly to the commission, not through the city manager.) The city has approximately 1,300 employees while GRU adds another 900. As can be seen from the employee counts, GRU is a very large component of the government. It also serves a significant customer base in the unincorporated county. The general government budget is approximately $132 million and the all funds budget for the city is approximately $366 million. See below are the City's Organization Chart.

GRU adds another approximately $410 million. Overall, both the utility and the city are in good financial condition. The city has five (5) unions and must manage seven (7) collective bargaining agreements.

The city's leaders truly want the best for their residents, customers and employees. The elected officials work well together, are collegial, and move on once an issue is voted on. They do not let discussions become personal. All are caring. They think highly of their staff and strongly favor empowering them to do their jobs. The leaders are truly innovative and forward thinkers. Seeking progress and embracing change is the way of life in Gainesville. In 2016, the city formed a Blue Ribbon Citizens Panel to evaluate how the city could become more competitive. While the report was extensive, its basic recommendations were to, " …make the city of Gainesville a helper, not hurdle", "to

City of Gainesville 2020 Organization Chart



shift the culture from No to Yes", "from reactive to proactive," "from prescriptive to facilitative", "from policy-oriented to services-oriented", "from siloed to team-based," and "from expert language or jargon to plain spoken." For the past three years, the city has been on a journey to create a responsive, citizen's centered government. Much has been accomplished but much remains to be done in order to make Gainesville it a leader for years to come!

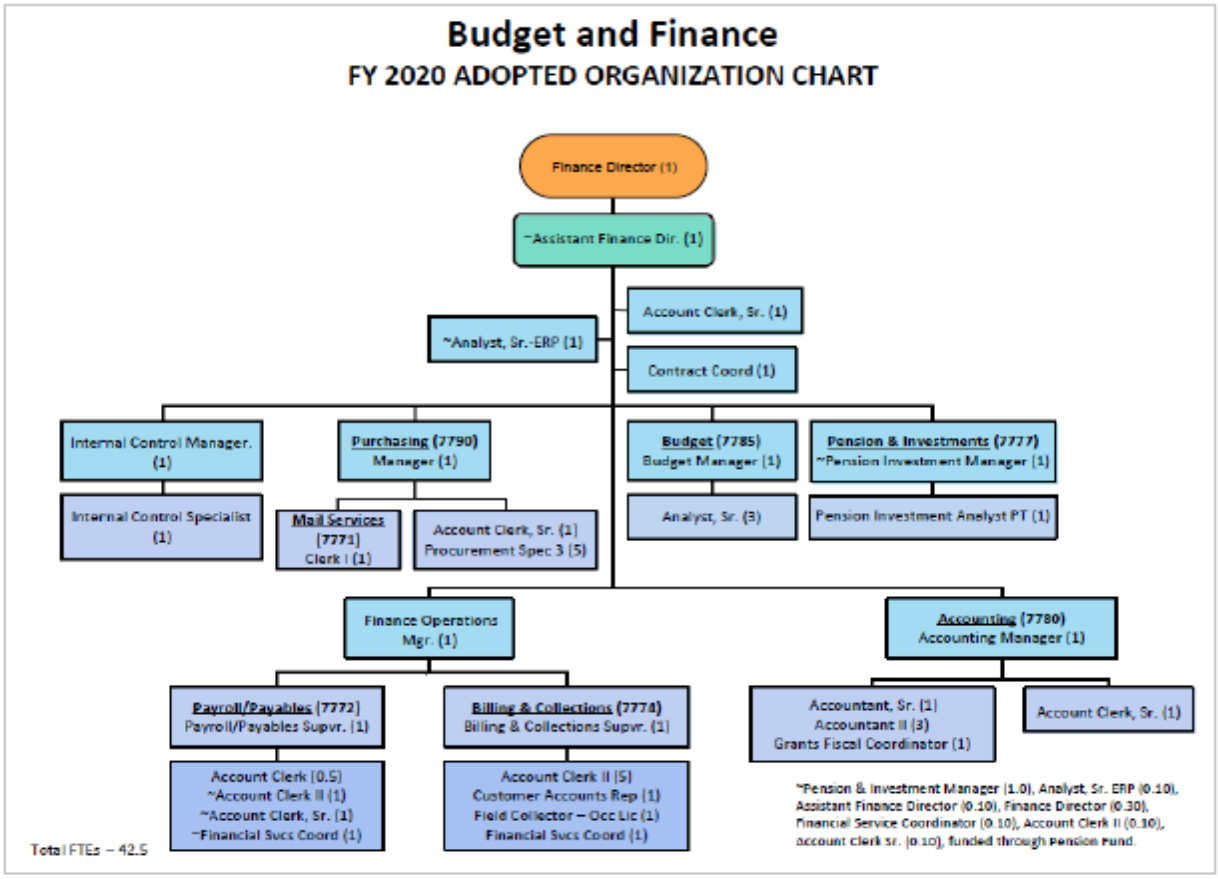
The Budget and Finance Department

The Budget and Finance Department's safeguards the City's assets, ensures cost-effectiveness, provides budgetary and financial support to operating departments and reports accurate and timely information to the City Commission, management, and residents of the community. The Department monitors budgets, accounts for the City's funds and assets, bills and collects for monies owed to the City, pays staff and vendors, provides mail delivery within the City government, coordinates and monitors grants and provides procurement services to City departments. Its efforts include providing financial analyses upon request, as well as preparing the biennial budget, the annual audited financial statements, the five-year financial forecast, and the five-year Capital Improvement Plan. The Department also oversees the City's cash, investments and debt management, as well as administration of City pension assets.

To carry out the described responsibilities, the Department has a budget of almost $5.8 million and 42.5 full time equivalent employees spread over six funcational areas. See the Department's organization chart displayed in Figure 3 above for more details.

The Challenges & Opportunities

Unlike many cities, Gainesville's primary focus is future-oriented. Its elected officials are driven to make it the next great American city and strive to find ways to continually improve the quality of life for all its residents, in both small and large ways. Yes, the trash needs to be picked up on time. Yes, resources are tight. Yes, its infrastructure needs



to be maintained, and so on. Those, however, are transactional issues and under control. What really matters to the residents of Gainesville is being strategic and constantly striving to make the City a better place to live, work, play, and raise a family-not just for the few but for every element of the community.

Beginning in early 2019 the City Commission participated in several workshops to identify focus areas, prioritize desired outcomes and establish financial planning guidelines for the FY 2020+ budget cycle.

These workshops reviewed the Commission's 2019 priority projects which included: wages, affordable housing, youth programming, zero waste, broadband, and the UF partnership. The result was a draft strategic roadmap for FY 2020-2025 focusing on:

- Embrace Equity and Partnership,
- Economic Opportunity,
- Community/Environmental Sustainability-Renewable Infrastructure, Mobility, Inclusivity,
- Social Sustainability, and
- Solid Foundation

The efforts to implement this road map all cost money. The Budget and Finance Department will play a critical role in ensuring the resources are available, properly monitored, and accounted for. Being an educational and governmental center brings many blessings, but it also means a large amount of developed land does not pay taxes. Creative ways continue to be required to address the future funding needs.

The Ideal Candidate

The City is looking for a Finance Director who is both an outstanding manager and leader, as well as an outstanding technician. The individual will be highly motivated and achievement oriented—someone who will help build the city's governmental infrastructure (and the Budget and Finance Department in particular) into a world class operation.

He/she will be seen as a trusted advisor and a strategic thinker. The ideal candidate will be able to look over the horizon, to anticipate both threats and opportunities, and will pursue actions to avoid the former while taking advantage of the latter. The individual will keep the city manager (and indirectly, the elected officials) well informed. He/she will believe strongly in transparency and keeping the public informed.

The ideal candidate will be dynamic and bring a fresh perspective to the City. Personally, the individual will be knowledgeable and confident and not afraid to speak truth to power—to tell those he/she reports to what they need to hear as opposed to what they want to hear. He/she will lead by example and always demonstrate honesty, integrity, and diplomacy. The next Director will realize that admitting he/she does not know an answer or when an error has been made is critical to establishing and maintaining credibility. Of course, the correct answer must be obtained quickly, and errors must be corrected and not repeated.

The Director will have a healthy sense of impatience. He/she will expect projects to move forward and issues to be resolved. The ideal candidate will have a "can do" attitude and see challenges as hurdles rather than roadblocks. When assistance is needed, the ideal candidate will present not only the problems, but will also bring solutions and options. The individual will believe strongly in customer service and set the tone. He/she will realize the customers are not always right but deserve to have their problems listened to and addressed.

The Director will be a motivator and not just provide direction but work collaboratively with staff and empower them. Micromanagement will not be a word in the Director's vocabulary. Instead he/she will be respectful, mentor, set priorities, provide resources, have high expectations and expect deadlines to be met. The ideal candidate will encourage teamwork and is comfortable rolling up their sleeves to get the job done. Accountability will be important. At the same time, the Director will realize not every proposed solution will work, and that mistakes will be made in the process of growth.

Strong analytical skills will be important, and the next Director will be constantly seeking ways to improve operations and efficiency. Being inquisitive, and not accepting the system the way it is will be important. The individual will be technologically savvy and seek new processes and systems to improve the daily workflow. Personally, the ideal candidate will be professional, but also friendly and outgoing with a sense of humor.

The ideal candidate must have outstanding communication skills, both verbal and written. As the individual is ultimately responsible for maintaining the City's financial data, he/she will have a strong accounting background and ensure the numbers are accurate every time, all the time. He/she produce reports that are understandable even to those without financial background. The Director will make clear and concise presentations to the City Commission and public.

Since the Department is responsible for issuing debt, experience in that area will be important, as will be investment management. His/her background will include experience in pensions/retirement funding, budget preparation, CAFR preparation, billing, collections, purchasing, and customer service.

The ideal candidate will have a Bachelor's degree from an accredited college or university in Business or Public Administration, Accounting, Public Finance, or related field and a minimum of eight (8) years of progressively responsible management and supervisory experience in Accounting and Financial Management for a governmental agency or other large entity. Credentialing as a Certified Public Accountant or Certified Government Finance Officer is desired.

Compensation

The salary will be commensurate with experience; the starting salary range is $129,000 to $167,700. Benefits are excellent.

Residency

Residency within city limits expected.

How To Apply

Internal and external candidates are encouraged to submit a cover letter and resume to ***Recruit45@cb-asso.com*** by February 28th. Direct questions to Colin Baenziger at (561) 707-3537 or David Collier at (772) 260-1858.

Other Important Information

Gainesville is a welcoming community that values diversity. It encourages men and women of all races, ethnicities and beliefs to apply. Under Florida law, all applications are a public record and subject to disclosure. A Veteran's Preference will be awarded if applicable and according to Florida Law.

Appendix C

Sample Candidate Report

COLIN BAENZIGER & ASSOCIATES

EXECUTIVE RECRUITING

Sample Candidate Report

[Note: The following materials are provided with the permission of the candidate.]

TABLE OF CONTENTS

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Cover Letter and Resume

March 26, 2020

Mr. Colin Baenziger
Colin Baenziger & Associates
2055 South Atlantic Avenue, Suite 504
Daytona Beach Shores, Florida 32118

Dear Mr. Baenziger:

Please accept the enclosed résumé for the position of City Manager for the City of Cape Coral, Florida. I am confident that my organizational and leadership abilities, educational background, and diverse professional experience are well-suited to the specific requirements of the position.

As indicated in the enclosed résumé, my professional background includes more than 25 years of progressive and responsible local government management experience. As an ICMA Credentialed Manager, I presently serve as the deputy city manager for the City of Fort Lauderdale, Florida. Prior to Fort Lauderdale, I served as the city manager for the City of Savannah, Georgia. In that capacity, I reported to a nine-member city council, created a new strategic plan - SAVANNAH FORWARD, led a family of 2,513 exceptional employees, and implemented a lean operating budget of $408 million and a capital improvement plan in excess of $407 million.

My previous experience includes serving as deputy county administrator for Broward County Florida; deputy county manager for Fulton County, Georgia; and assistant to the county administrator, Broward County, Florida. Collectively, my service in these progressive communities has provided me with extensive knowledge and expertise in all aspects of local government operations including affordable housing, strategic planning, transportation, budget development, community services, economic development and community revitalization, human services, and public safety, among others.

I am confident that I bring the right skills, experience and talents to the position. If you would like to schedule an interview or discuss my interest in the position, please contact me at (954) 940-1065 or at robhernandez@comcast.net. Thank you for your consideration.

Sincerely,

Roberto Hernandez

Roberto Hernandez

Enclosure:
- Résumé

ROB HERNANDEZ

1873 Northwest 113th Way, Coral Springs, Florida 33071 | 954-940-1065 | robhernandez@comcast.net

Profile

Proven, resourceful, and results-focused public administrator with more than 25 years of progressive local government management experience. ICMA-Credentialed Manager known for leadership, professionalism and organizational abilities.

Relevant Experience

Deputy City Manager — 2019 - Present
City of Fort Lauderdale, Florida

City Manager — 2016 - 2019
City of Savannah, Georgia

Deputy County Administrator — 2013 - 2016
Broward County Board of County Commissioners; Fort Lauderdale, Florida

Deputy City Manager — 2011 - 2013
City of Coral Springs, Florida

Deputy County Manager — 2008 - 2011
Fulton County Board of County Commissioners; Atlanta, Georgia

Assistant to the County Administrator — 2003 - 2008
Broward County Board of Commissioners; Fort Lauderdale, Florida

Various Positions — 1994 - 2003
Broward County Board of Commissioners; Fort Lauderdale, Florida

Education

Master of Public Administration
Nova Southeastern University; Fort Lauderdale, Florida

Bachelor of Public Administration
Florida International University; Miami, Florida

Current Professional Affiliations

International City / County Management Association (ICMA) – Credentialed Manager

Florida City / County Management Association

Broward City / County Management Association

Candidate Introduction

Rob Hernandez

EDUCATION

- Master of Public Administration, Nova Southeastern University
- Bachelor of Public Administration, Florida International University

EXPERIENCE

• Deputy City Manager; City of Fort Lauderdale, FL	2019 – Present
• City Manager; City of Savannah, GA	2016 – 2019
• Deputy County Administrator; Broward County, FL	2013 – 2016
• Deputy City Manager; Coral Springs, FL	2011 – 2013
• Deputy County Manager; Fulton County, GA	2008 – 2011

BACKGROUND

Fort Lauderdale is the largest municipality in Broward County and the ninth most populated city in Florida, slightly ahead of Cape Coral. Smaller in geographic area than Cape Coral, the city encompasses 38 square miles with a population of 186,220. A popular tourism destination, the city is often referred to as the "Venice of America" because of its many inland waterways, not too dissimilar to Cape Coral's "Water Wonderland" designation.

The City of Fort Lauderdale is a full-service municipal corporation that provides police protection, fire-rescue services, parks and recreation programs, potable drinking water to a service area both within and outside the City limits along with wastewater collection and treatment, sanitation services, development regulation, parking, and street maintenance. The City also operates a general aviation airport, a downtown heliport, an aquatic complex, and an auditorium. Its current general fund budget is more than $373.7 million or $832.7 million in total.

As the deputy city manager, I assist the city manager in overseeing municipal operations, specifically coordinating the activities of the Transportation and Mobility, Public Works, Sustainable Development and Parks and Recreation departments. Collectively these departments have a combined operating budget of $380 million and 1,527 full-time employees.

The three most critical issues facing the city are:

- Infrastructure
- Resiliency
- Affordable Housing

Both Fort Lauderdale and Cape Coral have identified infrastructure as key elements of their adopted strategic plans. Fort Lauderdale's emphasis is by necessity due to a series of recent high-profile infrastructure failures and a state mandated consent order. Fort Lauderdale's initial development boom occurred between the 1950s and 1970s during which the majority of the city's

infrastructure was installed. Materials of that era include cast iron pipe which is now failing regularly as a result of corrosion and erosion. From the 1990s until today, the city experienced a vertical development boom witnessed by large-scale redevelopment on its barrier island and downtown. This explosive growth was not matched by investments in infrastructure capacity, redundancy, and resiliency. Missteps occurred along the way, including transferring more than $20 million annually from the Water and Sewer Fund to the General Fund as a "return on investment", reduction in preventative maintenance activities, and failure to modernize its primary water treatment plant. The consequences of these decisions would surface years later as sewer main breaks, water line breaks, and flooding would disrupt life throughout the city. The City has identified more than $1.2 billion in needed infrastructure improvements over the next 25 years. In addition to rectifying years of disinvestment in its water utilities, the City's park system and public safety facilities have suffered a similar fate. The City is now implementing a $200 million parks bond and $100 million replacement police headquarters bond referendum to improve those facilities.

Sea level rise is Fort Lauderdale's second biggest issue. Fort Lauderdale has made adaptation to climate change and rising sea levels a top priority. Many neighborhoods in Fort Lauderdale now experience chronic flooding on a regular basis. According to recent projections issued by the Southeast Regional Climate Change Compact, 10-17 inches of sea level rise by 2040 and 21-64 inches are possible by 2070. The City now requires the impact of sea level rise to be incorporated in future infrastructure master plans. Also, City-owned seawalls are being replaced and elevated, tidal valves have been installed in flood-prone areas, and the City is exploring the feasibility of raising road elevations in certain neighborhoods that are threatened by sea level rise.

Fort Lauderdale's housing costs are now among the highest in the nation. More than 60 percent of households in the city spend more than 30 percent of their income on housing. The price of single-family homes has increased 41 percent since 2013. In 2018, the median sale price for a three-bedroom home was $440,000. A four-bedroom home is now $835,000. Given the high cost of homeownership, many are forced to rent; however, rental costs are equally unaffordable with the average two-bedroom rental costing $2,705 monthly. Three bedrooms, $3,204. The City is attempting to incentivize various housing types to support all income groups by providing zoning incentives such as height and density bonuses, no- or low-interest loans, or grants to developers to facilitate the construction of more affordable units. Without an affordable and diverse housing stock, the city, county, and region will not succeed in creating a diversified and balanced economy.

GENERAL MANAGEMENT STYLE AND EXPERIENCE

Cape Coral is a jewel for public administration professionals to practice their craft in a progressive environment. The challenges in Cape Coral are similar to those I have faced throughout my career as a city manager or deputy manager. For those reasons, I believe that the combination of my experience as a proven leader understanding local government in Florida, the ability to work with elected and appointed officials and the ability to understand and solve problems will allow me to excel as Cape Coral's next city manager.

Many can manage but few can lead. Management is something I did earlier in my career; at this point in my professional career and personal life, I believe it is more important to exercise leadership. As leaders, we must communicate a clear vision and direction. We must demonstrate a passion for what we do – that is, to make a difference every day. For me, leadership is situational. When time, resources, and skills permit, my leadership style is participatory and collaborative. In other circumstances, it must be directive.

Great leadership is infectious. People are your greatest assets. It is important to create an environment where people want to work hard by making things fun, challenging, and rewarding. I believe in building a positive work climate where people are appreciated and valued. I like to consider myself a "macromanager" rather than a micromanager. I view my role as explaining the project or task, the expected result and deadline, and monitoring performance on a regular basis. I track projects and assignments using a Sharepoint site and meet with staff on a routine basis to review progress. I meet with staff more frequently on an as-needed basis. I describe what needs to be done, provide them the resources, get out of their way, and hold them accountable. So far, I think this approach has worked.

I am confident that staff and elected officials would describe me as professional, thorough, hard-working, ethical, honest, opinionated, and transparent. They would hopefully view me as engaged, participative and inclusive and valuing open communication and feedback, while also allowing for empowerment and accountability.

Two strengths that others will point to are my transparency and ability to make strategic decisions. In terms of a weakness, I believe that my commitment to my organization and loyalty to my teammates has led others to conclude that I can be defensive at times.

Regarding performance measurement, I believe it starts at the top with the governing body establishing a clear strategic vision for the organization, and cascades downward. Once key strategic objectives are defined by the governing board, it is the manager's job to develop strategies to meet those strategic objectives. Business units then must identify those operational efforts and measures that are aligned with the strategies and long-term objectives. Those help form the basis for developing individual performance measures that are included in performance reviews.

In terms of a significant professional achievement, the revitalization of the Fulton Industrial District (FID) in metro-Atlanta, one the largest industrial, warehousing and logistics centers in the southeastern United States, is one that I am most proud of. In the fall of 2008, I toured FID as Fulton County's new deputy county manager. What was once a leading center of economic activity was now rife with rampant prostitution, open drug sales, shuttered buildings, neglect, and decay. FID was well into a state of decline that began in the 1980s as its warehouses were abandoned for taller and larger ones elsewhere and manufacturing disappeared overseas. I observed conditions that I had never seen in my career until that day. Families called extended stay motels home. A police detective explained how FID was the child prostitution hub for the entire metropolitan Atlanta region. After a woman was found locked in a dog crate in one of FIDs many hotels, I was horrified and said: "not anymore – not on my watch."

For the next three years, we made it our mission to make FID better. We used every conceivable resource within county government and put together a team of county agencies that included everything from arts to zoning. We rolled up our sleeves and went to work. We attacked the issues from every angle: from health to human services to public safety. With the help of a dedicated team, we accomplished a remarkable turnaround that included:

- Adoption of the Fulton Industrial Redevelopment Framework
- Designation by the State as an "Opportunity Zone", providing needed economic incentives
- Establishment of the Fulton Industrial Community Improvement District, a self-taxing entity to take on area wide governance and improvements
- Establishment of the South Fulton Service Center which relocated two county commissioners, police, fire, and all other unincorporated area services to FID

Today, FID is healthy and vibrant. It is now a place where businesses invest rather than flee.

My biggest disappointment thus far involves the establishment of a fire assessment fee in Savannah. A $14 million budget deficit welcomed me upon arriving in Savannah in October 2016. As I tackled the deficit with my new team members, I realized the City had a structural imbalance that needed a long-term solution. Although revenue growth was respectable, it lagged projected expenditures well into the future. Working with the city council, we agreed to a stopgap approach for Fiscal Year 2017 with the understanding that we would bring back long-term options the following year. Fiscal Year 2018 presented a $12 million imbalance and to address it, I proposed a fire service assessment using an approach and the same consulting firm as Cape Coral. After spending considerable time and effort creating such a fee, the city council adopted the budget with this fee. The fee provided financial stability, allowed us to lower the millage rate, and provided resources to address capital needs and service priorities. The fee was controversial and faced stiff public resistance. Continued opposition to the fee caused the city council to reverse its decision midway through the fiscal year, requiring us to identify more than $16 million in new revenue and expenditure reductions. Rescinding a budget halfway through the fiscal year was disruptive to operations. In retrospect, I did not anticipate such stiff opposition since we held more than 60 community meetings and thought we had obtained community buy-in to the extent we could. Newspaper editorials supported our approach. In the end, the fire assessment was reversed, the equivalent of two engine companies eliminated from the fire department's budget, and the millage rate increased. The painful lesson I learned throughout all of this is that local government must do a better job educating the public on how well it is performing and safeguarding the public's resources. It was a painful lesson – it still hurts to sit to this day.

Employee terminations are always an unfortunate aspect of what we do as leaders. Unfortunately, I have had to dismiss employees throughout my career for poor performance or poor leadership. While it is never an encounter that brings pleasure or satisfaction, these separations were not a surprise to the affected individual. In every instance the individual was counseled and made aware of performance deficiencies beforehand, corrective actions identified, and the consequences of not meeting the performance standards explained. I hope that in every instance, I treated the employee with respect and dignity. I allowed them to "write their final chapter" with the organization and

allowed them to leave at the top of their game with a celebration of their accomplishments to the organization.

The issues and challenges facing Cape Coral's next city manager are:

- Leading in the Post COVID-19 Era.
- Ensuring continued Smart Growth.
- Continuing to expand and upgrade critical infrastructure.

Sadly, Cape Coral's next city manager will have to lead the organization through the aftermath of Covid-19's devastation. Although the City has a diversified revenue base not overly dependent on one specific funding source, it can expect revenues of all types to be impacted. While the financial realities of the pandemic will become clearer in the months to come, Cape Coral's next city manager will need to assess the financial impacts and determine how to continue basic municipal services, allow for certain aspects of the local economy to resume and balance the workforce and service demands with the new fiscal realities.

Second, Cape Coral's next city manager will need to continue to position the city for growth once the post-COVID 19 recovery begins to take shape. The City will need to continue progressive land use policies and zoning incentives to attract orderly and smart development to greenfields and redevelopment. Promoting growth in the tax base and employment for the city's residents must be a top priority. Fortunately, Cape Coral is well-positioned to attract further economic investment once the nation and the state adjust to the realities of the post-pandemic world.

Finally, investments in infrastructure must continue to drive the next city manager's agenda. During difficult times, many municipalities defer or eliminate investments in critical infrastructure improvements. This is a grave mistake and the next city manager must avoid the urge to gut capital investment plans. Since capital investments are long-term in nature, it is important that Cape Coral's next city manager appreciates the need to ensure adequate investments are made in all facets of municipal infrastructure including roadways, water utilities, facilities, and information systems. For Cape Coral, this includes expanding infrastructure utilities to areas currently not served plus parks and open space to accommodate neighborhood growth. The benefits of such continued investment will pay off in the longer-term. It is important to take a long-term view rather than an immediate one, however painful it may be.

If selected for the position, during my first six months I will:

- Listen, listen, and listen to understand issues, challenges, and desires of all stakeholders: elected officials, neighborhood groups, organized labor, business community, education representatives, the local media, and others;
- Forge a close relationship with the City Council and Mayor;
- Review goals and objectives for the organization with the Mayor and City Council;
- Reach out to department directors and learn about their challenges, priorities, and programs;

- Meet as many employees as possible by conducting several "town hall" sessions;
- Establish trust and credibility with all stakeholders; and.
- Become familiar with the community and it is culture.

As for media relations, I appreciate the work the media does. The media can be a great asset if managed properly and cultivated. Being open and honest with them is important. Integrity is an essential part of the relationship with the media. In Savannah, I practiced an open-door policy with the media and reserved a better part of Tuesdays to meet with them. I am not aware of anything in my background that could be considered embarrassing to a potential client.

Social media is an effective tool in keeping the public informed and is changing how government communicates with its various constituencies. I have used social media, primarily twitter, to keep interested individuals informed with short briefs on an issue. This helped us shape our story and put us in leading the community conversation rather than delegating that role to media. I have used social media to help sustain interest on an issue and to keep the public informed on upcoming discussions or significant events. During workshops or regular meetings of my elected body, we would "tweet" aspects of the discussion. In Fort Lauderdale, we rely on ZenCity to help us mine social media on a regular basis to help us gauge public sentiment on a variety of issues.

There is "no dirt" on me. I live a clean, simple life, prefer to tell things as I see it, and sleep well at night. I also treat people with professionalism and respect. I am honestly not aware of anything in my professional or personal lives that could be viewed negatively. However, while serving as the city manager of Savannah, there were a few individuals who were not supportive of my efforts or views. You may find some blogs critical of my opinion on building materials in the city's landmark historic district, my hesitance in assuming the operating costs of a regional expressway, and of the ill-fated fire assessment. Regardless, I always conducted myself professionally and never brought any negative attention to the elected officials or the organization I worked for.

My personal interests include the outdoors and pursuing home improvement projects.

ADJECTIVES OR PHRASES THAT DESCRIBE ME:

Driven, Professional, Focused, Disciplined, Organized, Thorough

REASONS FOR CONSIDERING LEAVING CURRENT POSITION:

I am considering opportunities beyond Fort Lauderdale because I believe that I can have a greater impact on an organization and a community by serving in the top leadership role.

CURRENT SALARY

+/- $217,000 plus $4,680 auto allowance and $1,310 cell phone allowance.

CB&A Background Checks

Background Check Summary for ROBERTO HERNANDEZ

Criminal Records Checks:

Nationwide Criminal Records Search	No Records Found
County	
Broward County, FL	No Records Found
Chatham County, GA	No Records Found
Fulton County, GA	No Records Found
State	
Florida	No Records Found
Georgia	No Records Found

Civil Records Checks:

County	
Broward County, FL	No Records Found
Chatham County, GA	No Records Found
Fulton County, GA	No Records Found
Federal	
Florida	No Records Found
Georgia	No Records Found

Motor Vehicle	
Florida	No Records Found
Credit	Very Good
Bankruptcy	No Records Found
Education	Confirmed
Employment	Confirmed

Under the Fair Credit Reporting Act, 15 U.S.C. 1681-1681Y, credit and bankruptcy information are very sensitive and should not be used be in the consideration of hiring. The information is included for each candidate because we do not want you to be surprised if third parties raise what they consider to be a concern.

Background Check Summary for ROBERTO HERNANDEZ Personal Disclosure

Personal Disclosure Questionnaire

Name of Applicant: ROB HERNANDEZ

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

1. Have you ever been charged or convicted of a felony?
   Yes ☐ No ☒
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
   Yes ☐ No ☒
3. Have you ever declared bankruptcy or been an owner in a business that did so?
   Yes ☐ No ☒
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
   Yes ☐ No ☒
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
   Yes ☐ No ☒
6. Have you ever been charged with driving while intoxicated?
   Yes ☐ No ☒
7. Have you ever sued a current or former employer?
   Yes ☐ No ☒
8. Do you have a personal My Space, Face Book or other type of Web Page?
   Yes ☐ No ☒
9. Do you have a personal Twitter Account?
   Yes ☐ No ☒
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
    Yes ☐ No ☒
11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.
    NONE

Attested to: _____
Signature of Applicant

Please email this form via PDF DOCUMENT to Lynelle@cb-asso.com or via fax to (888) 539-6531 no later than 5:00 PM PST 04/13/2020.
(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

Property of Colin Baenziger & Associates

CB&A Reference Notes

Elizabeth Taschereau – Director of Developmental Services, City of Margate, FL
954-884-3686 954-218-9798

Ms. Taschereau has known Mr. Hernandez since 2011 when he was hired as the Deputy City Manager for Coral Springs. She was the Community Redevelopment Agency Coordinator and reported to him. She later followed him from Coral Springs to the Savannah when he became the City Manager. She had enjoyed working for him and had wanted to continue learning from him so much that she willingly commuted between her home in Florida to her job in Georgia. After he left Savannah to go to Fort Lauderdale, she also left.

Mr. Hernandez was a successful and professional leader. He had strong project and time management skills. Ms. Taschereau especially admired how well he kept track of numerous project deadlines on his calendar, which she had access to when working under him. He worked well with team and delegated excellently. The only possible weakness he had was his high expectations. He strove to accomplish much, and he expected his staff to perform similarly. Such expectations may have been overwhelming for some who were unsure of their abilities to accomplish their tasks. However, staff members were able to look back and be amazed by how much and how well they accomplished those tasks. Though his high expectations were a challenge for some, many Cities turned around for the better because of his drive.

Mr. Hernandez worked on numerous high profile projects, such as building a new city hall. The old city hall was built in 1905. It was very much out of date and far too small for a city of Savannah's size. That said, building a new city hall spurred a great deal of controversy over architecture and location. Recognizing it as a critical need, Mr. Hernandez took charge of the project and eventually achieved community acceptance of the building's location downtown and of the architecture. It all came about in approximately a year and a half and the new city hall celebrated its grand opening in 2018. Another significant project he worked on as upgrading the City's arena while working with a management company. He was able to renovate the facility while negotiating a contract that was eventually approved by the County Commissioner. It was a huge accomplishment.

Mr. Hernandez was very inclusive of employees in projects, meetings, emails, status reports, memos, and other forms of communication. He communicated in a way they easily understood, and he expected his staff to communicate with him. Such an inclusive mindset was different for staff from the Cities of Coral Springs and Savannah, where the culture was less inclusive. He managed several internal and external projects that involved multiple people across different divisions. Many commented how they had not enjoyed such high communication levels before Mr. Hernandez came. Previously, little communication occurred between divisions. As such, decisions were delayed and less efficient. When he effectively included different groups to integrate on multi-division projects. He helped projects move forward.

Mr. Hernandez also generally made good decisions. He had high integrity. He made the best recommendations and decisions possible for the community as a whole. He did consider the input of groups with special interests, but he strove to make the best possible decision. He also made good decisions with staff members. For example, he reorganized the Savannah City staff, which

composed of approximately 2,400 employees. This momentous change created openings, which he filled with sharp and high performing individuals. The new employees immediately began planning and establishing standard procedures. The City began to change, and consequently, so did the community. Furthermore, Mr. Hernandez greatly believed in committees. He formed several committees with the Human Resource Department and with staff, sometimes even bringing in external panel members if necessary. He wanted people in high-level positions to make decisions together.

As a great public speaker, Mr. Hernandez worked well with the public. He always remained composed and professional. He had excellent presentation skills. People were generally perceptive to his ideas when he spoke, and he communicated well when invited to speak for different organizations. Even if some people at those meetings were exceedingly unprofessional toward him, he managed himself well. He performed well despite those difficulties. In addition, Mr. Hernandez worked well with individuals. He educated others, providing recommendations on what the Mayor and others needed to vote on. Because of these interpersonal abilities, Mayor and Councilmembers voted on multiple successful projects. Moreover, Mr. Hernandez had good financial skills. He used a hands-on approach with the city budget and worked closely with chief financial officers and the Budget Director. He wanted to ensure he understood the budget accurately.

Though a change agent, Mr. Hernandez did not seek change for the sake of change. He carefully evaluated a City's situation, whether involving technology, processes, or even City culture. He observed how others managed tasks before he made necessary changes to keep the City moving forward. Ms. Taschereau has done her best to incorporate this valuable lesson into her own leadership skills. Also, Mr. Hernandez an effective problem solver. He solved numerous issues that had existed for long periods of time. Some problems required many changes and more money, which made certain solutions difficult to implement. He attempted to solve these, and then he put plans into place to initiate these necessary changes once enough resources were available. Other problems were out of his realm of influence. As such, Mr. Hernandez made good recommendations, even if people did not follow his advice.

Ms. Taschereau is unaware of anything in Mr. Hernandez' personal or professional background that will concern a future employer. She would definitely hire him if possible. As someone who has worked for him, she knows how good he is at overcoming challenges and managing a city. Mr. Hernandez is passionate about municipal work. He wants his employers to be high-performing organizations. He has been and will continue to be a very good Manager.

Words or phrases used to describe Roberto Hernandez:

- Successful,
- Professional,
- Collaborative,
- Inclusive,
- High integrity,
- Good speaker, and
- Influential.

Strengths: Project management, leadership and staff management, presentation abilities, financial understanding.

Weaknesses: His high expectations can be daunting at time, but his expectations drive people to accomplish goals they previously thought they were incapable of achieving.

Skye Patrick – former Director of Libraries, Broward County, FL 562-940-8400
562-659-1155

Ms. Patrick has known Mr. Hernandez since 2014. She really enjoyed working with him and learned much from him.

Public Administration was Mr. Hernandez's strong suit. He was thoughtful and he understood County policy and procedures very well, which meant he navigated in a way that was very helpful to his department. He did not know much about the library system when he was hired, but he studied and learned about how they operate and developed a good understanding.

The Directors hired by Mr. Hernandez were very good selections. He sat on the panel that hired the Finance and Business Administrator, and helped with the searches for the Aviation Director and Human Services. When making decisions in general he was very thoughtful and took the time to gather information.

In general, Mr. Hernandez maintained the organization at a high level and had learned from his department heads to be innovative and creative. They had a monthly meeting where Mr. Hernandez provided information on organizational changes. Ms. Patrick headed a very large organization with many issues. He was always available and responsive.

Some community members were very aggressive. Mr. Hernandez took the time to attend both scheduled and off the cuff meetings with individuals who had concerns about an issue. His openness and willingness to address an issue immediately, without any delay, was impressive.

In his capacity Mr. Hernandez really tried to lead the organization, and was creative and thoughtful in meeting goals. He worked very well with the Board, which consisted of nine voices with sometimes conflicting concerns. He protected the department heads when necessary and did a great job balancing the administration and the politics, which is no small feat.

Several major personnel issues involving union members were escalated to upper management. Mr. Hernandez was not required to attend the meetings but he came to help negotiations. The union had between 500 and 600 members. He helped navigate the very rocky road between the union relationship and County protocol. He showed great initiative in addressing problems that existing prior to his arrival. He helped resolve long-standing issues in only 2 to 3 meetings.

Mr. Hernandez was given directives to create a business plan for the new Panther Stadium. The process took several months and he worked with several departments to create the business model. He also worked on a new transportation plan that was very complex. The process has spanned for several years and involves 15 of the 31 cities in Broward County.

They were short 800k in a capital budget of $5 million dollars. Mr. Hernandez worked with the staff to review the overall budget and prioritize projects. Several of the big-ticket items related to technology were prioritized, and he found a way to upgrade their enterprise software.

They only knew each other for a few years, but Ms. Patrick does not know anything controversial that involves Mr. Hernandez.

Broward County has a $6.5 million dollar budget with 31 cities plus some incorporated areas. Ms. Patrick would hire Mr. Hernandez and feels he is well suited to run a community the size of Broward County or slightly larger. Every department head he worked with has a positive opinion of his management and leadership qualities. Employees are comfortable working with him and felt very supported by him. He ensured that Ms. Patrick had the financial resources she needed. She confidently recommends him for a Manager position.

Words or phrases used to describe Roberto Hernandez:

- Extremely thoughtful,
- Very intelligent,
- Incredible business mind,
- Perfectly capable administrator,
- Incredible leadership qualities, and
- Shows initiative and foresight to present quantifiable outcomes.

Strengths: Thoughtful; understands policy and procedures; public administration; learns what he needs to know.

Weaknesses: He could have a greater understanding of the different lines of work that each department head was responsible for.

Van Johnson – Mayor, City of Savannah, GA 912-651-5988 912-651-6444

Mr. Johnson worked with Mr. Hernandez between 2016 and 2019 when Mr. Hernandez became the Savannah City Manager. Mr. Johnson and Mr. Hernandez had a good relationship.

Mr. Hernandez performed decently as City Manager. He was smart, strong-willed, and a hard worker. He was a workhorse who innovatively tried to find solutions to problems. He was always quite professional, cordial, and direct. At times, his passion and directness may have caused people to think Mr. Hernandez was emotional or overly direct. However, these traits were a function of his military background.

Mr. Hernandez had good communication skills. He kept Mr. Johnson informed via email, phone, and personal communication when appropriate. Mr. Hernandez generally made good decisions and usually made good decisions when hiring personnel. He was customer service oriented. He accomplished tasks in a timely manner.

Additionally, Mr. Hernandez tried to make the City to a high-performing organization. He recognized several structural financial issues within the City and put the City on track. He was

both a leader who rallied employees around the organization's vision and a manager who oversaw processes behind a desk. He worked hard to effectively solve problems to the best of his abilities. For example, he brought about a strategic plan for the City, which had not existed prior to Mr. Hernandez's arrival. He led the Council and the organization to determine a goals and priorities. The Savannah Forward strategic plan is still currently used.

One of the largest criticisms against Mr. Hernandez was that he was less social than the public expected their Manager to be. Certainly, he was kind and polite. He had experience working with the public and sometimes was out in the public attending community meetings to represent the organization. However, he often worked more than he socialized.

At times, Mr. Hernandez experienced some difficulties wading through the City's Council-Manager form of government. These hardships were not entirely his fault because some councilmembers violated these lines at times. Usually, Mr. Hernandez persevered. Eventually, these challenges became too much for him to bear. For example, he proposed instituting a City fire fee similar to what Florida cities used to address the City's structural deficits. The Council accepted the idea. However, when the public became upset with the fee, the Council blamed him for the failure. Furthermore, the previous Mayor needed a scapegoat for some of his poor decisions and blamed Mr. Hernandez – even though the City Manager only carried out decisions made by the City Council.

Mr. Johnson is unaware of anything in Mr. Hernandez's background that will concern a future employer. If given the opportunity to rehire Mr. Hernandez, Mr. Johnson would consider him as a candidate. Given the difficult circumstances in Savannah, Mr. Hernandez was a great Manager.

Words or phrases used to describe Rob Hernandez:

- Smart,
- Strong-willed,
- Hard worker,
- Good work ethic,
- Innovative, and
- Professional.

Strengths: Work ethic, innovative solution finding.

Weaknesses: Mr. Hernandez's passion and directness may have been misconstrued as being emotional or overly direct.

Claudette Bruck – former Commissioner, City of Coral Springs, FL 954-562-2526

Ms. Bruck has known Mr. Hernandez since 2011. He was their Deputy City Manager for all too short of a time. They were sad to see him leave and would love to have him back.

Mr. Hernandez was extremely bright, very diligent and focused. When he first came to the city he first stood back and analyzed the organization. When it was his turn to speak, he impressed

everyone. His presentations are flawless but factual. Everything he said was entirely trustworthy; he presented information he could stand behind.

Their interactions were all professional. Mr. Hernandez was very respectful. He listened and was prompt in responding to inquiries. His decisions when hiring personnel were very good. He was innovative and operated at a high performance level. He listened, assessed a situation, and then came forward with an excellent recommendation. He was very experienced and innovative.

Mr. Hernandez frequently gave presentations at workshops, commission meetings and community meetings and always did an excellent job. He had good rapport with the audience and a demeanor that invited trust.

Mr. Hernandez kept the Commissioners informed as appropriate. The Manager's office operated independently of the Commission. Rather than reporting in on a daily basis, they did so at special meetings or as needed. Mr. Hernandez did not have the opportunity to work one-on-one with residents, but he did present information about projects to the community. He was always prepared and answered questions on the spot.

The Commission received much information from varying sources, and the information was not always accurate. They felt very fortunate to have Mr. Hernandez on staff and trusted his accuracy. He led the organization well because he earned the trust of employees.

Mr. Hernandez played a significant role in pension discussions. He responded to questions at community and commission meetings. He followed through and was customer service oriented. He always did what said to do. He was not directly involved in the finance department or the creation of the budget, but he had a good understanding of the numbers.

Ms. Bruck is unaware of any controversy involving Mr. Hernandez. She would hire him and feels he would be a great Manager. He was knowledgeable, experienced, task oriented, focused, and could always be trusted. His departure was a tremendous loss to Coral Springs.

Words or phrases used to describe Roberto Hernandez:

- Trustworthy,
- Bright,
- Quick study,
- Serious about his position,
- Honorable, and
- Innovative.

Strengths: Very thorough; brought an idea forward only after it had been thorough researched; good at identifying problems and determining solutions.

Weaknesses: None identified.

Brooks Stillwell – former City Attorney, City of Savannah, GA 912-484-1690

Mr. Stillwell worked with Mr. Hernandez between 2016 and 2019. During this time, Mr. Stillwell was the Savannah City Attorney and Mr. Hernandez was the City Manager. They worked closely together daily and reported to the City Council.

Mr. Hernandez was a great City Manager operationally. He worked hard and had good fiscal planning abilities. He had several good ideas for the City and was a good strategic planner. He possessed a long-term vision of what he wanted to accomplish and strove to quickly achieve those goals. He was driven and dedicated.

Mr. Hernandez managed day-to-day operations exceptionally well. He worked well with staff members and those close to him in the office. He met with Mr. Stillwell during weekly meetings with City leaders and kept the City Attorney well informed.

As a change agent, Mr. Hernandez came in and proposed several changes to help the City run better. He initiated several positive transformations, such as with implementing the City's strategic plan. However, Mr. Hernandez implemented other changes too quickly for the historical City to handle. For example, he tried to completely change the City's property exchange, planning, and financing. Each area's change was tough individually, but all these at once were especially difficult to maintain.

Savannah is a very unusual city. Its roots go back almost 300 years and Mr. Hernandez did not fully appreciate how the City's unique historical culture differed from the culture found in his previous positions in Florida. In past jobs, he rarely handled city politics as the person second in charge. In Savannah, he had to involve himself more than he had previously done. The City traditionally expected the City Manager to be its Chief Executive Officer and to be heavily involved with the entire community outside of city government organization. As such, Mr. Hernandez had to work with county officials, chamber commerce, state legislature, and community leaders. Though Mr. Hernandez worked well with staff, he did not see community politics as part of his job, which was a large issue for the City. He frankly did not anticipate the public blowback from some of the programs he recommended the City Council implement. As such, he faced many challenges.

Even though many of his ideas were conceptually good, Mr. Hernandez was unable to bring the public to side with his solutions. For example, he tried implementing a fire fee to unburden property owners' taxes. He saw the fee as a method of fixing the City's fiscal problem. Though he initially had the Council's support, Mr. Hernandez eventually faced huge public backlash. Then some council members tried to politicize the plans which led to the fee being poorly implemented. Mr. Hernandez also tried to implement a union contract with the fire union, which ended up facing public blowback as well. He had little Council support because such a plan did not translate well to Georgia.

Eventually, Mr. Hernandez left the City to return to Florida. Both his wife and he were unhappy with how rough this period was for them. He gave several months' notice before his resignation.

Despite these issues, Mr. Hernandez was a great City Manager. He spoke well with public groups. He was an excellent fiscal manager. He generally made good decisions and hired personnel quite conscientiously. He was particularly customer service oriented. He was a leader who had a vision of how to accomplish goals and who tried to mold the City's organizations to this vision. He accomplished tasks in a timely manner. He set goals and timeframes to move forward. He solved several problems effectively. He successfully implemented the complete reorganization of the City's organizational department. He worked hard through stress to overcome issues. He also was outstanding with crisis management, such as when the City dealt with two hurricanes.

Any future employer will need to discuss what they expect Mr. Hernandez to do and what he expects to do with public and community leadership. These clear explanations are critical. Mr. Hernandez will perform well under a strong County Manager or strong Mayor who assumes all roles of working with the public. Mr. Hernandez understands how this type of government is organized and will do well in this system. Mr. Hernandez was an excellent City Manager on a whole, just not for the City of Savannah.

Mr. Stillwell is unaware of anything in Mr. Hernandez's personal background that will concern a future employer. Though Mr. Stillwell would not rehire Mr. Hernandez for the City of Savannah, Mr. Stillwell would definitely hire Mr. Hernandez for most any other municipality. A future employer will not find a more dedicated, hardworking person who can implement ideas well. Mr. Hernandez has been and will continue to make a good Manager.

Words or phrases used to describe Rob Hernandez:

- Tremendously hardworking,
- Good strategic planner,
- Aggressive in a good way,
- Dedicated, and
- Visionary.

Strengths: Long-term planning, fiscal planning, management skills.

Weaknesses: Interacting with public and political leaders was hard for Mr. Hernandez, who was used to a more strictly managerial position.

Zachary Williams – former Fulton County Manager, GA 404-990-6545 404-371-2881

Mr. Williams has known Mr. Hernandez since 1994. They worked closely from 2008 to 2011 when Mr. Hernandez was the Deputy County Manager. He did an excellent job. His work performance, personality, and interactions were outstanding. He was handpicked from South Florida to come and work for Mr. Williams.

Mr. Hernandez had an excellent work relationship with his elected officials. They trusted that what he said to had been well researched. He earned their respect and represented Mr. Williams very well.

Once he had been given a problem to solve, Mr. Hernandez was tenacious. He marshaled resources and focused them through team building to get the job done. He did not shy away from challenges. He was patient when it was warranted; however, it did not come naturally to him.

Mr. Hernandez preferred face-to-face interactions whenever possible. If meeting a person directly was not an option, then he used the phone. He was an excellent writer and could be successful using email; however, he had developed respect from his subordinates by meeting with them personally, listening to their issues, and explaining his thoughts.

Depending on the nature of the decision that needed to be made, Mr. Hernandez responded quickly. Circumstances that required gathering facts may have taken him longer. He was not indecisive but rather took the appropriate amount of time to gather the information and opinions he needed to make good decisions.

Mr. Hernandez hired good employees. In some instances where a hire did not work out, he did all he could to work with them. He went through exhausted hiring practices involving many stakeholders. He was analytical and used that to his advantage in the hiring process.

Mr. Hernandez was innovative but did not try to change things just for the sake of change. He was mature enough to leave a process alone when it worked well. He had improved existing processes in Fulton County.

Mr. Williams was proud of the redevelopment that was carried out on Fulton Industrial Boulevard. Under Mr. Hernandez's leadership, an area known for drugs, prostitution, and crime had reversed its negative direction to become an area where businesses wanted to locate. Mr. Hernandez created momentum in this large container warehousing district. He acquired State funding and formed a commercial improvement district.

There were very few tasks in public service Mr. Hernandez could not do well. He is ready to take the helm of an organization and become a Manager. Mr. Williams gives him his full and complete endorsement and support. Mr. Hernandez was one of the best public servants Mr. Williams has ever worked with.

Words or phrases used to describe Roberto Hernandez:

- Embodies what public service should be,
- True believer in the mission to make other people's lives better,
- Tenacious,
- Analytical,
- Hardworking, and
- Professional.

Strengths: Problem solving; tenacity; marshaling resources; and team building.

Weaknesses: He could be patient when it is warranted; however, it did not come naturally to him.

Dele Lowman – former Assistant to the County Manager, Fulton County, GA
(404) 612-8331

Ms. Lowman worked with Mr. Hernandez in the Fulton County Manager's Office. She had known him since 2003 where they worked together in Broward County. They had a good working relationship. He was very diligent and mission focused.

When Mr. Hernandez first arrived in the Administrative Office in Broward, she was working as a graduate being mentored by the County Administrator. She was told to watch Mr. Hernandez and learn from how he took a task, broke it into small parts, and organized people to get the job done. If there was something he did not know he studied to become more effective.

Mr. Hernandez and Ms. Lowman had philosophical differences yet got along quite well. His military background had shaped his personality and made him the driven person he was. He worked well with elected officials. He spent most of his time with the commissioner over the unincorporated areas. Though their interests were not always the same, they worked well together. He had the respect of the commissioners. Mr. Hernandez valued loyalty. His greatest strengths were diligence and following through. No matter how difficult a situation had become, he did what he needed to for the best interest of the community.

Laser focus was both strength and a weakness for Mr. Hernandez. In his current role as second in command, he did what he was asked without stepping back to see if there was another way. If he was the final decision maker, perhaps that would have been different. Unlike many managers, Mr. Hernandez did not have an aversion to staff meetings. He liked to speak with people face-to-face. He was more than capable of interacting via telephone and email, but he favored the personal approach when dealing with direct reports.

Mr. Hernandez was a great public speaker. He had a teaching background in the military. He interacted well with the public and dealt with residents often in the unincorporated area.

One task Mr. Hernandez was asked to take on was building the first amphitheater on the south side of the county. It was an overwhelming project with an unreasonable timeline and difficult budget. He did an outstanding job and followed it through to opening day.

There are certain people Ms. Lowman has worked with that she would hand pick to be on her team and Mr. Hernandez is one of them. She highly recommends hiring him.

Words or phrases used to describe Roberto Hernandez:

- Focused,
- Reliable,
- Diligent,
- You can trust him to do what he says,
- Professional and,
- Hard working.

Strengths: Diligence; follow through; loyalty.

Weaknesses: Laser focus, however he might step back if he were the manager.

Bill Durrence – former Alderman, City of Savannah, GA 912-247-8108

Mr. Durrence worked with Mr. Hernandez between 2016 and 2019. At the time, Mr. Durrence was in his first term as Alderman. Mr. Durrence was one of the Savannah City Councilmembers who hired Mr. Hernandez to be City Manager. Mr. Durrence was one of Mr. Hernandez's directors.

Mr. Hernandez possessed an impressive and thorough understanding of the City. He had extensive knowledge from public works to finance. He was as open as possible with councilmembers. Even though working for nine directors made things complicated, Mr. Hernandez was exceptionally competent and provided numerous innovative ideas. He was good internally and developed good staff relationships. He accomplished tasks in a timely manner. He was highly skilled in running the City.

Mr. Hernandez offered many solutions to the City's issues. He helped councilmembers understand the reason for the City's problematic budget stresses. Although the City was a successful destination for tourism, very little of that money went to the City's coffers. Certainly, some sales tax revenue came to the City, but most went to businesses involved with tourism. Mr. Hernandez clearly identified the City's financial stress points.

As good as he was with finances, Mr. Hernandez struggled to maintain public posture as Savannah City Manager. First, he underappreciated the historical nature and character of the City that brought much community pride. Because historic landmarks and districts made the City different, many people expected solutions to be likewise unique. Local attitude often discouraged researching how other places solved similar problems. Mr. Hernandez's approach to look at other cities' solutions made people feel slighted. As such, he missed an opportunity to engage early and gain the public's support. Second, he was generally more of a hands-on manager who seemed uncomfortable interacting in social management of a highly networked City. He was more comfortable rolling up his sleeves and working than being a public face for the City. Because he did not engage people to his side, he was less effective than he could have been.

Mr. Hernandez generally made good decisions. He also hired well for many top staff members, including the Fire Chief, Police Chief, and Human Resources Director. He often reached out to other senior staff when looking for personnel, and this collaborative approach was helpful. Some personnel he inherited were not highly qualified for their positions. At one point, Mr. Hernandez successfully moved senior personnel to fill vacancies. Prior to this major shuffle, staff members were scattered all over the City, causing much unnecessary work. He consolidated staff, thus making processes more efficient. Occasionally, Mr. Hernandez needed to be more disciplinary, but he eventually let a number of problematic people go. For example, he fired the Director of the Department of Revenue because she was simply unable to fix a particular issue, even after being given adequate time and resources.

Mr. Durrence is unaware of anything in Mr. Hernandez's background or conduct that will concern a future employer. If given the opportunity, Mr. Durrence would rehire Mr. Hernandez. Being new to a large leadership position as Alderman, Mr. Durrence understands the learning curve Mr. Hernandez faced while being City Manager for the first time. Mr. Hernandez was a bright individual who experienced valuable lessons. He was a good Manager.

Words or phrases used to describe Rob Hernandez:

- Knowledgeable,
- Competent,
- Introvert,
- First rate manager,
- Innovative, and
- Open.

Strengths: Financial skills, extensive understanding of how to run a city, executive functioning.

Weaknesses: He did not fully appreciate the City of Savannah's uniqueness and had a hard time connecting with the City's people.

William "Bill" Hubbard – Chief Executive Officer, Savannah Area Chamber of Commerce, GA 912-657-9207

Mr. Hubbard and Mr. Hernandez interacted when Mr. Hernandez was the Savannah City Manager between 2016 and 2019. They have since messaged each other occasionally.

When Mr. Hernandez worked in the City, he communicated fairly regularly with Mr. Hubbard. Mr. Hernandez called and sent emails. He sometimes dropped by Mr. Hubbard's office, and they typically saw each other weekly during city events.

Mr. Hernandez was a decent City Manager. Mr. Hernandez was a good, smart man. He was quite professional and thoughtful. He had good financial grounding. He built good staff around him and organized them well. He generally made good decisions. He also did a great job with reorganizing the city staff. At times, though, Mr. Hernandez made some poor staffing decisions. For example, he left an engineer in a developmental position a bit longer than others might have preferred. Additionally, he let go an assistant city manager by leaving a note on her chair. Although several elected officials asked him to let her go, this approach was unprofessional.

Mr. Hernandez faced difficulties integrating himself in the community. As a first time city manager, Mr. Hernandez was not accustomed to being one of the City's key leaders. He wanted to ensure others did not accuse him of playing favorites. As such, he interacted with the philanthropic, nonprofit, church, and business communities on a purely business level. He experienced difficulty developing tough enough skin to deal with criticism. This weakness held him back and

undermined his ability to be effective. Despite his strengths as City Manager, his inability to fully participate in the community affected the public's confidence in him. He needed to get to know these smaller communities better.

Mr. Hernandez was a good manager who oversaw processes behind a desk. He had great management skills and good knowledge of running a city. He thoroughly researched various solutions and made decisions effectively. For example, he led a team in providing a strategic plan in a fairy short time period. He worked with elected officials to agree to this plan.

Unfortunately, Mr. Hernandez had challenges working through the politics to implement the strategic plan. In one instance, Mr. Hernandez proposed a fire fee to help city finances. Around this time, the City had collected approximately $10 million in revenue. While garnering public support for the fire fee, Mr. Hernandez was also especially transparent with this revenue. Because the public misunderstood how the revenue was not part of the City's own earnings, people were particularly upset with the fee. Mr. Hernandez had admirable intentions to be transparent, but his timing cost him the fire fee concept.

Despite these challenges, he was always polite and diplomatic with people. Even when church groups angrily protested and wanted him fired, he kept going. He handled stress well for the most part and never showed a temper. Eventually, however, Mr. Hernandez and his wife left the City because they felt alone.

Mr. Hubbard is unaware of anything in Mr. Hernandez's professional or personal conduct that will concern a future employer. Mr. Hernandez had been purely professional, honest, and transparent. Although Mr. Hubbard would not rehire Mr. Hernandez to be City Manager, Mr. Hubbard would consider Mr. Hernandez for an Assistant Manager position. Mr. Hernandez was strategic and smart. He would excel in the responsibilities expected of a Deputy Manager.

Words or phrases used to describe Rob Hernandez:

- Professional,
- Good guy,
- Quite thoughtful,
- Polite,
- Diplomatic, and
- Capable.

Strengths: Financial skills, building good staff.

Weaknesses: He was politically weak and often distant from constituents.

John Hearn – City Attorney, Coral Springs, FL 954-344-1011

Mr. Hearn has known Mr. Hernandez since 2011. In terms of job performance, Mr. Hernandez was very energetic and a go-getter. He really moved projects along and stayed on top of them. He was a change agent.

City Hall was in an office that was built by General Electric for selling homes. The City had been trying to build a City Hall since 1993. Mr. Hernandez really energized those involved, and the new City Hall was finally under construction.

Mr. Hernandez was always very involved in the community, and he attended community meetings. He had a very good relationship with the public. He was customer service oriented.

Mr. Hernandez led staff to fulfill the vision of the Board. Employees did not have much appetite for moving forward with the downtown development, which included the new City Hall. He took the bull by the horns and made a very detailed PowerPoint presentation showing all the issues that their current City Hall had. He demonstrated how having a vibrant downtown area would benefit the City and residents. He did a nice job leading the project.

Mr. Hearn was not directly involved with the budget and finances, but in the course of their conversations he came to believe that Mr. Hernandez had good financial skills. Mr. Hernandez completed tasks by the deadline given.

Mr. Hernandez had not been involved in anything personally or professionally controversial. He left Fulton County because his family wanted to return to Florida. When an opportunity opened up on Broward County, he embraced it. He moved forward when doing so made sense.
Mr. Hearn would hire Mr. Hernandez and had a positive experience working with him. Mr. Hernandez would be a good City or County Manager. The five Commissioners and City Manager in Coral Springs loved working with Mr. Hernandez.

Words or phrases used to describe Roberto Hernandez:

- Energetic,
- Outgoing,
- Positive,
- Change agent,
- Engaged, and
- Active.

Strengths: Energetic; very much wanted to make decisions; could shepherd a project from A to Z very well.

Weaknesses: People's greatest strengths are often their greatest weaknesses. Because he moves projects along so well, Mr. Hearn had to slow him down a little and occasionally reminded Mr. Hernandez of a step that needed to be taken in the process.

Prepared by: Danielle Dayton and Lynelle Klein
Colin Baenziger & Associates

CB&A Internet Research

WLRN News HD1 (FL)
February 21, 2020

Fort Lauderdale Officials Respond to $1.8 Million State Fine for Sewage Spills
Author: *Alexander Gonzalez & Tom Hudson*

Pipes in Fort Lauderdale keep breaking--it's been an almost daily reality for many people living and working in the city. More than 200 million gallons of sewage have spilled from busted pipes in Fort Lauderdale since December. The state responded to the sewer spills this week. The Florida Department of Environmental Protection fined the city almost two million dollars. That amount is based in part on how much sewage has spilled. On the South Florida Roundup, host Tom Hudson talked about the issue with WLRN's Broward County reporter Caitie Switalski and Fort Lauderdale's deputy city manager **Rob Hernandez**.

Here's an excerpt of their conversation: Tom Hudson: What are the funding options if the city has to pay the state this $1.8 million fine or any fine for that matter?

Rob Hernandez: Well, if we have to pay the fine, it's either going to have to come out of the Water and Sewer fund or the city's general fund. And again, we believe that $1.8 million will best serve our local residents and our taxpayers by being reinvested into some of these projects rather than just going in and being deposited into a general fund at the state level. We're not being critical of the state. We understand that they were in the position where they felt that they had to take some sort of action. But we're hopeful that we'll be able to work something out that is slightly different than just the fine.

Caitie Switalski: When it comes to the punitive nature of the fine, $1.4 million of the $1.8 million is civil penalties based on how much sewage and how many days the sewage spill went on. I know the city is in the middle of weaning off trying to take money out of those funds [general or Water and Sewer funds] to balance the regular budget. That was a practice leftover from the last city administration. But if the city has to pay part of this fine out of those funds again, have you heard from any residents about that?

Hernandez: No, we haven't heard from any residents. And certainly I don't think it's going to change the practice. The city commission has made it abundantly clear that we were going to transition away from transferring funds from the Water and Sewer fund into the general fund. The city commission that's currently in office directed the city manager to transition us over a four-year period. They have since directed us to accelerate that transition. And that's something, going into next fiscal year, that we're certainly looking at. If there's an opportunity to return those funds at midyear this year, that's something that our city manager is looking at. But I don't think that the fine is going to derail us from making progress. And using your word, "weaning" ourselves off of that budget transfer. We're under clear direction that the funds that are generated by the Water and Sewer fund are going to go back into the necessary improvements that need to be made. And certainly we've been working in that direction for the last couple of years and we will continue to do so.

South Florida Sun Sentinel (FL)
July 23, 2019

Fort Lauderdale: Contractor Who Broke Water Main Wasn't Digging Where it told us
Author: *Larry Barszewski*

Fort Lauderdale never warned a contractor that a critical water line lay buried where workers planned to dig last week, a report shows, but city officials say that's because the contractor supplied the wrong address. The misinformation led to a failure that ultimately dried up the city's water supply and led to days of boil-water orders. Taps ran dry hours after the contractor drilled into the water supply line July 17. Countless businesses were forced to close, and more than 200,000 people were left without water to drink or shower. The contractor, Florida Communication Concepts, used a service called Sunshine 811 to find out whether there were underground utilities it had to watch out for while doing work for Florida Power & Light Co. The statewide utility service is authorized under Florida law and is the state's official resource for companies and individuals planning underground work.

The report shows Fort Lauderdale never told the contractor that the site in the back of 2525 NW 55th Court contained a 42-inch pipe that supplied raw water to the main water treatment plant. Instead, the city indicated that it didn't provide service there, according to the report from Sunshine 811. Deputy City Manager **Rob Hernandez** said the city's water line isn't on that property; it's 75 feet north. The digging was being done to the north and east of the requested location, he said. "It appears that where the contractor was digging is not where they indicated on the 811 ticket," **Hernandez** said. "Our investigation is still ongoing." The owner of Florida Communication Concepts, Tim Hicks, said he couldn't comment, and FPL has declined to answer reporters' questions.

Contractors contact Sunshine 811 to alert agencies about the work they plan to do and to find out whether there are pipes or underground facilities they need to avoid when digging. The service then alerts the utilities, which are supposed to inform the contractor whether they have lines in the area and mark them if they do. Florida Communication Concepts filed a ticket with Sunshine 811 on June 25 to install conduit in July for FPL near Fort Lauderdale Executive Airport, records show. Sunshine 811 notified Fort Lauderdale and nine other entities, based on maps they submitted to Sunshine 811 that indicated it was possible they could have equipment near the work site. Tamarac and Crown Castle Fiber responded that they had no facilities there. Oakland Park, Teco People's Gas of South Florida and CenturyLink said their lines were outside of the work site.

Others said they did have equipment in the area. Fort Lauderdale Executive Airport, Comcast Cable, AT&T and FPL indicated that they marked the locations of their lines for the contractor. Fort Lauderdale responded as well, but it used a code indicating that no city utilities were present at that excavation site. The code it used said "another company provides the services at this location." That code typically is used by utilities that do not have services at that exact location, according to Sunshine 811′s online site. **Hernandez** said that's because the city doesn't have any water lines at the property address the contractor listed. He also said Florida Communication

Concepts said on its Sunshine 811 form that it would not be doing boring, but that's how the city's pipe was pierced. Fort Lauderdale receives dozens of requests each day from Sunshine 811 for underground line information. Sunshine 811 sent the city 20,501 notices last year and 12,635 so far this year, the service reported. The requests go to the city's distribution and collections chief for its water and wastewater services. A city police report filed at the time the line was punctured said the company had used the line-locating service. However, it cited Florida Communication Concepts for not having a permit for the work, violating city codes. It issued the contractor a "Notice to Appear" citation. City officials said a date has not been set for a hearing. It's not clear whether a permit was needed. **Hernandez** said last week that FPL has a franchise agreement with the city that does not require the utility to get a permit every time it digs.

Post Gazette (PA)
July 19, 2019

Fort Lauderdale gets 'Temporary Relief' While Crews Repair a Water Main Break
Author: *Dakin Andone & Emanuella Grinberg*

Officials in Fort Lauderdale, Florida, said a temporary fix water has running again after a main break left an estimated 220,000 customers without service Thursday. Water is flowing below normal pressure and is expected to return to "near normal" sometime Thursday night, Mayor Dean Trantalis said in an evening news conference. A subcontractor repairing electric lines on Wednesday struck a pipe that supplies water to a treatment plant, cutting off the city's water supply. No major incidents were reported as a result of the outage, the mayor said. A partial patch was placed on the hole, increasing water pressure, Mr. Trantalis said. Those involved in the repairs are "confident" that the patch will provide "temporary relief" while crews work to redirect the water flow through a backup line and replace the broken pipe, he said.

The installation could take through the weekend, Mr. Trantalis said. While repairs are underway, a boil water advisory is in effect until and water distribution sites will stay open until at least Saturday, Mr. Trantalis said. With repairs underway, he said the city's focus will shift to investigating the cause and seeking compensation for not only the city but hotels, restaurants and other businesses impacted by the service outage. "This was not just a minor incident, this impacted many hundreds of thousands of hundreds of people," Mr. Trantalis said. "It was clearly haphazard," he said. "It's clearly something that we're going to seek retribution for."

What the city is doing to fix the pipe
On Wednesday, a subcontractor working near the city's Executive Airport for Florida Power & Light damaged a 42-inch city pipe that supplies water from wellfields to the Fiveash Water Treatment Plant, the mayor said. The service outage impacted the city and surrounding municipalities that receive water through the city, including Lauderdale-by-the-Sea, Oakland Park, Wilton Manors and sections of Davie and Tamarac. An estimated 220,000 customers were impacted, Deputy City Manager **Rob Hernandez**. Crews are now building a concrete bunker around the broken pipe to seal the break and protect the pipe, Mr. Trantalis said. The bunker should be completed by 10 p.m. ET and the Fiveash Water Treatment Plant should be back to full and normal operation, he said. The temporary fix will give crews time to redirect the water flow through a backup line, Mr. Trantalis said. Once the backup line is in place, a replacement pipe for the primary main will be installed, likely over the course of the weekend, the mayor said.

Cause of outage under investigation
Earlier Thursday, Mr. Trantalis said crews responded immediately, but as they were working, the damaged pipe collapsed, forcing the city to turn off the water flow. During Thursday night's news conference, he suggested the subcontractor bore the brunt of the blame for "something they should not have done." The subcontractor has been cited and an enforcement action has been launched, the mayor said, although he was unable to identify the specific citation. When initially asked if there was anything the city could have done better, the mayor responded "no," then

added, "Yes -- we could have foreseen this but you can't foresee these types of things." Later in the press conference, the mayor maintained the incident an "accident" caused by "human error," but he also acknowledged that it put a spotlight on the city's redundancy systems.

Deputy City Manager **Rob Hernandez** said "difficulty" with at least one valve that was supposed to redirect water to the redundant system, leaving them unable to isolate the damaged section of pipe. "What [this] pointed out to us is that we need to pay more attention to our infrastructure needs and that we need to go back and make sure that these redundancies systems do work when they're supposed to work." Residents in need of bottled water can find it at the Beach Community Center on 33rd Avenue, Mills Pond Park on Northwest 9th Avenue and Riverland Park on Southwest 27th Avenue.

SavannahNow
Posted May 26, 2019 at 8:18 PM Updated May 27, 2019 at 12:29 AM

Savannah's city manager out on medical leave
By DeAnn Komanecky and Eric Curl

Savannah City Manager **Rob Hernandez** is out on medical leave, with Patrick Monahan now serving as acting city manager. **Hernandez** tendered his resignation on April 12 with a last work day date of June 30. Whether **Hernandez**'s medical leave will change when he leaves his post is not known. City spokesperson Ken Slats said no other details are currently available. Monahan, a former Chatham County assistant manager, was hired in April as a consultant to work with **Hernandez**, starting in May. Monahan retired from the county in 2013 and has said he would only take the interim position temporarily, but is willing to stay long enough after this fall's election for the new city council to hire the long-term manager next year. He will be paid $20,000 a month for up to 12 months, under the agreement.

Hernandez's resignation came after news broke of his pending departure for a job as deputy city manager of Fort Lauderdale, Florida. **Hernandez** declined interview requests regarding his resignation, but said in a subsequent press release that he and his wife decided to go back to south Florida to help their siblings care for their elderly mothers. He indicated there was more to the decision than just family reasons, however, in correspondence obtained by the Savannah Morning News. **Hernandez** said he intended to stay away from city manager positions for a while after being asked about his plans by Lake Wales, Florida, City Manager Kenneth Fields. "The last three years here have been tough as a (city manager)," **Hernandez** said. He responded in a similar manner to an April 12 email from Chatham County Engineer Leon Davenport. "Tough town," **Hernandez** said. "Going back to Fort Lauderdale."

The city council hired **Hernandez** as city manager Sept. 1, 2016, with a $238,000 salary and $600 monthly vehicle allowance, as well as a $7,000 annual 457 retirement plan. After his arrival, **Hernandez** led the city through a major restructuring and successful development of a strategic plan. The city has also experienced two years of budget surpluses after **Hernandez** had implemented a hiring freeze and budget cuts. His impact was praised by some of his executive team following word of his departure.

City Management Coordinator Joe Shearouse Jr. wrote in response to his resignation notice that he thought a lot about the accomplishments **Hernandez** had made in Savannah. "Your impact on people is extensive and much more influential than a project or initiative," Shearouse said. "Your openness and eagerness to provide us opportunities to grow and learn is lasting and far reaching." Special Projects Coordinator Daphne Williams said in an email that it may be a long time before they get someone else comparable. "Our team was on fire," Williams said.

Hernandez also experienced his share of criticism, which began shortly after his arrival when he proposed cuts, which were ultimately restored, to arts organizations and social programs. And he was widely panned by residents following the implementation of a fee for fire service. **Hernandez** had touted as a way to get all property owners — including those that are tax-exempt

— to contribute to the rising costs of providing fire protection. Public indignation only grew when **Hernandez** presented the council with a spending plan for a budget surplus from 2017 of more than $10 million about five months after the fee was adopted. The fee was ultimately repealed, but **Hernandez** later attributed some subsequent job searches to the widespread opposition he encountered following its implementation.

Savannah Morning News (GA)
April 29, 2019

Savannah Could Get More Affordable Housing Under These Proposed City Programs
Author: *Eric Curl*

About 44 percent of Savannah families cannot afford quality housing, according to city officials. In other words, almost 24,000 local households are cost burdened because they spend 30 percent or more of their income on housing, said Housing and Neighborhood Services Director Martin Fretty. To address the issue, the city is considering some new affordable housing initiatives that were presented to the Savannah City Council during a workshop Thursday. The initiatives include a $20 million investment to acquire, redevelop and sell 1,000 blighted properties over a 10-year period. The investment would provide more affordable housing, while also reducing the number of abandoned properties that cost the city an average about $1,300 a year each in lost tax revenue and expenses related to police, fire and code enforcement services, Fretty said. The city is hoping to get $10 million for the acquisition program included on the Special Purpose Local Option Sales Tax referendum going before voters this fall. The eventual sale of the properties would go back into a revolving fund and help drive down costs for future investments, Fretty said. "After a couple of years you ought to be able to recover, we think, 80 percent of what we invested in the properties to acquire them," he said. The city is expected to meet with Chatham County officials next month to discuss the SPLOST project list and determine Savannah's distribution share of the sales-tax revenue. Savannah affordable housing presentation by savannahnow.com on Scribd. Inclusionary zoning. The city is also contemplating the implementation of an inclusionary zoning policy, similar to one established in Atlanta last year. The policy would require developers of apartment projects to include a certain percentage of affordable units or pay a one-time fee into a city housing fund. In turn, the developer could select from a list of incentives that could allow for more units, reduced parking requirements and a streamlined permitting process. In Atlanta the program applies to areas where the city is experiencing the pressures of redevelopment, said Bridget Lidy, Savannah's director of planning and urban design. In Savannah, the Canal District, where the new arena is being built west of downtown, provides an opportunity for the program's launch, Lidy said. "It's ripe for this," she said. The proposal received general support from the council, although it is still early in the process. Lidy was encouraged to set up a meeting with Atlanta officials, who she said have expressed interest in helping Savannah establish their own initiative.

And City Manager **Rob Hernandez** said he thought the city would likely need to hire an outside consultant before they could develop an inclusionary zoning policy. "I think we need to bring in the resources from other communities that have gone through that process," **Hernandez** said. "We haven't and there is a lot of stakeholder involvement and a lot of legalities involved." In the meantime, the city has developed some proposed standards to reduce development costs and increase the amount of affordable housing, including the reduction of the minimum lot size and parking requirements in traditional neighborhoods. In addition, the city's proposed new zoning ordinance, NewZo, provides more flexibility for constructing accessory dwelling units, with no more than one bedroom, in some areas. City officials are planning for the new ordinance to be adopted in July after public hearings are held in June.

Savannah Morning News (GA)
April 13, 2019

Hernandez Formally Resigns Post
Author: *Savannah Morning News*

Savannah City Manager **Rob Hernandez** formally submitted his resignation letter Friday morning. "Such letters are never easy to write and I hope it conveys my appreciation to all of you and our great staff, especially those that sit around the table with me each Monday," **Hernandez** wrote in an email to the city council and city staff. "I know that I've made some mistakes along the way as I am far from perfect. Please know that I have always attempted to do what is in the best interest of the city in the long term, and endeavored to create a culture of fairness, professionalism, integrity, inclusion, diversity, opportunity and ingenuity. I'm fortunate to have been surrounded by a team of good people. I'm grateful to have known you. Together, we've gotten a lot done since October 11, 2016. I hope that I have served all of you well," he wrote. "Thank you for the opportunity to serve as your city manager."

Fort Lauderdale City Manager Chris Lagerbloom informed the Savannah Morning News on Thursday that **Hernandez** will be joining the city as deputy city manager later this summer. In a formal resignation letter addressed to the mayor and alderman, **Hernandez** touted the team's accomplishments, from upgrading the city's bond rating to launching the design of the new arena. "I have been honored with the privilege of serving as Savannah's eighth city manager since adoption of the council-manager form of government in 1951. I joined the City on the heels of Hurricane Matthew on October 11, 2016, and since then we've weathered literal and figurative storms and overcame numerous obstacles in providing exceptional municipal services," **Hernandez** wrote. "We accomplished much during this time while simultaneously creating an organizational spirit focused on one simple concept: Forward. Forward is a fanatical passion for momentum, progress and achievement. It is an obsession with what is possible rather than the status quo. It is the driver behind our biggest accomplishment - SAVANNAH FORWARD, our guide to strategic policy-making and investments through 2025."

Hernandez said in a press statement issued later that he and his wife decided to go back to south Florida to help their siblings care for their elderly mothers. His resignation is effective June 30. Savannah Mayor Eddie DeLoach has recommended that former assistant Chatham County Manager Pat Monahan serve as interim city manager, but he is awaiting support for that decision from the rest of the city council. A special meeting has been called for 6 p.m. Monday in the Media Room on the second floor of City Hall for the council to consider an interim city manager. The next city manager is not expected to be hired until after the new city council is sworn in next year following this fall's election.

Savannah Morning News (GA)
January 9, 2019

Savannah City Manager Rob Hernandez: Government Leadership Backs Savannah Fire Department
Author: ***Rob Hernandez***

There has been much discussion in recent days about staffing levels within Savannah's Fire Department. I would like to take this opportunity to address misinformation circulating in social and regular media outlets.

First, what the city government has not done:
• We have not closed any fire stations.
• We have not laid off any fire personnel.
• We have not left any neighborhood in Savannah unprotected.
• We have not taken steps that will delay Savannah Fire's response time to an emergency.

What we have done is eliminate vacant positions in Savannah Fire over the past two years. To put those reductions in context, I would like to take you back to 2014. For the first time that year, Savannah Fire was granted an ISO Class 1 rating — an insurance classification that evaluates a community's fire operations and water infrastructure. Less than 1 percent of fire departments in the nation are rated Class 1. The following year, in 2015, Savannah received a three-year, $3.5 million FEMA grant designed to increase staffing levels in Savannah Fire. We did just that. In 2015, we added 15 firefighter positions. In 2016, we added another 15 firefighter positions. And in 2017, we grew by 10 more firefighter positions. Add it all up and over a three-year period we added 40 new firefighters to our payroll — a 12.6 percent staffing increase. At 366 total positions, including 341 firefighters, this was the highest staffing level in Savannah Fire's history.

That grant ended in 2017, and with it we faced a difficult decision: Do we ask Savannah taxpayers to continue funding this increased staffing level, or do we make reductions? We were facing flat revenues that year, and direction from city council to continue making investments in the police department. To balance the 2018 budget, we eliminated 45 vacant positions across the city government organization, including 18 within Savannah Fire. Council directed that those cuts come from Engine 16/Marine 1 — a specialized unit that operates the fire boat and a backup pumper truck at fire department headquarters on Oglethorpe Avenue. That same budget authorized a permanent funding solution for fire operations: the fire fee. That fee was rejected over the summer, and during months of public discussion we heard repeatedly from property owners that they preferred a smaller fire department over paying a new fee to fund fire services.

We contracted with the University of Georgia Carl Vinson Institute of Government to analyze Savannah Fire operations and make recommendations on better use of resources. I expect those recommendations within the month, but preliminary discussions with the report authors identified options for increased efficiency and reducing costs. The 2019 budget was balanced with the elimination of another 15 vacant positions. The UGA recommendations will drive where

those reductions are made. It is important to note that even with the elimination of these 33 vacancies over the past two years, Savannah still has seven more firefighter positions today than we did in 2014, when we received our ISO-1 rating. And we are still well-staffed compared with communities our size; Charleston, for instance, has one fewer firefighter position than Savannah, and 24 percent more territory to cover.

As a resident or business owner in this city, you are served not just by the fire station located in your neighborhood, but a fire protection system consisting of 15 stations and 22 emergency response vehicles. The city government also maintains agreements with our adjacent cities, which provide us access to more than 20 other fire stations, firefighters, and equipment should they be needed in the unlikely event all of our resources are unavailable. No area of the city will ever be left without a response to a fire. We are fortunate to have one of the best fire departments in the nation. Savannah Fire will continue to be, even with these adjustments.

Rob Hernandez is Savannah's city government manager.

WTOC 11
April 9, 2019 at 11:21 PM EDT - Updated April 11 at 10:36 AM

City of Fort Lauderdale extends offer to Savannah city manager
By Sean Evans

SAVANNAH, GA (WTOC) - Several sources have confirmed that Savannah City Manager **Rob Hernandez** is leaving his job. “The city is losing a very smart and talented individual,” Savannah Alderman John Hall said. “I wish Mr. **Hernandez** the best wherever he goes. Our loss is another city’s gain.” **Hernandez** said that he has not officially tendered his resignation or discussed this with all of city council as a group. He said he will not release a statement until he felt it was the appropriate time. We’ve reached out to the mayor’s office and the city spokesperson for comment.

Hernandez came to Savannah from Broward County, FL in 2016. “He inherited a virtual mess. Remember, he came in in the middle of a hurricane. The first hurricane we’d had in what, 27 years," said District 4 Alderman, Julian Miller. In addition to dealing with the aftermath of Hurricane Matthew, **Hernandez** was tasked with completing a budget and coming up with a blueprint that would carry Savannah years into the future. “He has come up with the city’s first strategic plan and gotten it going. He has refined our logo so we have the same logo everywhere. There’s an awful lot he has done, most of which the public will never see," Alderman Miller said. Several things spear-headed by **Hernandez** have been very public, like re-establishing a Savannah Police Department after the de-merger with the county, the search for a new police chief, and the fire fee proposal.

Less than a year after the fire fee proposal was dropped by city council after public backlash, **Hernandez** referenced it in a moment of levity during his speech at a firefighter award ceremony Wednesday afternoon. “Believe it or not, the city actually imposed a fire fee way back in the early 1800′s to provide fire protection services to all property owners of the city. I wish I would’ve known that a year-and-a-half ago. That could have helped us sell what we were trying to do a little easier to those that were opposed to what we were trying to do," he said.

If **Hernandez** is in fact out the door like sources tell us, city leaders know they need a similar leader to take the helm. “When you run a city, there are so many moving wheels and so many gears going in different directions. There’s always going to be hundreds of things that have to be addressed. That’s why it’s going to take someone who really knows what they’re doing to pick up the mantle and go forward," Miller said.

Hernandez’s previous attempts to change jobs have been publicized. In August of 2018, it was announced that **Hernandez** did not get a county administrator position in Pinellas County, FL. The city of Savannah confirmed he was a finalist for the position. **Hernandez** was also on the shortlist for a city manager position in Brownsville, TX. At the time, **Hernandez** said he wasn’t sure if the Savannah community wanted to work with him. “Criticism of government is healthy and important, and comes with the territory,” he said in a statement in August of 2018. “I don’t take it personally, even if some of the attacks on me have been very personal. What I do want is

to work in a community that wants to work with me. I am not sure that is currently the case. Amid a sustained level of criticism and uncertainty, I have considered opportunities outside Savannah. While I have no desire to leave, I did feel it was a prudent move for me and my family." **Hernandez** was a key architect of a proposed fire fee in Savannah that drew the ire of many in the city. The city council withdrew the fee from consideration after a tortured fine-tuning process. The mayor proposed to halve the fee weeks before it was withdrew.

Chaz Adams with the city's strategic communications office says **Hernandez** has received an offer as Deputy City Manager for the City of Fort Lauderdale Florida. "The City of Fort Lauderdale has extended an offer to Roberto "Rob" **Hernandez** for the position of Deputy City Manager. The offer is contingent upon approval from the Fort Lauderdale City Commission. The commission plans to consider the item at their next meeting, which will take place on Tuesday, April 16," Adams said. City council will hold its regularly scheduled meeting on Thursday. We'll be following this closely to see if anything is announced regarding a resignation, as well as what's next if the Savannah city manager position becomes vacant.

Savannah Morning News (GA)
December 20, 2018

Savannah City Council Oks $1M Fire Station Sale Despite Buyer's History of Code Violations
Author: *Eric Curl*

The Savannah City Council on Thursday approved the sale of a former fire station, despite the buyer's history of being cited for code and maintenance violations at multiple properties throughout downtown. The $1.05 million sale to Inman Park Properties came after three proposals were submitted to the city and evaluated by a five-person staff committee. Inman received the highest score after proposing to preserve and restore the 72-year-old building at 6 W. Henry St. for use as a cafe and office space. Rajesh Patel had proposed paying $525,000 for the property, while Lynch Associates Architects offered $455,000. The sale was quickly approved without discussion by the city council, with the exception of Alderman Bill Durrence, who had stepped out of the chambers to speak with someone who was leaving.

Durrence, who represents the area where the building is located, said he probably would have voted for the sale also. It was his understanding that most of the property maintenance issues have been addressed and he was hoping to see something done with the building, Durrence said. "The bottom line for me is that it didn't matter how I voted because the majority of council made up their mind that for that price point, they were going to sell it," he said. Inman's proposal is expected to activate the "somewhat stagnant" block and generate 75 full-time jobs in the neighborhood, according to the developer's proposal. Inman reported that construction was expected to begin 120 days after closing and take one year to complete.

Staff had delayed consideration of the sale in October following inquiries from the Savannah Morning News into the buyer's past code and property maintenance issues. From 2012 through 2016, the city instigated 16 Chatham County Recorder's Court cases against Inman's owner, Jeff Notrica, for 14 downtown properties. Charges related to overgrown vegetation, maintaining a clean and sanitary property, safety, defacement of property, accumulation of garbage, and an unsafe building. The pending sale comes after the approved sale this year of multiple downtown city properties. City Manager **Rob Hernandez** has touted the sales as a way to return outdated properties to the tax rolls and raise revenue for the construction of a new municipal center west of the Historic District, where the city is building a new arena.

However, **Hernandez** said during an interview Tuesday that the sales revenue may instead go toward construction of the arena. The amount of current voter-approved Special Purpose Local Option Sales Tax is expected to raise $120 million, while about $22 million was raised during previous tax periods. Still, the city expects to need an additional $20 million to $40 million to cover the estimated $140 million to $160 million costs of the arena's construction, as well as relocating public works from the arena site and building a new complex for that department, **Hernandez** said. The city does not plan on adding the arena to the next SPLOST referendum going before voters this fall, he said.

Savannah Morning News (GA)
November 16, 2018

Savannah Proposing Slight Property Tax Cut, Employee Wage Hike
Author: *Eric Curl*

The owner of a home valued at $100,000 will save about $8 a year under a proposal to reduce the property tax rate in 2019, according to city estimates. The reduction from 13.40 mills to 13.20 mills was requested by the Savannah City Council on Friday, the second day of a two-day budget retreat, after staff had initially proposed retaining the existing rate. Alderman Brian Foster advocated for the reduction to provide some relief to taxpayers after the rate was increased from 12.48 mills this year following the elimination of the widely opposed fire fee. "It's a start," Foster said. The council also directed staff to incorporate a 3.5 percent wage increase for employees next year. The proposed increase was agreed to as a compromise after Alderman Van Johnson had initially sought to bump staff's recommended 3 percent wage increase to 4 percent. "The fight for the best and the brightest is real and people ultimately go where they will be paid," Johnson said.

To maintain a balanced budget, while accommodating the council's wishes, staff said they increased their "conservative" projections for property tax revenue growth next year from 3 percent to 4 percent. In addition, staff plans to cut another $1 million from the proposed budget to cover the remaining costs, said City Manager **Rob Hernandez**. The 2019 budget is expected to be presented to the city council for adoption next month. Since **Hernandez** arrived in late 2016, he has touted the need to address what he described as a structural imbalance resulting from expenses exceeding revenue. The fire fee adopted this year was an attempt to address that imbalance, but the council voted to repeal that new revenue source after facing widespread opposition from property owners.

Hernandez said he believes the city has made progress, but noted the concerns raised by the council during the retreat that funding was lacking for infrastructure and service improvements. "We're still imbalanced in that this budget is not able to adequately address those needs," he said. "We are addressing them, but the need really outstrips our ability to fund them." The next Special Purpose Local Option Sales Tax, which goes before voters next fall, has been touted by the council and staff as a way to fund needed infrastructure improvements, but **Hernandez** said the city cannot rely on the tax to resolve the issue. The city will also be looking at more models to fund municipal services, including a potential stormwater fee to cover the cost of drainage projects, **Hernandez** said. In July 2017, the city council unanimously approved a $49,651 contract with Atlanta-based Stantec Consulting Services to study the feasibility of such a fee and how it would be implemented, but the study's findings have never been presented. "We continue to look at that and we will be bringing that back to City Council at the appropriate time," **Hernandez** said.

Savannah Morning News (GA)
August 31, 2018

$3.9M Mistake Mucks Up Arena Contract
Author: *Eric Curl*

The Savannah City Council on Thursday delayed by two weeks consideration of an $11.2 million contract with AECOM Hunt to manage the construction of the new $140 million arena, after learning the contract amount is actually about $3.9 million more than city staff had initially reported. The vote for the delay came after staff explained during the morning workshop that a misreading of the fee proposal had led staff to initially report that the contract was $7.3 million - the amount that was on the meeting agenda until Wednesday. The originally reported amount should have been a red flag since it was so much lower than the amounts submitted by the other two finalists for the contract, said Alderman Bill Durrence. Turner Construction had proposed serving as construction manager at a cost of about $13.6 million, while JE Dunn's proposed cost amounted to almost $12.7 million. "I'm very nervous," Durrence said. "I never spent $140 million before." Pete Shonka, executive director of arena development, said that AECOM Hunt still had the lowest price and highest evaluation score after the error was corrected.

City Manager **Rob Hernandez** also said he felt confident in moving forward with the recommended contractor after determining the company had followed the process correctly, while acknowledging the error should not have occurred in the first place. "That reflects poorly on me and I apologize," **Hernandez** said. "We will double down to prevent circumstances like this in the future." Council members said they wanted more time to see how the error occurred before taking a vote. "The severity of it should not be lost," said Alderman Julian Miller. "We are going to be doing an awful lot of contracts and we need to have confidence on that." Walter Murphy, vice president at JE Dunn, had also spoken out against the contract being awarded to AECOM during the meeting and had informed the council that he had notified the city manager of the issue. "We were told it was a scrivener's error," Murphy said "I don't think so. I think the bid was non-responsive."

In other council news, city council approved the $14 million sale of two downtown buildings. Mayor Eddie DeLoach joined Aldermen Carol Bell, Durrence, Brian Foster, John Hall and Miller in approving the sale of the historic Gamble Building next to City Hall for $8.5 million, while Aldermen Van Johnson, Estella Shabazz and Tony Thomas cast the opposing votes. The buyer, Foram Development, plans to convert the building into a condo complex with rooftop gardens. Staff had recommended the sale as a way to rid itself of a building that requires extensive repairs and generate ongoing revenue by putting it back on the tax rolls. But Thomas said he disagreed with staff's assertion that the historic building was not adequate for city use. "I'm a little bit more of a sentimentalist," he said. "I believe the city is giving up its imprint on the riverfront."

The vote was similarly split with the council's approval of the sale of the former Catholic Diocese building at East Broad and Liberty streets for $5.9 million to Standard Companies, which plans to develop the property as an apartment complex with commercial space. Johnson

said he was afraid residents were being priced out of living in the city. "This was in my mind a wonderful opportunity to provide affordable and workforce housing for people to live downtown," he said. The approved sales come two weeks after the city council's vote to sell the Broughton Municipal Building to Columbia Ventures for $4.5 million. The buyer intends to convert the mid-century building into a hotel with retail on the ground level. And in April 2017 the council approved the $5 million sale of a 1.2 acre lot on Oglethorpe Avenue, where a developer plans to construct a mixed-use residential complex.

Hernandez said the funding from the sales is being invested into a reserve account for a modern municipal center he is considering building west of downtown near the arena to consolidate city departments. The total costs of that project, which would include a public safety complex, have not been determined, **Hernandez** said. "We still have a lot of work to do on that," he said. "We still have to flesh that concept out with city council." In the meantime, the city has been relocating staff into 36,538 square feet of leased office space on Chatham Parkway at an annual cost of about $785,000.

Savannah Morning News (GA)
July 11, 2018

City: Funding Problems not Over
Savannah May be Facing Tough Budget Process for 2019, Hernandez Warns
Author: *Eric Curl*

The recent repeal of the controversial fire fee may have been welcomed by property owners concerned about the additional expense, but city officials are not breathing easy as they look toward Savannah's financial future. With the elimination of the dedicated fee, which would have freed up millions in general funds, the city may be facing a difficult budget process for 2019, according to City Manager **Rob Hernandez**. **Hernandez** warned the Savannah City Council last week that their plan to increase the property tax rate by 0.92 mills, or 7.4 percent, will not resolve long-standing financial challenges that the fee was meant to help address. Almost a third of city parcels pay little or no property taxes due to being exempt or having low value, and tax digest growth has not kept pace with expenses, **Hernandez** said. "I don't want anyone leaving here today with a rosy picture of 2019's budget process," he said. "We are structurally imbalanced."

The mayor and aldermen are expected to adopt the tax increase on July 19 to restore almost $10 million of the $16.5 million in revenue lost with the elimination of the fire fee. The city also implemented a hiring freeze and cut expenses, including $1 million Mayor Eddie DeLoach had sought for an early childhood learning center being planned by the Savannah-Chatham School Board. With the proposed tax increase, the city will be able to preserve funding for some priorities that included software upgrades, enhanced right of way maintenance, Waters Avenue streetscape improvements, increased city reserves, and the Savannah Shines neighborhood revitalization initiative that has already begun in Edgemere/Sackville, said Alderman Julian Miller. "I'm not sure if everyone understands how deplorable the city's computer system is," Miller said. "We're still running programs that most people have abandoned 20 years ago."

Alderman Brian Foster said the city will also maintain the full staffing levels of the police department after adding more than 120 officers to patrol the city following the department's split with Chatham County in February. "We are fully staffed and have been for a while in the first time in over a decade," Foster said. "That's what the public asked for and we have successfully done that." Savannah's property tax rate has been decreased or remained the same every year since 1994, aside from a six-month half-mill increase in 2010 that was dropped back to the previous rate the following year. The current rate of 12.48 mills has been in place since 2013. For the owner of a home with a fair market value of $150,000, the proposed increase amounts to $55.20 annually or $4.60 per month.

Alderman Tony Thomas said that every effort would be made to reduce the rate in 2019, but **Hernandez** responded by casting doubt on that scenario. "I don't know at this point in time because it's still too early in the process for FY19 to determine, in fact, whether we are going to have a smooth budget process or we're going to have a rocky budget process like we've had the last couple years," **Hernandez** said. "So please do not leave here today thinking that budget

process for FY19 is going to be a smooth one because I can't guarantee that." Savannah Alderman Van Johnson suggested that the city meet with residents before the budgeting process begins to reconcile what they want and what the city can afford. "We have a region that takes advantage of many of the services that we provide that they do not pay for," Johnson said. "So I think part of this discussion is educating individuals that we can give everybody what they want, but there is a cost to it." **Hernandez** said that the city's budget director, Melissa Carter, has already proposed holding several citizen engagement panels to walk residents through the budget process, "allowing them to see how difficult it is to put together a $400 million budget for an enterprise the size of the city of Savannah." The council will hold two additional hearings at 9:45 a.m. and 2 p.m. July 19 before a making a final vote on the tax rate increase.

Savannah Morning News (GA)
June 8, 2018

City to Consider $11M in Cuts
Council Approves Adding Sunday 'Brunch Bill' to November Ballot
Author: *Eric Curl*

With less than six months left to go, City Manager **Rob Hernandez** has been charged with cutting more than $11 million from this year's budget. On Thursday, the Savannah City Council directed **Hernandez** to figure out over the next week what cuts can be made to make up for the anticipated loss in revenue, as the mayor and aldermen prepare to reduce the controversial fire fee by more than half in the face of widespread opposition. "We're just asking the city manager to go back and modify the numbers and bring us something forward that people can feel better about," said Mayor Eddie DeLoach. As proposed by the council, a property tax increase is not an option and the city would retain the one mill tax rate decrease that was approved in conjunction with the fire fee as part of the 2018 budget. The council's vote came after DeLoach announced on Wednesday a proposal to reduce the fee by 53 percent, which would bring the fee to $120 for residential properties. The city is also offering discounts of up to 20 percent until June 15, which would bring the total to $96. Mayor Pro Tem Carol Bell also suggested that **Hernandez** present an alternative option to cover the costs of eliminating the fire fee entirely. "As a council, let us determine if that's the way we want to go," Bell said. Previous attempts last month by Aldermen Van Johnson, Estella Shabazz and Tony Thomas to repeal or lower the fee were voted down by the remaining members of the city council during deliberations on how to spend $10 million surplus from last year. On Thursday, Thomas said he was staunchly opposed to the fire fee, but was concerned the council was being unfair to **Hernandez** by not making the $11 million reduction request when the surplus was presented. "I don't know if the city manager has truly analyzed that plan to see if he could reach that number," Thomas said. "And I don't know either what other options are completely out there." The surplus spending plan, which left the full fire fee intact, included funding to pay off the purchase of the Coastal Empire Fair site; complete the Cultural Arts Center; install computer security upgrades following a malware attack; fund a staff compensation study; and assist the Savannah-Chatham School Board in establishing an early learning center touted by DeLoach as an anti-poverty initiative.

Hernandez said Thursday he did not recommend using the surplus funds to make up fire fee cuts because the savings and unexpected revenue from 2017 were going toward one-time expenses and that the fire fee was meant to free up general funds for ongoing operational costs. "It would come back to bite us at some point in the future," he said. The proposed budget cuts are expected to be presented for the council's consideration during a budget workshop June 18. The tax rate has to be formally adopted by the end of the month and the council is expected to vote on the revised budget at their meeting June 21. Prior to the regular meeting, the council got a briefing on a hardship program the city is developing for low-income property owners who are unable to afford the fee. The city is now seeking a nonprofit social service provider to administer the program so applicants can also have an opportunity to get assistance with additional needs, said Tafanye Young, Chief Community Services Officer. "We're hoping that people will take advantage of this and see rewards beyond just the fire fee being waived," Young said.

Savannah Morning News (GA)
April 12, 2018

The Sense in the City's Spare Cents
Author: *Eric Curl*

Savannah had a better year, financially, than expected, according to city officials. Now, the city is planning on providing $2 million in funding needed to complete the new Cultural Arts Center, paying for security upgrades following a recent computer malware attack, and covering the full costs of a 3-percent performance-based pay increases for employees, after recently closing out the 2017 budget with a $10 million surplus. The surplus stemmed from a combination of about $5.2 million in revenue coming in higher than anticipated, in addition to expenses coming in about $4.7 million below budgeted amounts after the city implemented a hiring freeze last year, said City Manager **Rob Hernandez**.

Most of the growth was from elastic revenues, such as lodging and sales taxes, that expand and contract with strength of economy, **Hernandez** said. "We have a general idea how the economy is going to perform but it's a guess and science at the same time," he said. "So in 2018 our budgeting numbers are a bit more optimistic than they were when we put together the '17 budget, but something could happen tomorrow." The funding plan going before the Savannah City Council Thursday will also increase reserve funds, pay a debt owed for purchasing the Coastal Empire Fairgrounds site, and cover costs associated with converting a section of Montgomery Street for two-way traffic. In addition, staff is recommending that the revenue go towards staff relocation costs related to the planned sale of two downtown buildings and a compensation study to address pay inequities.

"We also did a reorganization this year and created new job titles," **Hernandez** said. "We think we slotted them in the right place, but it's time that we do a real in-depth review of our pay and compensation practices." Almost 100 positions were eliminated as part of the reorganization, with about 40 of them vacant, but dozens of new positions were added and impacted employees were given the opportunity to apply for the jobs. Seven employees ended up not being placed either because there was nothing available or they did not accept the position offered, according to city officials. And after the city council voted to add 24 new positions to the police department this year, there ended up being a total net reduction of one position.

Hernandez said the surplus does not negate the need for the city's new fire services fee, which was implemented to correct a structural imbalance the city has faced for years. "If we didn't have the hiring freeze and agencies spent every dime we got budgeted, we would have only $5.2 million in extra revenue," he said. "The fire fee provides us an opportunity to take $21 million of pressure off of the general fund." The city council recently approved an ordinance that offers up to a 20 percent discount on the fee for installing safety equipment, developing emergency plans and participating in fire training programs. Property have between April 15 and June 1 to apply for the reduction before bills are sent out in the fall.

Meanwhile, the city also plans to spend about $500,000 on new technology and services to boost

security measures after a malware attack discovered in February impacted some city services. The malware appears to have been eliminated, but the city is still not accepting email attachments as a precaution, said city spokesperson Michelle Gavin. "We think that we've gotten it," Gavin said. "We've taken all the measures to wipe computers and have taken some extreme measures, but it's an ongoing thing."

Proposed surplus expenditures
Transfer to Reserves/General Fund Balance: $2.5 million
Performance-based 1-percent employee pay increase: $600,000
Cultural Arts Center Overrun: $2 million
Montgomery Street redirection project: $1 million
MPO agreement amendment: $200,000
Revenue dept. relocation: $500,000
Fairgrounds - Pay off Debt Service: $1.4 million
IT/Malware Equipment Recovery: $500,000
Relocation Contingency: $100,000
Compensation study: $300,000
Facility repairs and improvements: $800,000
Rental of backhoe - Cemeteries: $100,000
Total: $10 million

Savannah Morning News (GA)
February 18, 2018

Savannah Restructures Government Operations
Officials Tout Plan as Way to Make City Operations More Efficient
Author: *Eric Curl*

New titles and responsibilities, along with salary increases in some cases, have been issued to a number of Savannah's department heads and top administrators as part of a government reorganization implemented by City Manager **Rob Hernandez**. Touted as a way to make city operations more efficient and achieve the Savannah City Council's priorities in a recently adopted strategic plan, new departments and positions have also been created, while others have been eliminated or modified. The restructuring consolidates two assistant city manager positions, one deputy to the assistant city manager position and five bureau chief positions into three executive officers. The employees selected for the new positions have the experience and personality to lead and get things done, **Hernandez** said. "That's what differentiates managers from leaders," he said. "I need leaders more than I need managers."

Paying for quality
Marty Johnston, formerly a deputy assistant to the city manager, was selected to fill the chief operating officer position, charged with asset management, customer service, special events coordination and oversight of the financial and internal service functions of the city. The move bumps her salary up from $125,827 to $148,000. Heath Lloyd was selected as Chief Infrastructure and Development Officer, after previously working as the public works and water resources operations director. Lloyd's responsibilities include ensuring the safety of the city's infrastructure, producing safe drinking water, protecting buildings and streets from flooding, and improving the development process. Lloyd's new salary amounts to $148,000, up from his previous salary of $109,414. Taffanye Young was hired as the city's Chief Community Services Officer after previously serving as the Community and Economic Development Bureau chief. Young is charged with unifying initiatives and programs focused on improving the lives of residents and providing them with clean, safe neighborhoods and access to quality housing, recreational facilities, leisure opportunities and supportive services. Her salary increased from $132,282 to $148,000.

The city's former budget director, Melissa Carter, also received a pay increase from $89,400 to $115,000 after being promoted to head the new Office of Management and Budget, which is responsible for preparing the city's yearly and long-term fiscal plans, as well as taking on an expanded role in grants development. And David Keating, who previously worked as a real property director, had his salary increased from $84,025 to $90,327 after being put in charge of a revamped Real Estate Services Department that now oversees property acquisitions, facilities maintenance, cemeteries, and the Civic Center. Pay was only increased for employees who have taken on additional responsibilities so that they are being fairly compensated, **Hernandez** said. "We want to keep the good ones," he said. "And also we have key positions we have to fill and we need to be able to compete and attract a quality workforce." Cutting grass and dysfunction
After years of complaints about property maintenance issues and delays in completing planned

projects, departments that never talked to one another were merged and new offices were launched as a way to eliminate government bureaucracy and improve focus, according to officials. To improve property maintenance, quality of life and tourism impacts, a new Code Compliance department was created. Previously, code-related activities were handled by multiple departments, prompting situations in which a property maintenance enforcement officer could not handle a zoning violation, or vice versa. In addition, property maintenance was only citing code violations on residential properties and letting violations on commercial properties go or referring them to the building department, **Hernandez** said. "So we said time out ... we're bringing all that in house," he said. "We're going to do cross-training and we're going to have commonality in how our code enforcement is handled and prosecuted."

Kevin Milton, a new employee with the city, has been hired as director of the department, with a salary of $115,000. Former Property Maintenance Director Kimberly Corbin is now working as Code Compliance Assistant Director, with her salary remaining at $80,368. Similar issues led to the consolidation of the city's landscape maintenance functions, including squares and monuments, into a new Greenscapes department. Prior to the consolidation, **Hernandez** said one team would cut an overgrown lot and then a different unit would come back a week later and cut the adjacent canal bank. And in some cases, **Hernandez** said, small equipment such as weed wackers would not be brought in until days after the larger mowers had cut down some city right-of-way. Now, work areas have been divided into grids that are maintained by regional teams responsible for basically anything that grows, **Hernandez** said. "They work a grid and don't leave that grid until everything is finished," he said.

Former Park & Tree Director Gordon Denney now heads the new department. His salary remains $80,368. The reorganization also included the formation of the Capital Projects Management office, which **Hernandez** said put five full-time positions in charge of overseeing $726 million in budgeted projects. That move was praised by Alderman Julian Miller recently when the council was given an update on the projects being funded by the voter-approved special purpose local option sales tax. Often-repeated concerns were raised about the time it has taken to complete some projects, and Miller noted that the department was created to address the issue. "This is one of those things going on behind the scenes that the public won't see that is really going to make a big difference," Miller said.

Staffing impacts

The restructuring came after the city imposed a hiring freeze upon **Hernandez's** arrival in October 2016, and at his direction only critical positions were filled for more than a year in anticipation of the changes. Almost 100 positions ended up being eliminated as part of the process, with about 40 of those vacant. Dozens of new positions were added, however, and impacted employees were given the opportunity to apply for those jobs. "In certain instances we were very lean in operations, and I think that was hurting us," **Hernandez** said. Seven employees ended up not being placed either because there was nothing available or they did not accept the position offered, according to city officials. And after the city council voted to add 24 new positions to the police department this year, there ended up being a total net reduction of one position, **Hernandez** said.

Not all employees' pay went up after getting a new position. One former assistant city manager,

Peter Shonka, ended up having his pay reduced by $15,624 to $140,619 after he became head of a new arena development district office - the office focused exclusively on developing the new arena and stimulating private and public investment in the surrounding redevelopment area. Such pay reductions were unfortunate, but in some cases could not be avoided, **Hernandez** said. "There may have been several, although not widespread, due to reduction in responsibilities," he said. A number of other staffers retained the same salary, while taking on new roles. Bridget Lidy, former Tourism and Ambassadorship director, was hired as the new Planning and Urban Design director after her department was eliminated. Her salary remains $85,703.

And Bret Bell, newly titled assistant to the city manager rather than deputy assistant, is now charged with handling legislative priorities, preparing the council's agenda, and working to ensure residents' concerns brought to the attention of aldermen are addressed. His salary remains $107,205. In addition, former Economic Development Department Director Manuel Dominguez's salary of $80,368 was left unchanged after he became head of what is now the Office of Business Opportunity, which is responsible for administering and coordinating the city's economic and small business development program. After being delayed for about two months as they attempted to find suitable jobs for all of the impacted employees, the reorganization became effective Feb. 1, said **Hernandez**, whose salary remains $238,000. "One thing I want to stress to folks is patience," he said. "We just put this new organizational alignment into play."

Savannah Morning News (GA)
December 30, 2017

City Manager Talks 'Funkification,' Ferris Wheels in Savannah
Opinions Expressed on Preserving Historic Structures Modernizing Others
Author: *Eric Curl*

A modern looking arena could be in play, but a proposed Ferris wheel on River Street is out of bounds. City Manager **Rob Hernandez** recently shared his thoughts on architecture, historic preservation and development in Savannah, as the guest speaker at the Historic District Board of Review's recent retreat. During the hour-long discussion earlier this month, **Hernandez** also took time to describe one of his architectural "pet peeves." "I hate red brick," **Hernandez** said. "We seem to have this tremendous love affair with red brick." He said he would like the new arena the city plans to build west of the Historic District to have a more modern look, perhaps with stainless steel and glass, while still paying homage to history. "But it doesn't have to be rooted in red brick," he said.

The arena site is outside the board's jurisdiction, but Chairman Stephen Merriman Jr. later said he is not necessarily opposed to a more modern looking building being built at the site. "I would be more opposed to build an arena that appears like it was built in the 1850s," Merriman said. "It gives a false sense of history." **Hernandez** also made it clear that he believes City Hall is no longer an efficient place for himself and other city staffers to work or for the Savannah City Council to hold their meetings. He talked about his plan to build a modern municipal complex in order to consolidate the city's workforce, while possibly converting City Hall into a "working museum" where the mayor and aldermen could have offices. "We're going to preserve City Hall," **Hernandez** said. "We have to preserve it, but the day-to-day stuff can go somewhere else." The 111-year-old building is in serious need of repairs, and funds for the structure's restoration will need to be raised, possibly by including the project in the 2019 special purpose local option sales tax referendum, he said.

Hernandez got some pushback from board members when he said he was considering replacing City Hall's deteriorating wooden windows with modern faux-wood frames to make them more efficient and hurricane-resistant. Board members were concerned the move would ruin the building's historic integrity and lead to private developers also wanting to bypass ordinance requirements. They suggested the city install exterior wood windows with interior storm windows to achieve the results he is seeking. Otherwise, the historic protections in place would crumble, Merriman said. "That's one of the biggest things Savannah has going for it, is our ordinance," he said. There are some buildings that seem ripe for "funkification," such as the old East Side Theater on the corner of East Broad and East Gwinnett streets, **Hernandez** said.

The historic theater with the words "Hungry World" across the old marquee has sat vacant for decades. "Not to be disrespectful of its character, but you can do cool things with it," **Hernandez** said. "That building has a lot of potential." In a similar vein, he would like to "funkify" Martin Luther King Jr. Boulevard around the Interstate 16 flyover, which he considers an eyesore. There have been plans proposed to demolish the ramp into downtown, but **Hernandez** said he does not

see the structure going anywhere anytime soon. But the city is too busy trying to put out daily fires and has little time to be creative, **Hernandez** said. "You're the folks that need to come up with those ideas and we'll support it when we can," he said. **Hernandez** also made it clear that some proposals will not fly as the city tries to balance the demands of tourism with preservation efforts and residential needs. Board members thanked him after **Hernandez** said he and the city council recently rejected a request to install a Ferris wheel on River Street.

The 137-foot-tall observation wheel would have been installed on a city parking lot along the water between the Abercorn and Lincoln street ramps at an initial rate of $17,000 a month, under the lease agreement proposed by Missouri-based SkyStar Wheel. "When I looked at that request, I said no way," **Hernandez** said. **Hernandez**, who previously worked as the deputy county administrator of Broward County, Fla., became Savannah's city manager in October 2016.

Savannah Morning News (GA)
December 1, 2017

City Considers Budget Cuts, Fees to Cover its Shortfall
Hernandez: $187 Million Proposal a Starting Point
Author: *Eric Curl*

Savannah staffers are proposing a variety of revenue generating options and expense cuts for the 2018 budget to determine whether the Savannah City Council wants to implement service enhancements or reductions in the face of projected funding shortfalls. The preliminary spending plan presented during the first day of a two-day budget retreat on Thursday amounts to a "bare bones, no frills and somewhat painful" general fund budget of $187 million that includes almost $13 million in cuts to personnel, services and capital project investment, said City Manager **Rob Hernandez**. "It's not even a recommended budget or a proposed budget," **Hernandez** said. "It's just a starting point for our conversation."

The second budget option of almost $200 million would sustain existing services, as well provide funding for performance-based wage increases and increase reserve funds for unforeseen expenses. The third spending plan would be an "enhanced budget" of about $213 million to cover expenses related to council priorities, such as additional police officers recommended by a consultant to improve emergency response times. Among the funding options staff presented was a proposed fee charged to all properties to cover the cost of fire department services and eliminate that department's dependence on tax revenue. Implementing a fee to cover the full cost of fire services would amount to $370 per household and raise an estimated $31.5 million, according to the budget report.

A consultant, Ecological Planning Group, also presented reduced rates as an option that would cover between 50 percent and 75 percent of fire service costs and raise about $15.7 million to $23.6 million. Property tax increases and decreases of between half a mill and two mills were also proposed, with revenue impacts ranging between $2.5 million and $10 million. "Anything you decide today for this budget is going to play out and have an effect for the next few years," said Erick van Malssen, who was working with the fire fee consultant. A hardship fund to assist low-income property owners is now being considered as part of the fire fee proposal, if it is adopted.

Savannah Alderman Van Johnson said he is still concerned about the fee's impact since renters would not be eligible to receive payments from the fund, even if the fee's cost was passed onto them by landlords. But Alderman Julian Miller said rental rates are established by the market and he does not expect tenants to be adversely affected as a result of the fee. Alderman Tony Thomas said renters would be impacted, but that the more than 5,800 tax-exempt property owners benefiting from fire services need to contribute to those costs. "Those folks have got to participate," Thomas said. "It's going to be tough for some people, but some people have been riding this system for decades."

The $12.7 million in spending cuts are being proposed, despite projected increases in property

tax revenue and other tax revenue streams this year and next. The shortfall is due to a combination of factors, including an increase of tax exemptions, operating costs and growing debt payments related to property purchases, infrastructure improvements and public safety purchases, **Hernandez** said. "We have a lot of needs in the city that far exceed the revenues available to us," he said. A surplus of about $3.8 million is actually anticipated for 2017, due to higher than projected tax growth and salary savings from a hiring freeze. Those funds are proposed to be used to offset a budgeted use of reserve funds for 2017 and help cover expenses related to hurricane damages and capital project overruns.

The city is also anticipating some employee payouts due to some officers joining the county police department, following the split of Savannah-Chatham police. Planned civilian staff cuts stemming from a government restructuring should only result in a "handful" of employees actually leaving the organization since those impacted will have the opportunity to fill other positions, **Hernandez** said. The second day of the budget retreat is scheduled to begin at 8:30 a.m. Friday. During the workshop staff will need the council to make a decision on what type of funding options or cuts they want to move ahead with, **Hernandez** said. "I have to get some clarification on what they want to do because I have to put together a final budget," he said.

Savannah Now – Savannah Morning News (GA)
February 11, 2017

Poverty Persists in Savannah, Despite City Programs
Author: *Eric Curl*

Austin Spell, 20, wants to be a pipe-fitter or EMT. That is why he was recently sitting in a classroom at the Moses Jackson Advancement Center, where he and six others were registering for a GED program put on by Savannah Tech. Spell said he was pulled out of school by his stepfather in eighth grade and he does not have the educational background he needs to meet his career goals. "I'm planning on getting my bachelor's degree and see what I can make out of myself," he said. The GED program is one of many programs at the city-supported advancement center that are meant to help Savannah residents find employment. Still, Savannah's high poverty level persists. The percentage of Savannah's population living below the poverty level was almost 27 percent in 2015 — up from almost 22 percent in 2000, according to the US Census Bureau's American Community Survey. The increase occurred as the city invested $2.7 million in general funds in anti-poverty programs between 2011 and 2016, including $642,600 to support the advancement center, according to a recent report presented by city staffers. During that time, another $1.1 million was spent supporting Step Up Savannah's job training and anti-poverty initiatives, and $981,304 went toward various social service agencies.

About a million dollars in federal funds supported the advancement center and social services offered by America's Second Harvest of Coastal Georgia, Union Mission and Lutheran Services of Coastal Georgia. Taffanye Young, Community and Economic Development Bureau chief, recently attributed the increased poverty rate to the recession when she presented the report to the Savannah City Council during an economic mobility workshop. "You had a lot of jobs that were lost," Young said. "A lot of people with higher incomes and higher skills ended up taking some of the lower skilled jobs." And job training is no "magic bullet" when residents have child care, transportation, substance abuse and criminal background issues to deal with, Young said. Only 17 percent of the 507 individuals who received job training through the city-funded programs since 2011 ended up becoming employed, according to the staff report. Those type of results are not satisfactory, City Manager **Rob Hernandez** told the council. "We may have to do something entirely different with some of these populations that have drastic barriers," **Hernandez** said.

Hospitality programs
Other programs have fared better, however. The US Department of Labor's Workforce Innovation and Opportunity Act only employed 34 percent of the 1,256 Chatham County participants since 2011, although many of those participants are still engaged in the program, according to the staff report. And since 2014, 316 adults received job training through the Step Up's Chatham Apprentice Program, with 59 percent becoming employed. Another 159 jobs have been created or retained since 2011 for low- to moderate-income residents through a city-supported loan program administered by the Small Business Assistance Corporation. Goodwill of Southeast Georgia is helping residents find work with the launch this year of a hospitality training program at the advancement center. Rashena Platt, one of the six-week program's

participants, said that after three months of being unemployed, the program helped "get her foot in the door" and find a job as a housekeeper.

Whether hospitality-based jobs will help Savannah reduce the poverty rate has been a matter of local debate. The growing number of hotels has drawn some criticism from residents, who are concerned about the city becoming too dependent on what they contend are low paying jobs. But Borish Jenkins, a Goodwill Career Center assistant who conducts the training course, said the hospitality industry does offer opportunities for advancement and better pay. Hotel employees, for instance, can start as a housekeeper, go to front desk, then become a supervisor and from supervisor become a general manager, said Jenkins, a former hotel employee himself. "I know it can be lucrative," he said. And some hotels, such as developer Richard Kessler's Plant Riverside $270 million hotel project being built along West River Street, are going to be offering higher pay, Jenkins said.

The Plant Riverside project is located in a state opportunity zone, which makes Kessler eligible for job tax credits for providing employment in an impoverished area. The hotel is supposed to create 700 full-time permanent positions with benefits, including health insurance, and Kessler is required to pay at least $10.25 as part of the tax credit agreement, but he has said beginning wages could reach as high as $15 an hour . As for Platt's plans, she said she plans on working her way up to be a manager. "You always have an opportunity for advancement," she said. "So just take your time and move up."

'Outside the box'
City staffers said that they plan on improving coordination among service providers, identify new revenue sources, aggressively promote programs, and think "outside the box" to reduce the poverty rate and provide more employment opportunities. Young said that the city may want to try to re-implement a partnership with a local church that had retirees provide training, such as brick laying, for residents seeking job skills. Staff is also working on a proposal that will hopefully address some of the hard to hire issues with respect to city contracts and city employment, **Hernandez** said.

https://www.wsav.com/news/savannahs-city-manager-on-his-first-3-weeks/
Nov 9, 2016

Savannah's City Manager on His First 3 Weeks
by: Andrew Davis

He was the choice of the council to lead the city of Savannah. In just three weeks on the job, City Manager **Rob Hernandez** has already been through a hurricane and multiple murders. But what does Savannah's City Manager thinks the next three weeks, months, even years may hold. "Making decisions without having all the appropriate facts or knowing all the different facets of the community that could be dangerous," said **Hernandez**. That's why **Rob Hernandez** says he is in "listen, learn and observe" mode. Observing the community he now helps shape.

Shaping with a community and a staff he has already seen deal with a hurricane, and thrive under pressure. 'The reverse would be that i'm here 6 months or a year and we would have a crisis and what would be going through my mind would be, well i don't know who I would rely on, I don't know how this team is going to perform, I now know that," explained the City Manager. He also knows is that crime in Savannah is a problem. "The community is very concerned about it, the community expects us to take proactive measures and we have," said **Hernandez**.

But the same community also may be too focused on each and every criminal act. "When we have an instance of crime that happens here its unfortunate," explains **Hernandez**. "But it stands out more i think in the community mindset because its out there its closer to them it gets publicized more in the city of Savannah." But he is not ready to rubber stamp the high cost of putting more officers on the streets. Stressing Fiscal responsibility, he hopes to find "progressive" ways to get police what they want in 2017. "My job is to balance all the competing needs in the community and to try to make a fiscally sound and operationally sound recommendation to the nine that eventually have to make the decisions," explained the City Manager.

The decisions about growth of our city is foremost on **Hernandez**'s mind. "We cant afford to be as methodical as we have been in the past again because the world is moving at a breakneck speed, and we have to keep up with the world," said **Hernandez**. "Are we behind?" "I'm not saying we are behind. But we have to pick up the pace." Pace of life, and pace of drawing businesses to Savannah. "Make sure they know Savannah more than just a great place to visit. A great place to relocate your business," said **Hernandez**. "Oh and by the way they have a really great local government as well."

Sun Sentinel
SEP 21, 2016

Deputy Broward administrator leaving for Savannah
By Brittany Wallman

The No. 2 official in Broward County government has resigned, after accepting a job in Georgia. Roberto "Rob" **Hernandez**, deputy county administrator, said in a letter to County Administrator Bertha Henry earlier this month that it was with "great sorrow" he submits his resignation. **Hernandez** was responsible for a large portion of county government, and also brokered the deal with the Florida Panthers that increased the hockey club's public subsidy but helped ensure the team would stay. In a handwritten note on the resignation letter, he thanked Henry for mentoring him, and giving him "the tough tasks to take on, like the arena."

Besides the deputy position, Henry has two assistant county administrators, Monica Cepero and Alphonso Jefferson, and two assistants to the county administrator, Gretchen Cassini and Alan Cohen.

Hernandez has been the deputy in Coral Springs and in Atlanta's Fulton County. But he said his professional goal was to be in the top position. "I'm not getting any younger and the years are just flying by, so this was the right time and the right community," the 50-year-old **Hernandez** said in an email recently. "I did not want to take any city manager or county manager job just for the sake of it, unless the community was right. Savannah is a nice town with lots of positive attributes and challenges, too." **Hernandez**'s resignation is effective Oct. 9.

WTOC 11 (GA)
August 11, 2016

City of Savannah Names Roberto Hernandez as Sole Finalist for City Manager
Author: *Sean Evans*

The City of Savannah held a news conference on Thursday to discuss updates in the search for the new city manager. After a nationwide search, and in a unanimous consensus and recommendation, **Roberto Hernandez**, deputy county administrator of Broward County, Florida, has been named the sole finalist for the position of City Manager of Savannah. Choosing **Hernandez** was a unanimous decision by city council members, and **Hernandez** has accepted the offer pending contractual negotiations according to Mayor Eddie DeLoach. Deloach said **Hernandez's** hands-on approach, experience in government and energy are some of the qualities that separated him from the other candidates.

According to the Broward County Government website:
Hernandez is an ICMA-Credentialed Manager with more than twenty years of progressive and responsible local government management experience. He re-joined Broward County in July 2013 as Deputy County Administrator. Previously, he served as Deputy City Manager for the City of Coral Springs overseeing various city functions as well as the city's community redevelopment agency. Prior to Coral Springs, he served as Deputy County Manager for Fulton County, Ga., where he oversaw public safety agencies, unincorporated area services, the Office of the Child Attorney, offender reentry program, and coordinated with the County's constitutional and judicial agencies. He previously served Broward County in a variety of capacities from 1994 through 2008, including serving as an Assistant to the County Administrator from November 2003 to June 2008. **Rob** retired from the U.S. Army Reserves in 2008 after a 23-year career, most recently serving as a senior instructor in civil-military operations.

Hernandez was a finalist for two other jobs previously. He was a finalist for the El Paso County, TX County Administrator position earlier this year, and was a finalist for the Delray Beach City Manager position in 2014. **Hernandez** talked about the advantages the region presents, with the ports, travel opportunities with Savannah-Hilton Head International Airport and the proximity to the beach and overall rich history, as well as the military presence. "I was very impressed by the passion from the city council in terms of what they see happening in the city over time, and their strong dedication to the community. That really, that really sold me," said **Hernandez**. While in Fulton County, **Hernandez** oversaw multiple departments including police, fire and rescue and also served as the county manager's liaison with judicial agencies.

Mayor DeLoach says he believes **Hernandez** could come in and start working right away with the police department and judicial services in Savannah to address crime. Alderwoman Carol Bell says she was impressed with how much **Mr. Hernandez** knew about the city and its operations already. So WTOC asked the front-runner what he's observed so far and hopes to achieve as the next city manager. "The need for continued re-investment in certain communities, a progressive strategy for bringing new investment for the community, for growing jobs. For

fixing and updating the condition of the infrastructure. Those are the things that everybody goes through, it's very common. But that's certainly something that I'm going to have to tackle once I get there," said **Hernandez**. Savannah City Council members met on Wednesday to hear from the search committee about where they are on the final candidates up for the position. The council and search committee then met behind closed doors in an executive session.

Current City Manager Stephanie Cutter announced her retirement at the beginning of the year, setting into motion a nationwide search for her replacement. So, what exactly was the city looking for when they put out the posting for a new city manager? It's an important question given that at least the last two city managers were not what the respective city councils eventually wanted in the role. First of all, for those who forgot or perhaps never knew, ours is a Council/City manager form of government. Meaning while the council appoints a city manager, the city manager runs the city and some might argue, the city council itself.

First and foremost council was looking for a person who had worked with and understood the challenges of a diverse community, not just racially but economically. Someone who could bring new ideas for breaking the cycle of poverty among those living in certain neglected parts of Savannah. And, of course, someone who bring new ideas to the table when it comes to fighting violent crime, in particular, gun violence. Here's an interesting role they want this person to fill: possible ax-man. Council, at least the newest members, want this new city manager to review city government top to bottom and start cutting if Savannah's City Hall has gotten too big, and taxpayers are paying too much for something that could be done with fewer people and resources.

For filling this role, our new city manager will receive the city's benefits package and a salary between $210,000 and $300,000. That's yet to be negotiated if **Roberto Hernandez** is our man. We mention briefly where this candidate has been and what positions he's held in the past. You may be thinking of all his deputy roles that this guy has always been the groomsman and never the groom. And **Hernandez** anticipated that issue in his actual resume' saying, "…I've resisted the temptation to 'chase' city manager positions solely for the sake of becoming a city manager at any cost. Instead, I've judiciously and patiently served in deputy roles in great organizations and exceptional communities."

Hernandez considers himself a pretty simply, straight-forward guy. He says his management style is fluid. It adapts to the specific situation. Not that we're looking yet, but **Hernandez** will tell you he is clean. This is what he told recruiters before tossing his hat in the ring: "…There is 'no dirt' on me. I live a clean, simple life, prefer to tell things as I see it, and sleep well at night." We will continue to follow those negotiations and let you know exactly what the city decides when it comes to salary, contract length, start time and other allowances.

Tribune Content Agency News Service (USA)
May 20, 2016

Is Broward ready for a hurricane hit? Drill shows how rescue would work
Author: *David Fleshler*

May 20--After raking the Florida Keys and Miami-Dade County, Hurricane Kimo reached Miramar as a lethal Category 3 storm, with sustained winds of 129 mph, and tore a diagonal corridor to Deerfield Beach. The slow-moving storm bore into the county for seven hours. A tornado struck Pembroke Pines, Cooper City, Davie and Fort Lauderdale. An eight-foot storm surge trapped people on barrier islands. With cell towers damaged, many smart phones became useless. This was the scenario Thursday as Broward County conducted a full-scale hurricane drill at the Emergency Operations Center in Plantation to prepare for the June 1 opening of hurricane season. About 300 people gathered on the operations center's vast open second floor to practice receiving calls for help, coordinating responses and dealing with the countless challenges of a natural disaster.

"We've got to get it right the first time," **Rob Hernandez**, deputy county administrator, told the group. "The public expects that we'll get it right the first time. We can't offer them excuses. There are no alibis, there are no mulligans." The scenario began seven hours after the all-clear, as the county lay damaged, darkened by power outages and full of a untold crises, with fatalities reported, residents trapped by floodwaters and many situations requiring immediate attention. Like much of contemporary life, the response to the crisis would be coordinated largely through a computer software program, in this case WebEOC 8.0, a crisis-management system developed by Intermedix Corp. of Fort Lauderdale.

As calls for help and reports of problems such as power outages came in, it was up to those in the room to route them to the right agency or issue the correct orders to deal with them. The group included representatives of law enforcement agencies, fire departments, the county government, Florida Power & Light Co., city governments, the Red Cross and many other organizations.
A call to rescue four people trapped on a roof in Oakland Park was routed to the Broward Sheriff's Office, said Major Kevin Shults, who headed the Sheriff's Office group at the emergency operations center. But the law enforcement agency's helicopters didn't have the sort of basket-and-line system required for such an endeavor. They asked the Coast Guard to do it instead. A call for water came from Pompano Beach, where the storm damaged the treatment plant, reducing its output by half. Alan Garcia, director of the county's division of water and wastewater services, ordered emergency interconnects from a county water plant that would temporarily provide the city with sufficient water.

In the pressroom, public communications specialist Cindy Malin scrawled occasional updates on a white board: "Flooding and tornado damage throughout county. Exact location TBD." "Drones being used to assess damage." As the various reports, crises and calls for help came in, evaluators in green vests observed the work in each area. They will prepare written reports. The Red Cross, which operates shelters, faced a crisis when 2,500 people showed up at a Coconut Creek shelter that was already full. The issue was "escalated" to a high-ranking group of

decision-makers, who authorized the opening of an additional shelter. "The exercise is to test our abilities to collaborate, communicate and respond," said Roberto Baltodano, the Red Cross' regional communications manager. "These are things that could happen during a real hurricane. We've had these hurricane scenarios." The county has not seen a direct hit from a hurricane since Wilma in 2005. "It's been 11 years since we had one," County Mayor Marty Kiar said to the group before the drill began. "Hopefully this will be another year that we're hurricane-free. But eventually we're going to get hit."

South Florida Sun Sentinel (FL)
Dec 8, 2015

Deal helps Panthers, helps Broward more

The Broward County Commission should approve a new agreement today with the Florida Panthers because the deal would better protect the public's investment in the BB&T Center. One can argue persuasively the county was wrong to make that investment of tourist tax revenue 20 years ago, when the Panthers wanted out of the old Miami Arena. A National Hockey League team draws fewer tourists than Broward's beaches and the convention center. The county, however, can't back out of that commitment. With that in mind, county administrators make their more persuasive case for the front-loaded $86 million deal that would run through 2028.

One argument against the deal is the public shouldn't subsidize the rich owners of the Panthers. Deputy County Administrator **Roberto Hernandez** responds that the money -- none of it property tax revenue -- would go toward the arena, not the Panthers. The team owners also run the company that manages the BB&T Center. They would have to spend the $86 million on improving, operating and promoting the arena, of which the team is the main tenant. The county would have to sign off on the improvements. The team also would continue to pay $5.3 million per year toward the arena's debt, which will be paid off in 2028. So the county's investment would go to the county's facility.

The other main argument against the deal is the county should spend the money on projects that better play to Broward's tourism strengths -- such as beaches. Two other key priorities are an expanded convention center and a convention center hotel. The arena is far from the county's major tourism hubs. **Hernandez** acknowledged, "We are very sensitive to that." He believes, however, the county can "meet all of our obligations" regarding tourism promotion, especially beach renourishment. County officials, **Hernandez** said, routinely have made conservative estimates of 3 percent for increases in tourist tax revenue. In fact, annual increases have been more like 5 percent.

The county has put much of that balance in reserve, **Hernandez** said. A recent study of the tourist tax questioned the amount of money held in reserve. Doing so, **Hernandez** said, means the county can use that money for one-time projects like beach renourishment and still pay the recurring expenses of the Panthers deal. Part of this story is the coming debate over raising the tourist tax from 5 percent to 6 percent, even though none of that potential revenue is part of the Panthers deal. It is generally agreed money from the sixth cent would go toward convention center expansion.

Hernandez said the county is waiting for bids on the expansion. When administrators have an idea of the cost, the county will start discussions on raising the tax. Miami-Dade and Palm Beach counties have raised their tourist taxes to 6 percent. +The deal would cut the county in for a share of profits if the money-losing Panthers became big winners on the ice and financially. The arena would have a better chance of getting an all-star game, and the team would continue to help youth hockey in Broward. All are nice points, but the focus of the deal, correctly, would remain

on the BB&T Center. The healthier it is, the better for the county. Losing the Panthers would mean losing 40 dates, and the BB&T Center has lots of regional competitors. So the arena is healthier with the Panthers, and with the team having a better chance to succeed.

Having studied the financials, **Hernandez** said, "We came to the conclusion that it would cost the county almost as much if the team stayed as if the team left. It's almost an economic wash. So if we would pay with or without them, it's better to have them." The deal would allow the Panthers to leave after eight years, but the team would have to repay the $72 million in tourist tax revenue it had received. If the team left after eight years, the county would have enough money to repay the arena debt. As long as the Panthers stay, **Hernandez** said, "We transfer a lot of the responsibility to the team." The county also would get development rights to land around the arena. One other point in the deal is worth noting. Two decades ago, the county committed to spending two cents of tourist tax revenue on the arena. The county hasn't met that obligation. Under the deal, **Hernandez** said, the Panthers would drop all claims to any unspent money. There might be emotional reasons to reject the Panthers deal. There are better business reasons to approve it.

Capital Gazette (PA)
March 3, 2015

Broward Commission Brainstorms Ways to Help Struggling Center Pocket of County
Author: *Brittany Wallman*

In the heart of Broward County is a zone of economic depression that even the most dramatic real estate boom didn't lift out of poverty. The unincorporated neighborhoods in the 33311 zip code — roughly between Interstate 95 and U.S. 441, north of Broward Boulevard — were left behind by the cities around them. No city will take them. County commissioners are their only local government. Commissioners met Tuesday to talk about the central county community — four mostly African-American neighborhoods of about 7,000 people — and agree on a host of small efforts to help. Only $4.8 million is allotted for economic development there — a sliver of the county's overall $4.1 billion budget. County Commissioner Dale Holness, the area's only direct local representative, said it's the first economic development money the county has spent there since the 1980s. About $30 million has been spent on improvements of roadways, bus shelters, drainage and the like. The moves commissioners endorsed Tuesday are hardly dramatic: Relocating a Boys and Girls Club to Delevoe Park, continuing building homes on 144 lots the county owns, working with small businesses to improve properties by offering loans or grants, giving a makeover to some of the roadways, improving parks, and banking land for future redevelopment. No one promised an immediate turnaround. "It doesn't happen overnight," county Economic Development Director Sandy-Michael McDonald warned. But county leaders said they support a renewed focus. "I'm glad to see we're moving forward with some planning," Holness said, "because the community desperately needs it." While the rest of Broward enjoys a rebound from the Great Recession, with three years now of positive economic growth, the central county zone remains stagnant. "These communities look to us to guide them along the way to economic prosperity in their neighborhoods," Deputy County Administrator **Rob Hernandez** said.

Joblessness is down to about 5 percent countywide. But in Central Broward, it ranges from 21 percent in Boulevard Gardens, to 22 percent in Roosevelt Gardens, to 32 percent in Washington Park, to an astounding 44 percent in Franklin Park. Holness said many residents there lack transportation and job skills, and some have criminal backgrounds — all obstacles to employment. Countywide, the median household income is $51,251. In the central county area, it's significantly lower, at $33,432, Assistant County Administrator Alphonso Jefferson said. Crime is down there, county officials said. Still, the number of rapes, burglaries, car thefts and assaults are relatively high in such a small area, county leaders said, and residents complain they regularly witness drug deals and prostitution, as well as assaults. Broward County Administrator Bertha Henry said she would begin implementing the economic development ideas discussed Tuesday. McDonald said he hoped to leverage the money to spark private investment from business owners. Each project will return to a County Commission agenda for approvals. Across downtown, at the Fort Lauderdale City Commission, Commissioner Robert McKinzie asked that the city take another look at annexing the unincorporated areas. The city will move in that direction.

Broward New Times (FL)
March 18, 2014

Florida Panthers Asking for Public Money, but Proposal Seems to Benefit Only the Team
Author: *Chris Joseph*

Looks like the Florida Panthers' latest proposal to Broward County has altered language that would basically screw over the county while they make the big dough, according to a rundown of the proposal by the Sun Sentinel. The first proposal the Panthers made at the beginning of the year had asked the county for something around $70 million, claiming that they had been losing $20 million and that they need public funds to keep from being dissolved from the NHL. This latest proposal asks for $80 million or more. The Panthers also want to develop 22 acres north of the BB&T Center for a casino-hotel that the county is also supposed to pay for. The Panthers turned over the 57-page proposal to Broward County commissioners and, according to the Sentinel's findings, it boils down to more money for the team while the county gets the shaft. Those wishes are not far off from when the team asked for county money originally back in January. The team's original proposal included taking $4.5 million of its annual payment off the books and having it picked up by Broward County. The team also asked the county to contribute $500,000 a year toward maintenance.

The latest proposal says the Panthers need a hotel-tax subsidy package worth $80 million over the next 14 years to keep them from losing money. But the overall deal would seem to benefit only the Panthers. "As currently written in their proposal," Deputy County Administrator **Rob Hernandez** told the Sun-Sentinel, "it would definitely have an impact on our ability to share in any of the profits." County officials say they won't support the proposal without a better return for Broward's taxpayers. Back in September, the Panthers were bought for $240 million by Cliff Viner and Sunrise Sports & Entertainment to a group led by New York businessman Vincent Viola. The Panthers have had an operating loss of $12 million for the 2011-12 season and were worth $170 million, according to Forbes. As for Panther and hockey fans' reaction to this, they took to Twitter with the usual vitriol.

US Fed News (USA)
August 11, 2013

Broward County Names New Deputy County Administrator
Author: *Staff*

Broward County has issued the following news release:

Broward County Administrator Bertha Henry has announced the appointment of **Roberto "Rob" Hernandez** as the new Deputy County Administrator. **Hernandez** is an experienced public servant who served as deputy county manager for Fulton County, Georgia, and most recently as deputy city manager for Coral Springs in Broward County. He is returning to County Government, where he first began serving the County in 1994 and most recently served as an assistant to the county administrator from 2003 to 2008. As deputy county administrator, **Hernandez** will assist the administrator in managing the day-to-day operations of the County, and oversee the activities of several large departments, including Public Works, Human Services and Environmental Protection and Growth Management, as well as the Parks and Recreation, Libraries and Cultural divisions. Also reporting to **Hernandez** will be the Office of Economic and Small Business Development, Office of Public Communications, Office of Intergovernmental Affairs and Professional Standards, and the Office of the Medical Examiner and Trauma Services.

Henry said, "We are excited to have **Rob** back with Broward County. He has dedicated much of his professional life to public service and has a keen understanding of how county government programs and services help meet the needs of our residents, businesses and visitors. He will be a valuable asset to the County and the community." **Hernandez** has a bachelor's degree in public administration from Florida International University, and a master's degree in public administration from Nova Southeastern University. He is a graduate of the Broward Fire Academy and the U.S. Army John F. Kennedy Special Warfare Center and School. He retired from the U.S. Army Reserves in 2008 after a 23-year career, most recently serving as a senior instructor in civil-military operations.

McClatchy-Tribune Regional News (USA)
February 6, 2013

Brief: Coral Springs Offers Incentive to Company
Author: *Lisa J. Huriash*

Taxpayers will be handing over cash to a new business considering coming to town, although they don't know yet who is getting the check. City officials said the business, described as a "pharmaceutical manufacturing, research and development" company, is a coup for the city. The company is expected to bring 108 jobs and a new source of tax revenue to the city.

Dubbed "Project Rock Solid," the business will receive $540,000 in state, county and city money in incentives through the state's qualified target industry tax refund program. In addition to the city's portion of $54,000, city commissioners agreed Tuesday to allow $825,000 in credits that would normally be paid for fees such as building permits.

"The bottom line is if we don't offer incentives, somebody else will," said **Rob Hernandez**, deputy city manager. "It's the cost of doing business." The company is allowed by state law to remain unknown to the public while it's in this process of receiving incentive money. **Hernandez** said the company asked to remain anonymous for competitive reasons.

McClatchy-Tribune Regional News (USA)
December 13, 2012

Coral Springs to Consider building New City Hall
Author: *Lisa J. Huriash*

City commissioners said Tuesday they were open to the idea of spending millions of dollars to construct a brand new City Hall. "To me, the short answer is yes," said Commissioner Claudette Bruck. "We should proceed and we should proceed now." City leaders must now decide if they really want the new building, where it will go and how to pay for the estimated $25 million cost. It will eventually be a "financial decision," said Vice Mayor Tom Powers. "There's way too many questions." For about a year, former Mayor Roy Gold had proposed closing both City Hall buildings on the north and south sides of Sample Road to construct one large facility.

But while some commissioners had previously said the project could become unwieldy and too expensive and they doubted there would be public support, the majority now seem open to at least further discussion. Deputy City Manager **Rob Hernandez** said the 45-year-old building was "outdated and functionally obsolete." "You can go anywhere and hear conversations in the next office," he said. And, the current building is "not a source of civic pride." "That's depressing," Bruck said. **Hernandez** also said the current building is expensive to keep up, with $1 million alone needed to retrofit the building to accommodate a new telephone system.

"If we're pouring money into a facility that is no longer worth pouring money into," the commission should consider a new building, said Commissioner Dan Daley. City Manager Erdal Donmez said the city staff will come back with "more refined numbers" in late January with the projected costs to build a new City Hall at various spots, which include the current location, Mullins Park, and the area envisioned to be built as a downtown.

Several South Florida cities have recently built new City Hall complexes. Doral earlier this year spent $22 million on its new building and Wellington built its new building last year for $10.5 million. In Coral Springs, officials said municipal bonds would be the best way to cover the expense Commissioner Larry Vignola said he has always opposed the plan and still does. "Is it a top priority to spend more than $20 million on? Not in my opinion, and not in the opinion of the majority of our residents. I don't why we're still talking about this. I don't think now is the time for a project like that."

South Florida Sun Sentinel (FL)
November 24, 2011

Springs Gets New Deputy City Manager
Author: *Arun Sivasankaran*

Roberto Hernandez, who has over 20 years of progressive and responsible local government management experience, has been appointed Coral Springs Deputy City Manager. "I look forward to leveraging **Rob's** operational expertise to continue delivering exceptional services to our community with the best possible level of service," City Manager Erdal Donmez said. Prior to joining Coral Springs, **Hernandez** was the Deputy County Manager for Fulton County since 2008. **Hernandez** also served as an Assistant to the County Administrator for Broward County. Before that, **Hernandez** served in a number of key roles with local government.

His professional experience includes key positions in public safety, housing and community development, and social services. In addition, his military service includes more than 23 years in the U.S. Army Reserves. He has held several leadership positions and has served on Active Duty in support of several military operations. **Hernandez** holds a Master of Public Administration degree from Nova Southeastern University and a Bachelor of Public Administration from Florida International University. **Hernandez** also obtained his certification in firefighting from the Broward Fire Academy.

The Atlanta Journal-Constitution (GA)
May 25, 2011

Illegal Dumping
Putting the Brakes on Tire Dumping
It's no Easy Task as Illegal Activity Stealthily Spreads Across State
Author: *Ernie Suggs*

Over 10 days last fall, someone made three trips to the Arts Exchange and dumped more than 1,000 old, dirty tires onto the property. The location was ideal. Easy access off I-20 in southeast Atlanta. A dead-end road. A wide-open space. Across Georgia, there are hundreds of examples of illegal tire dumping such as this, on public and private lands, creating a problem that is as much health hazard as it is eyesore. Of 10 million scrap tires generated in the state annually, an estimated 1.5 million are discarded illegally, the Georgia Environmental Protection Division said. And Atlanta finds itself at the center of this rubberized abandonment, with its city council compelled this week to form a separate tire commission to combat the violators. The city annually deals with 450,000 scrap tires, nearly 70,000 of them dumped illegally, said Winthrop Brown, Georgia EPD program manager.

Not surprisingly, money is at the heart of this problem: Tire salvagers get paid to collect tires but many of them won't pay for recycling. So they dump the tires. Everywhere they can. "It is a very significant problem in the state, because of the expense and because these tires are breeding spots for mosquitoes and vectors," said Brown, noting that Newton County last year collected 67,000 dumped tires. "Dumping is bad in metro Atlanta because of the population, but dumping is increasing in rural areas because of the distance they have to travel to get rid of tires."

As part of his job, the EPD's Brown regulates how tires are disposed from car dealerships and tire shops, among others. Businesses must pay for a carrier to pick up truckloads of old tires. Otherwise, there is little concentrated enforcement. Tire dumping is a felony, but there are just five criminal cases currently pursued by the state, though several people previously have served prison time for this offense, Brown said. "If nobody calls it in, we have a hard time prosecuting," Brown said, adding there are only a few local jurisdictions, such as Columbus and Macon, that have their own laws on the books, though state regulations exist. In April, Atlanta Councilwoman Joyce Sheperd, who pushed for the tire commission, led a clean-up in District 12 in which 2,000 tossed tires were collected. In southeast Atlanta, she has overseen the retrieval of 4,711 tires this year, and more than 10,000 over the past five years.

Fulton County Deputy Manager **Rob Hernandez** said south Fulton has the same problem as Atlanta with illegal tire dumping and no ready solution. The county has considered putting a deposit price on used tires, similar to glass bottles, to encourage residents to take them to a landfill. "It's difficult to prosecute offenders unless they're caught in the act," **Hernandez** said, "and Fulton lacks the staff to try to trace tires back to suppliers and find out who they were sold to." Last summer, the Fulton County health department spent $23,000 on a tire drive that netted 2,100 tires. The public works department pays $50,000 per year to dispose of old tires. "This has been a real problem for us," said Cheryl Odeleye of the Arts Exchange, surveying the endless

and unwanted black mountain left near the center. "It is a health hazard. And it is a morale downer for someone to come in and be so disrespectful to us."

Piles of old tires don't necessarily present toxic health issues, rather they serve as nesting places for rats, snakes and mosquitoes, little consolation to those left with this mess. Across metro Atlanta, jurisdictions vary in how to deal with dump sites. DeKalb County officials said they defer to state law in dealing with tire dumping. In Clayton County, illegal dumping can land someone in jail for six months. Cobb County claimed it hasn't had much of an issue with discarded tires, outside of a few isolated incidents. "What a lot of people don't understand is that there are a lot of expenses involved in tire disposal," Dewey Grantham of Liberty Tire Recycling said.

If operating lawfully, a carrier takes used tires to a recycler, where in Georgia there is a 90 percent chance these tires will be converted to fuel. A carrier typically charges $2 per tire, but has to pay the recycler $1 for each, cutting into the profit. An illegal carrier might charge $1.50 per tire on pick-ups, bypass the recycler and leave the tires at an isolated place like the Arts Exchange. There also have been cases in which people have rented trucks and abandoned them filled with old tires. Bolder criminals have stocked empty warehouses with worn tires. The state lacks funding to properly monitor tire disposal. For every new tire larger than 12 inches and sold in Georgia, a consumer pays a $1 fee, which was supposed to go to a solid waste fund. Yet for two years, state lawmakers have diverted the funds elsewhere, covering other needs. Limited state spending also has resulted in fewer inspectors, making it harder to monitor and clean up tire dump sites.

The Arts Exchange, even with more than 1,000 tires, had what was considered a small clean-up. Liberty Tire Recycling volunteered to remove the tires, employing four workers. The tires were loaded in less than two hours. Grantham said his company processes 25,000 tires daily. "What is unfortunate is that illegal tire dumping gives tire recycling a bad name," Grantham said.

Tire disposal
Number of scrap tires generated in Georgia annually: 10 million
Number of those that are disposed of illegally: 1.5 million
Fulton public works department's expense each year for tire disposal: $50,000
State fee charged on each new tire larger than 12 inches that is supposed to fund a solid waste fund, but has been diverted for the past two years for other purposes: $1

The Atlanta Journal-Constitution (GA)
May 16, 2011

Your Tax Dollars
Grumbling Greets Amphitheater
Supporters See Boon for South Fulton; Opponents Question Use of Funds
Author: *Johnny Edwards*

South Fulton has a lot to brag about these days. After last week's announcement that Porsche would leave Sandy Springs to build its North American headquarters near Hapeville, Fulton County officials will open the new 5,200-seat Wolf Creek Amphitheater. Supporters are counting on the venue becoming another Chastain Park, a regional draw where picnicking music fans take in classy, intimate concerts. Fulton County Commissioner William "Bill" Edwards, who has championed the $6.1 million project for the past decade, predicts it will draw the spending power of concertgoers from throughout the metro area to nearby stores and restaurants, bolstering a local economy hit hard by the recession.

But the amphitheater is a sore subject for north Fulton residents who say it's another case of the county government using their tax money for projects that don't benefit them. State Rep. Lynne Riley, R-Johns Creek, who opposed the amphitheater when she was a Fulton commissioner, said the $6.1 million shouldn't have come from the county's general fund. "Every citizen of Fulton County, regardless of where they live, top to bottom, is underwriting the cost of operating that facility," she said, "whether it's a gain or a loss."

Edwards said south Fulton residents pay county taxes, too. "South Fulton needs to be able to live, work and play right where they are," he said. Business owners between the amphitheater, which is off Camp Creek Parkway, and I-285 expect a boost. Anwar Noorali, owner of Camp Creek World of Beverage, predicts a 15 percent to 20 percent increase in business on concert days from wine shoppers. "Any economic activity, and concerts that bring in a lot of people, will definitely be good for the local economy," Noorali said.

But some point to the location -- in the flight path of the world's busiest airport -- as an issue. Michael Fitzgerald, a Johns Creek resident and member of the Milton County Legislative Advisory Committee, said he can't fathom making a 45-mile drive to attend a show there, not with the constant roar of jet planes overhead. "One of the problems with Fulton County is it's too big, and that's a long way," he said.

The Wolf Creek Amphitheater has stirred tensions along the way. When the construction contract was approved in 2008, Riley and Commissioner Tom Lowe were outvoted 4-2. Riley contended that figures from a 2005 feasibility study -- which predicted the amphitheater would be profitable after three years -- needed to be updated. Edwards fired back that she and Lowe were trying to sabotage a revenue-generating project that south Fulton wanted. Edwards also brought up that the county spent $1 million on Alpharetta's Verizon Wireless Amphitheatre, which was privately built. The county's contribution came through a trade-off for north Fulton not having garbage service at the time. Gary Bongiovanni, editor-in-chief of Pollstar Magazine,

said a 5,200-seat venue will have a tough time up against the 6,500-seat Chastain Park in Buckhead, the 12,000-seat Verizon amphitheater, and the 19,000-seat Aaron's Amphitheatre at Lakewood in southeast Atlanta. The proximity to Hartsfield-Jackson International Airport won't help, Bongiovanni said. "Especially if you're talking about doing any acoustic acts," he said.

Fulton County Arts Council interim Director Michael Simanga, whose department will run the amphitheater, said he isn't worried about planes. Before construction began, the county held free concerts at the site, including Atlanta Symphony Orchestra performances. "You can't really hear it, once the music is playing," Simanga said. Grammy-winning soul/R&B singer India Arie will perform a free concert June 4 for the grand opening. No shows have been booked after that, he said, though he's in negotiations for some. Riley questions whether Wolf Creek will cover its operating costs.

The county doesn't have a detailed operating budget yet. Deputy County Manager **Rob Hernandez** said planners didn't expect the facility to be finished this soon, so the upcoming concert season will be something of a trial run, with 10 shows at the most. The plan is to recoup costs through concert bookings, and the County Commission has approved a fee schedule. Expenses should be limited to electricity, water, janitorial maintenance and groundskeeping, like any public park, **Hernandez** said.

Wolf Creek was the shooting venue for the 1996 Olympics, and it currently houses a police training center. A new library is in the works, and other plans include a sports complex, walking trails, horse trails, and an arts, cultural and events center, which also could generate revenue through bookings, Edwards said. Alre Alston, owner of the Ultimate Bar and Grille in Camp Creek Pointe shopping center, expects the amphitheater to bring him customers before and after shows. "I think it will be a good thing, as long as they bring in the quality clientele, not the rough clientele," he said.

Edwards said the county won't allow hard-core rap acts. He's looking for shows that appeal to south Fulton residents, citing performers that played free concerts -- R&B groups such as the Manhattans, the Spinners, the Dells and the O'Jays. However, he said, north Fulton residents are welcome to book shows, too. The amphitheater also can be used for church functions and graduations. On a recent visit, Edwards showed off the massive stage, the pristine dressing rooms for stars and the 4 feet of legroom between the rows of seats. He said he has no doubt the project will pay for itself. "It isn't about being sustaining," Edwards said. "Let me tell you what we want to pay: lights and water. This is for the people, for people to come out here and have a good time."

The Atlanta Journal-Constitution (GA)
January 22, 2011

Fulton Hikes Club Fees Despite Suit
Judge Declared Adult Ordinance Invalid after Free Speech Dispute
Strip Joints' Attorneys Debating Next Step
Author: *Johnny Edwards*

Fulton County will raise fees on strip clubs by hundreds of dollars this year and double them for nude dancers, even though the county remains locked in litigation over the fees after a federal judge recently declared the adult entertainment ordinance unconstitutional. With no discussion, the commission voted 5-1 this week to raise a list of fees on businesses and residents in unincorporated south Fulton expected to generate an extra $303,601 per year. Amid new and increased rates for false alarms, fire safety inspections, escort services and door-to-door salesmen were several license and permit hikes on the county's three nude bars off Fulton Industrial Boulevard.

Attorneys for the clubs say they are considering what to do: whether to seek an injunction or pay the fees and hope to recoup them as damages. "I don't know what right they have to increase them when the case is still being litigated," said Jim Cline, who represents Riley's Showbar. "I guess they can do whatever they want. I guess we can argue about it when we get to the end." **Rob Hernandez**, the deputy county manager for the South Fulton Special Services District, said the county attorney advised officials that since the lawsuit is still pending, Fulton is justified in raising the fees. If a club refuses to pay, it could have its license revoked and would face closure, he said. "There was an injunction ordered on certain aspects of the ordinance, but not all aspects of the ordinance," **Hernandez** said.

County Attorney R. David Ware did not return messages from The Atlanta Journal-Constitution inquiring about the issue. The judge's ruling arose from a First Amendment lawsuit filed by a group of clubs in 2001 that challenged the county's revved-up regulation of nude dancing as a prior restraint on free speech, part of a larger battle being waged throughout metro in both state and federal courts. The clubs won the 2001 case in U.S. District Court. It was reversed on appeal, and then it was sent back to District Court. In November 2010, Senior U.S. District Judge Robert Vining ruled that the code illegally put the clubs through a bureaucratic wringer, making them wait indefinitely for approval from police, fire and building departments. While Vining withheld judgment on whether the fees were too high, he did say that if sections of the ordinance don't hold up, none of it can stand. "Judge Vining has said that we don't have an ordinance," Cline said. "Unless they appeal, then there's no ordinance unless they go back and pass one."

But starting Feb. 1, the county will raise the cost of an adult entertainment license from $6,000 to $6,400 and annual license renewal from $4,000 to $4,300. Employee permits will rise from $300 to $325, permit renewals from $50 to $100, employee background checks from $50 to $55 and fire inspections from $30 to $75. The increases are expected to generate an additional $11,590 per year. Cary Wiggins, an attorney for Fannie's Cabaret, said that since nude dancing is protected speech, a county's licensing fees can be no more than the cost of regulation. He said

there is no evidence that nude bars cause any more problems for police than regular bars, and he doesn't see how Fulton can charge $4,000 to renew a license, much less $4,300. "I'm just unaware of any evidence justifying a rate hike," Wiggins said.

The third club off Fulton Industrial, Club Babe's, isn't taking part in the lawsuit. Managers at all three declined interview requests. Wiggins also represents two Sandy Springs clubs that, while no longer in unincorporated Fulton, are seeking back compensation from the period before Sandy Springs became a city. As with the state government and other local jurisdictions, the Fulton fee hikes are part of a strategy to make up for declining revenue without burdening property-tax payers. **Hernandez** said he is also trying to recover costs and adjust an array of charges, many of which haven't changed in five years, for inflation. North Fulton Commissioner Liz Hausmann cast the sole dissenting vote Wednesday. She told the AJC that she opposes raising any fees or taxes in this economy without reducing spending. She said she wasn't aware of the strip club issue.

The Atlanta Journal-Constitution (GA)
May 17, 2010

County Targets Image Change
Campaign is to Clean up Fulton Industrial
Code Enforcers, Police Start out Cracking Down on Boulevard's Motels
Author: *Steve Visse*

Fulton County has an image problem with its huge warehouse district: Its legitimate economic opportunities sometimes have been overshadowed by its undesirable qualities. This has caused companies to bypass it and take their business across the Chattahoochee River to Cobb and Douglas counties, or get out of Fulton and relocate. "We have had tenants who have been there for years and years and who decided to move across the river," said Tom Flanigan, ING Clarion asset manager. "I don't think it was taxes." To attract new business and keep what it has, Fulton is pushing a campaign designed to clean up what it says is the 10 percent of Fulton Industrial Boulevard that gives the rest of it a bad name. For starters, code enforcers and police have targeted motels that allegedly were centers for sex and drug trades; three were closed for health and safety violations, and a fourth was sold to a new owner, who refurbished the property and secured a Days Inn franchise.

The new motel has posted rules in the lobby banning unregistered guests from rooms and requiring identification to reserve a room as a customer. "We got rid of a hub of criminal activity," said Tom Phillips, county code enforcement administrator. "You can walk in there now and say, 'I can stay here.' Two years ago you wouldn't have said that. You might not even have walked in there." At its last meeting, the County Commission banned truck drivers from parking their big rigs in vacant lots off the boulevard and using them as unofficial truck stops. "Truck stops, as you know, have a link to prostitution," Phillips said. Even strip clubs such as Fannies' Cabaret are seeking a more orderly boulevard. Fannies' is trying to distance itself from prostitution, specifically the hookers who regularly have solicited the club's clientele when arriving and leaving. The club hired security to run them off. "It didn't used to be this way 15 years ago," said Thomas Madden, Fannies' Cabaret general manager.

Police have cracked down, making 107 prostitution arrests in the past two years compared to 41 in the three previous years, according to county statistics. The county is committed to restoring a clean-cut image to the boulevard's seven-mile roadway that runs from Fulton County Airport at Charlie Brown Field to Campbellton Road in south Fulton, according to Deputy County Manager **Rob Hernandez**.

The area has 89 million square feet of warehouse and commercial space but a county study released in March showed that several buildings and warehouses, developed in the 1960s and 1970s, are practically unusable. Seven properties are listed on the Georgia Hazardous Site Inventory, including five for the presence of cancer-causing vinyl chloride. Noting its potential, the study described the boulevard as potentially one of the largest and most prestigious warehousing and transportation hubs east of the Mississippi River. "Today it may still be the largest, but it has lost much of its prestige," the report concluded. Last month, the county used

the area blight and vacant warehouses to have the district reclassified as an opportunity zone urban redevelopment area. That allows it to borrow $26 million from a federal bond program and give employers a $3,500 tax credit for each new job for 10 years. **Hernandez** said the county wants to use the bond money to install crime surveillance cameras in the area. A $100,000 federal grant already was secured to increase police patrols and hire seven officers specific for south Fulton. "We're serious about this," **Hernandez** said. "We have put together everything we have available in our tool box to assist Fulton Industrial."

Satellite offices for county services and commissioners Emma Darnell and Bill Edwards have been set up to show the county is committed to improving the area. People have noticed. Companies recently either bought or leased separate industrial properties that cover a combined 260,000 square feet. With upgrades, the area should be able to sell itself. It is located in the center of a metro area that promotes itself as a national transportation hub. Fulton Industrial offers a regional airport and is close to Hartsfield-Jackson International Airport. I-20 is located nearby, as is the Norfolk Southern Intermodal container shipping yard in Austell, an industrial area crisscrossed by railroad tracks.

A next step would be to develop a Community Improvement District, which has happened elsewhere in Fulton and in Cobb, DeKalb and Gwinnett counties. CIDs require commercial property owners to tax themselves to pay for development plans, transportation alternatives and security. Boulevard activists so far have been unable to obtain 51 percent approval of the property owners to install a CID, which increases tax bills by 3 or 4 mills. Yet one man on board with this idea is Madden, the strip club manager, who recognizes that even the adult entertainment business needs better security. "We have to keep it clean here," he said.

The Atlanta Journal-Constitution (GA)
October 9, 2008

Fulton Begins Taking Steps to Aid 911 Center
Author: *D. L. Bennett*

Fulton County has begun making changes that officials hope will improve a 911 center beset by chronic understaffing and dangerous operator errors. By filling 12 vacancies and promising reforms to reduce job-related stress, county officials say they should be able to boost both work quality and employee retention. "We are adamant when we say we are going to solve the problems in the center," said **Roberto Hernandez**, deputy county manager. "Once we know all the facts, we will address it immediately. We will fix it."

Problems at the center that takes emergency calls and dispatches aid were discovered in August when an operator mistakenly sent help to the wrong location for a Johns Creek woman who later died. An Atlanta Journal-Constitution investigation found more than 1,000 write-ups of employees during the past five years for everything from fighting, dispatching mistakes and chronic tardiness to falling asleep on the job. Current and former employees complained that understaffing leads to workers being routinely forced to work 12- and 16-hour days, straining family life and causing conflicts in the center, dispatching and call-taking errors. The inquiry found mistakes that endangered not only callers seeking help but the emergency crews sent to provide aid.

Fulton also has launched three of its own investigations -- one by an outside consultant reviewing center operations, another by police of the incident on Aug. 2 and a third by **Hernandez** and others looking at employee satisfaction issues. Rather than wait for those all to be complete, County Manager Zachary Williams has filled 12 of 33 openings for communications officers and supervisors by reassigning operators who previously provided service for the city of Milton under contract. Milton dispatching is now handled by Alpharetta.

"This definitely should add value and reduce stress on the staff," said Commissioner Lynne Riley, who represents the city of Johns Creek, where Darlene Dukes died Aug. 2. Fulton also has in process two classes of trainees who should be able to fill all the remaining spots, a move he hopes will cut down on stress at the center and reduce conflict and mistakes. Everyone should be on the job within six months, **Hernandez** said.

"We remain committed to excellence in all public safety services, and recognize that 911 operators are the first link in the chain of emergency response," said Williams. "These men and women save lives each day." The auditor's report is now due Nov. 10. The internal probe by police should wrap up this week. **Hernandez** said the committee's work on employee issues is ongoing and its plans address issues like child care for employees who work odd hours and stress management.

The Atlanta Journal-Constitution (GA)
October 5, 2008

Not Enough Workers and a lot of Slack
Author: *Heather Vogell & D. L. Bennett*

A supervisor told 911 worker JoLynn Griffin she didn't have any days left for vacation. The Fulton County emergency center had barely enough workers to cover shifts. But Griffin went on a cruise anyway. She returned to find her job waiting, her personnel file shows, just as it had been when she'd missed work before. Chronic absenteeism and tardiness are among the center's most vexing problems, records and interviews suggest, accounting for roughly a quarter of all personnel infractions and aggravating a staffing shortage that can mean marathon shifts for the dispatchers who do show up. Griffin is one of scores of Fulton 911 employees who racked up roughly 280 sanctions for arriving late or not at all -- often on multiple days -- a database of personnel actions since January 2004 reveals. The problem is likely worse; officials say their data is not comprehensive.

No-shows were counseled, warned and occasionally suspended. But they were rarely fired, data show. Some workers accumulated long disciplinary histories that included 911 call errors as well as absences, and they weren't terminated, according to personnel files. "It appears that certain violations of performance were tolerated or forgiven, for lack of a better word, in order to maintain the staffing required to operate the center," said Lynne Riley, a Fulton commissioner. Losing trained employees wasn't an attractive option for the 911 center. In recent weeks, as many as a third of the center's total positions have sat vacant. Deputy County Manager **Rob Hernandez** said staffing shortages are common at 911 centers, but Fulton's center needs to train more new workers and improve retention. A county consultant should address discipline problems such as absenteeism, he said. "In general, discipline was used like a tool -- a management tool -- rather than as a last resort," he said. "It may have lost its intended effect."

Data show at least eight 911 workers have been sanctioned 10 or more times for playing hooky or walking in late since 2004. Migraines, oversleeping and not feeling well were regular excuses, files say. Employees also blamed a pet illness, panic attack, traffic, getting back in town late, driving a child to school, car problems and a broken toilet. Even current center director Crystal Williams has filed her share of tardy slips, records show, citing late starts, trouble finding parking, feeling ill and, on at least three days, alarm clock malfunctions. Reached by phone, she declined to comment. Former 911 center employees said chronic tardiness and absenteeism led to feuding among staffers. Cassandra Eloi said that during her year at the center it was common to be held over for extra work because others failed to show. Those who did come in often worked 12 to 16 hours straight, she said. "You are running a 911 center on minimal staffing every day," said Eloi, who was fired for being rude to callers. "You have calls holding. You have calls dropping, every day."

Griffin left without permission for the cruise and two other short vacations between September 2003 and March 2004 -- in addition to taking dozens of sick days and showing up late at least 14 times, records show. Alfred "Rocky" Moore, the center's director at the time, wrote in a March

2004 letter that he was considering dismissing her. "Your personal vacation [cruise] did not justify an emergency vacation," he wrote. But Griffin hung on, volunteering for a demotion instead. Her tardiness continued. One night in January 2006, the call center sent a Fulton sheriff's car to pick her up for work because she had car trouble, records show. Later that year, she was suspended after supervisors said an error she made delayed response to a fire call. She took disability retirement in mid-2007.

Griffin, a 23-year center veteran who was called "an excellent supervisor" in a 1995 job review, said in an interview she disputes that she caused a delay on the fire call, or that her unpaid leave resulted in a staffing shortage that couldn't be covered. She said she was singled out for infractions that others -- including supervisors -- also committed. She felt Moore had a grudge against her. "There was no reason to deny me," Griffin said of her vacation requests. "It's not like I didn't do my share of covering for people, either."

Other workers also complained discipline was not handed out evenly. "There are subjects who manage to be sick every payday weekend and never receive any type of discipline from your same staff," communications officer Francesca Pearson wrote in an April memo to Moore. Pearson could not be reached for comment for this article. Morale was low. After a supervisor threatened one employee with suspension for tardiness, she responded: "go ahead and suspend me that's one less day that I have to work here," a note in her personnel file said. Moore, who was reassigned, did not return three phone messages seeking comment.

The 911 center hasn't lacked the money to fill vacancies. For the past three years, the center -- funded by fees tacked onto phone bills -- has ended the year with excess cash in its salary account, records show. In 2007, it finished nearly $1 million richer than it started. Instead, **Hernandez** said the center appears unable to keep up with attrition. Some drop out during the intense six-month training period. Others start but find the pressure and night shifts unworkable. Child care and worries about job security as some cities encroach on Fulton's call territory are also factors, he said. He said he does not want to second-guess center managers on their handling of absent employees. But it is a serious problem. "I know my boss would consider that to be job abandonment," he said.

Data analysts John Perry and Megan Clarke and staff writer Cameron McWhirter contributed to this article. 32 emergency calls delayed. Six of those calls were delayed more than 20 minutes.
* 23 instances of employees being orally abusive, fighting, being unprofessional or disruptive in the call center. 34 write-ups for poor customer service. 9 instances of dispatchers sleeping on duty. 280 write-ups of not showing up to work or showing up late. 147 write-ups for not meeting monthly standards for speed and safety by the department.
* Numbers based on a review of the incomplete database of disciplinary actions against employees at Fulton County's 911 center.

Sun Sentinel - Fort Lauderdale (FL)
April 29, 1997

Conditions for Planned Shelter don's Allay Fears
Author: *Robin Benedick*

No matter how many conditions the city puts on the proposed homeless shelter on West Sunrise Boulevard, they won't appease nearby property owners who worry about transients congregating near their homes, businesses and public parks. "Those conditions won't keep vagrants from wandering around the neighborhoods," said Fort Lauderdale Vice Mayor Tim Smith, who is among the shelter's harshest critics. "Unless there are incredibly stringent rules that you can only go in by vehicle and leave by bus, that neighborhood is going to be overrun."

Smith and neighborhood leaders are hoping to derail Broward County's plans for a $7.7 million shelter at 600 W. Sunrise Blvd. Their first chance comes at a special meeting of the city Planning and Zoning Board at 6:30 p.m. Wednesday at City Hall, 100 N. Andrews Ave. The board's recommendation goes to city commissioners for hearings. One of the conditions the city wants to put on the proposed 200-bed homeless assistance center is that it accept no walk-ins - only tenants who are referred there by an agency or police. That means homeless people now accustomed to staying the night at Tent City, the dingy open-air camp in a downtown parking lot, won't get into the new shelter without referrals.

Opponents are pushing the planning board to delay approval until Broward hires a not-for-profit group to run the center and community leaders raise $3 million in private donations for the project. The shelter is expected to be completed in 18 months once city approvals are granted. Broward County's architect, Edward Seymour, has designed a two-story shelter patterned after one in Miami. The building would face Sunrise Boulevard, but entrances and parking would be at Northwest Sixth and Seventh avenues. The fenced campus would have separate men's and women's dormitories with room for families, classrooms, a medical clinic, day-care center, dining hall and courtyard.

City planners are recommending approval with these conditions:

- Availability: Center must give priority to Fort Lauderdale's homeless who are within two miles of the center.
- Security: Center must pay for 24-hour security inside and outside the campus.
- Curfew: Center must require tenants to be inside from 8 p.m. to 7 a.m. daily. Exceptions would be made for school or work.
- No walk-ins: Center must not accept people without a referral. Center also must establish a no-loitering policy on the property and post signs.
- Citizen board: Center must set up a neighborhood advisory board.

County officials said they were designing a shelter that wouldn't be a magnet for uninvited homeless people. "The word will quickly get out among the homeless that this facility does not accept walk-ins," said **Rob Hernandez**, Broward County's assistant director of Human Services. With more than 5,000 homeless people in Broward, the shelter is billed as the first of several to

address a growing problem that could get worse under new federal and state welfare reforms. Homeless advocates worry that police will enforce trespassing and other city laws too eagerly to chase transients from public places. "Being homeless is not a crime and it shouldn't be that they go to jail for that," said Dianne Sepielli, a member of the county's homeless advisory board.

Sun Sentinel - Fort Lauderdale (FL)
March 13, 1994

New Refugees like Broward Cuban Immigrants Find more Opportunities, Less Congestion
Author: *Lyda Longa*

When Geovanny Montes de Oca and 11 of his friends set sail from Havana for the United States aboard a rubber raft in October, Montes de Oca's friends couldn't stop talking about Miami. But after the men were rescued by the U.S. Coast Guard and taken to Key West, Montes de Oca set his sights on a different place: Broward County. His relatives had described Broward as an area where plenty of opportunities could be found. "I like Miami, but up here, there's less congestion and life is more relaxed," Montes de Oca said in Spanish. "I love it here because I'm learning English, I have a job and I even got a car," he said. Montes de Oca works at the Fort Lauderdale-Hollywood International Airport's catering service. Montes de Oca, who lives with friends in west Hollywood, is not alone. In the past six months, a colony of about 50 or 60 Cuban rafters has taken root in Hollywood and Fort Lauderdale.

The reason is simple: The rafters believe that employment and housing are easier to get in Broward than in Dade County. Historically, rafters have flocked to Dade County because they felt more comfortable among their Cuban countrymen, said **Roberto Hernandez,** executive director of Hispanic Unity of Florida. But that's changing. "Lately, the rafters have learned that in Broward there is less congestion and a better chance of finding a job," **Hernandez** said. "Many of them also have friends and family in the area who have told them that Broward County has less Hispanics and less competition for work."

According to the 1990 U.S. Census, there were roughly 109,000 Hispanics in Broward County compared to almost 1 million in Dade. Of those, there were 24,000 Cubans in Broward and almost 570,000 Cubans in Dade. Hector Nodarse, 29, heard about Broward County when he was still in Havana earlier this year. Nodarse was a sound technician with El Ballet Nacional de Cuba - the Cuban National Ballet. "I like the hustle and bustle of Miami because it reminds me of Havana, but I already have a job here {in Broward)," Nodarse said. "Broward is a little too quiet for me, but I'll get used to it."

Brothers Roberto and Raydel Rivera of Dania are two more Cuban rafters who ended up in Broward. The Riveras arrived in Miami aboard a rubber raft in December; they came from the Cuban port town of Mariel. Both are learning English at a night school in Hollywood. "I lived in Miami for about a month before I came to Dania, and I tell you life is better here," Roberto Rivera, 22, said in Spanish. "I'm learning English, I just got my driver's license and soon, I know I'll have a job. Once I get that I'll get my own apartment. Life is good here."

Sun Sentinel - Fort Lauderdale (FL)
February 22, 1994

Planned Center may Help Elderly Hispanics
Author: *Lyda Longa*

Inez Carrascillo is an elderly Hispanic woman who wants somebody to talk to.
When you're 76 and the only language you speak is Spanish, it's hard to make friends in a neighborhood filled mostly with young working Anglos. Soon, Carrascillo, who is Cuban, and other elderly Hispanics in Broward County could have a place to spend time together, working on arts and crafts and chatting in Spanish.

Roberto Hernandez, director of Hispanic Unity of Broward, said he hopes to open the county's first senior center for Hispanics in the next few months. The proposed center, which would be in Hollywood, would provide activities, meals, transportation and companionship for Broward Hispanics over 60. The 1990 U.S. Census estimated there were 11,891 elderly Hispanics in the county. "There is no single place in Broward County where elderly Hispanic people can go just to talk and relax with their peers," **Hernandez** said. "When you reach a certain age, you want to be with other people who share a similar culture and can understand you."

Hernandez, 27, has applied for a $100,000 county grant that would pay for four full-time employees for the planned center. Last year he purchased a 7,000-square-foot building at 5840 Johnson St. for the center with the help of a grant from the city of Hollywood. Edith Lederberg, executive director of the Area Agency on Aging, said she has promised **Hernandez** that her organization would provide meals for the center once it opens.

Although there are a handful of senior centers scattered throughout the county, Lederberg and other social service officials agree that none cater specifically to Broward's Hispanic elderly. "We have several senior centers throughout the county, but elderly Hispanic people won't go there because they feel uncomfortable and out of place," Lederberg said.

That feeling is not limited to elderly Hispanic people. Gema **Hernandez**, a sociologist and associate professor at Nova University's School of Business, said the sentiment is shared by most elderly people of varying ethnic backgrounds. "As we age, most of us have a need to return to our ethnic roots," **Hernandez** said. Carrascillo, who stays alone during the day in her west Hollywood home while her daughter and grandchildren go to work and school, said she needs someone to interact with during those long hours.

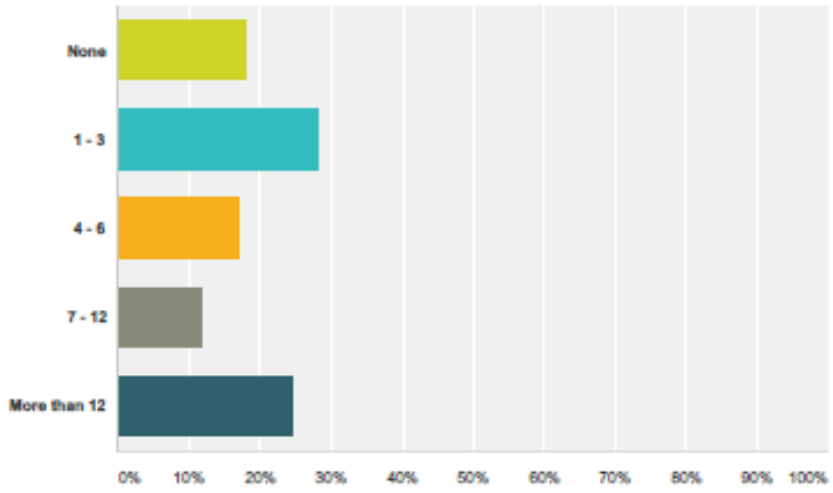
Appendix D

Sample Survey
Savannah City Manager Quality Survey

Sample City Manager Quality Survey

Q1 During the past three years, how often have you attended or viewed a city council or city commission meeting (select only one)

Answered: 449 Skipped: 1

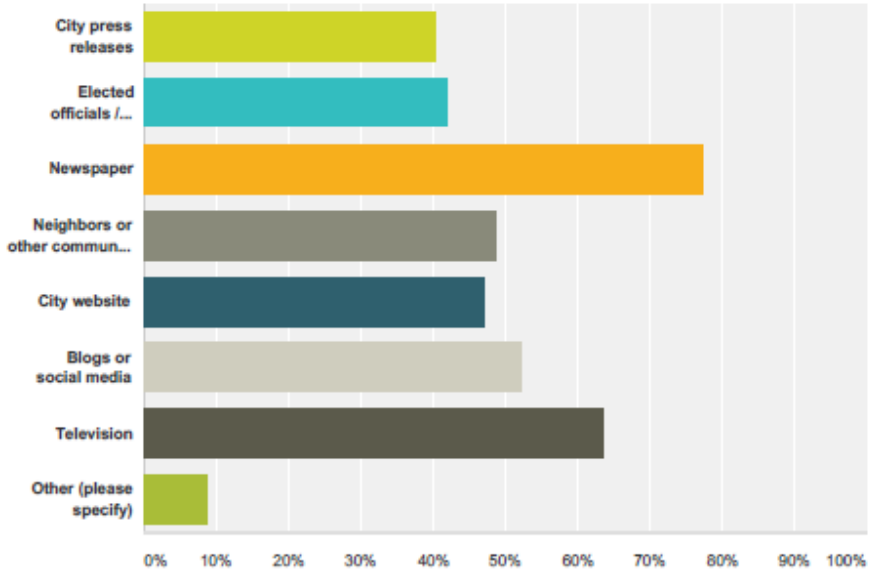


Answer Choices	Responses	
None	18.26%	82
1 - 3	28.29%	127
4 - 6	16.93%	76
7 - 12	11.80%	53
More than 12	24.72%	111
Total		449

Savannah City Manager Quality Survey SurveyMonkey

Q2 How do you keep informed of City issues and concerns (select all that apply)

Answered: 450 Skipped: 0

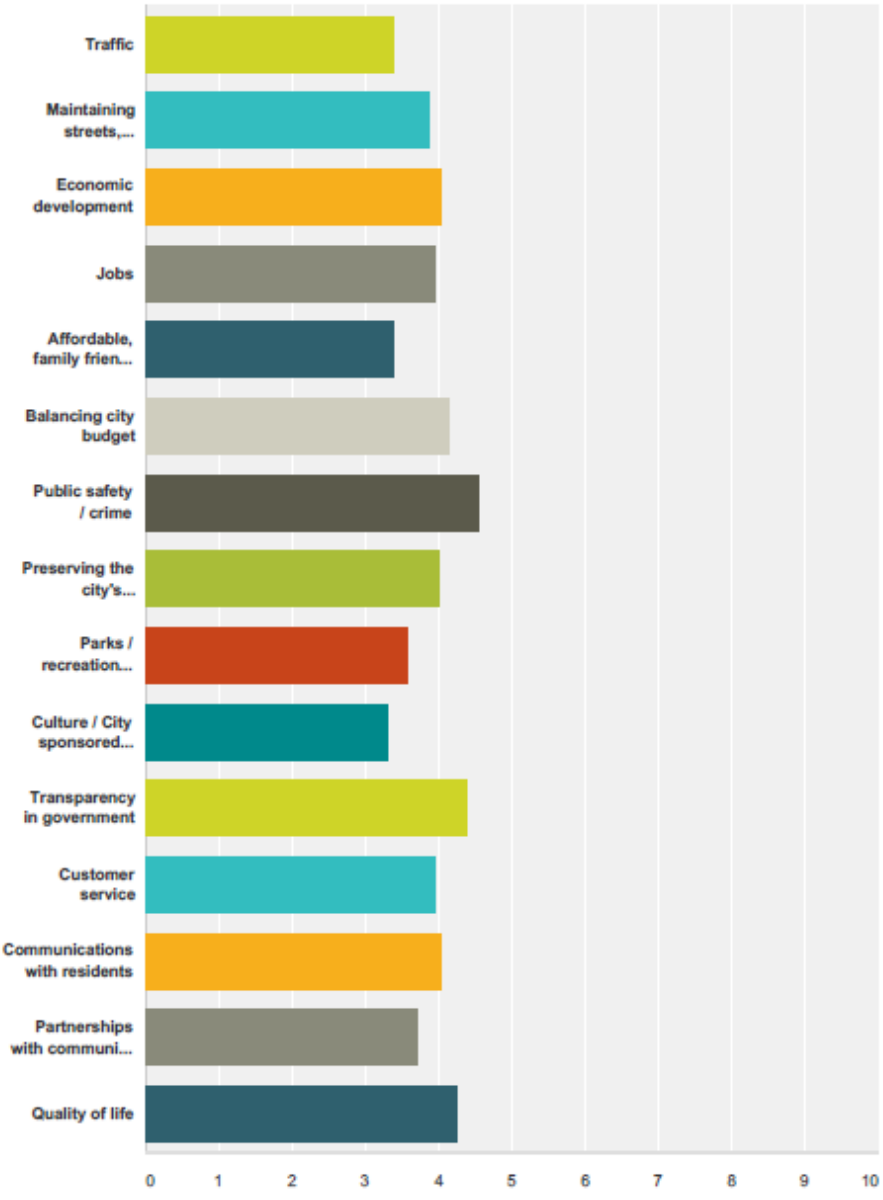


Answer Choices	Responses	
City press releases	40.22%	181
Elected officials / city staff	42.00%	189
Newspaper	77.56%	349
Neighbors or other community members	48.67%	219
City website	47.11%	212
Blogs or social media	52.22%	235
Television	63.78%	287
Other (please specify)	8.67%	39
Total Respondents: 450		

Sample City Manager Quality Survey (continued)

Q3 Please rank each of the following issues that the City Manager should address (5 being the most important and 1 as not important)

Answered: 448 Skipped: 2



Sample City Manager Quality Survey (continued)

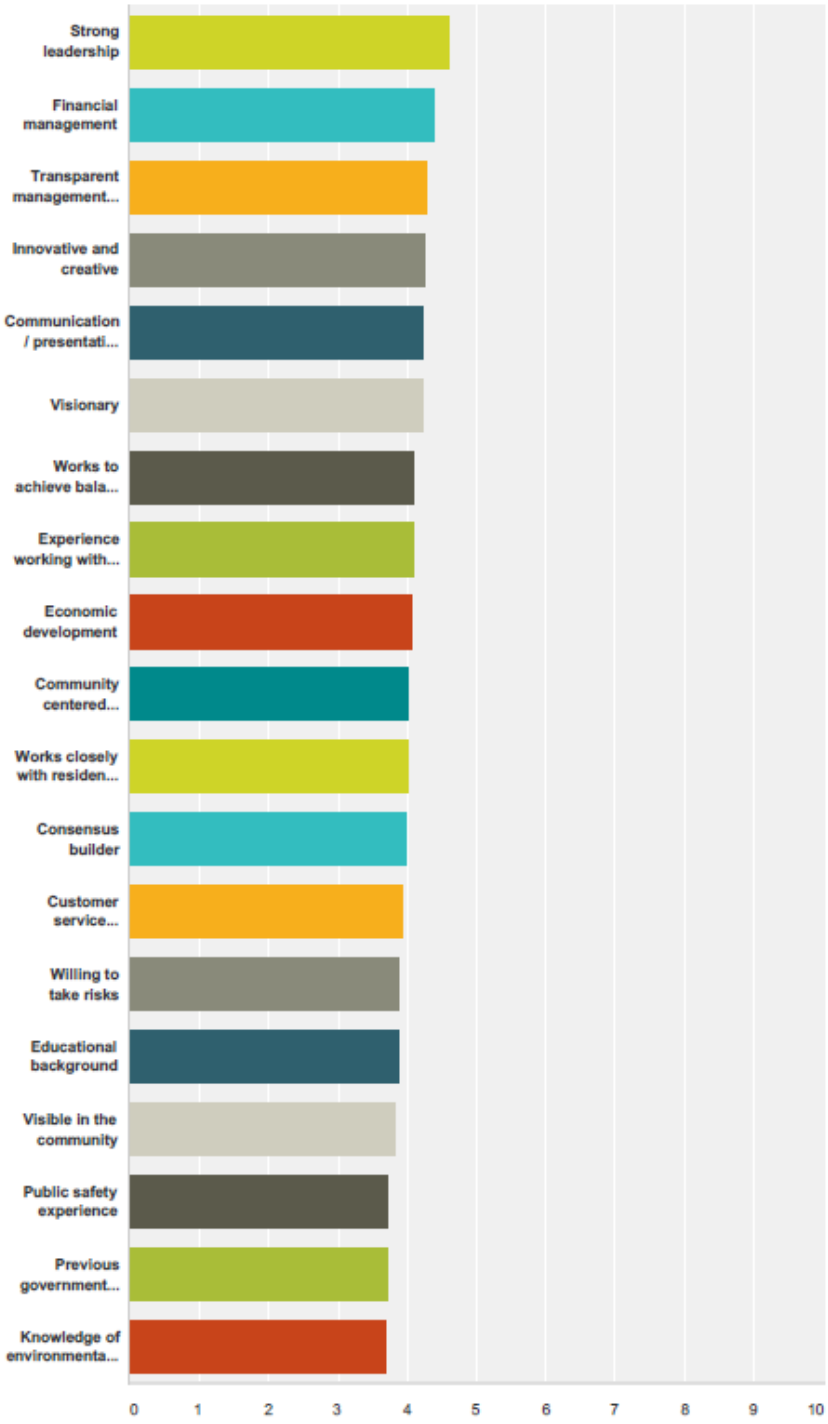
Savannah City Manager Quality Survey — SurveyMonkey

Traffic	**6.59%** 28	**12.47%** 53	**35.06%** 149	**24.00%** 102	**21.41%** 91	**0.47%** 2	425	3.41
Maintaining streets, buildings, and other public facilities	**2.30%** 10	**7.36%** 32	**23.22%** 101	**33.79%** 147	**32.64%** 142	**0.69%** 3	435	3.88
Economic development	**6.19%** 27	**6.42%** 28	**13.76%** 60	**22.25%** 97	**48.85%** 213	**2.52%** 11	436	4.04
Jobs	**5.61%** 24	**7.71%** 33	**16.82%** 72	**22.66%** 97	**44.86%** 192	**2.34%** 10	428	3.96
Affordable, family friendly housing	**10.39%** 45	**13.39%** 58	**28.41%** 123	**19.40%** 84	**27.48%** 119	**0.92%** 4	433	3.41
Balancing city budget	**3.63%** 16	**5.22%** 23	**13.83%** 61	**27.89%** 123	**47.62%** 210	**1.81%** 8	441	4.13
Public safety / crime	**3.83%** 17	**2.03%** 9	**5.63%** 25	**10.36%** 46	**74.77%** 332	**3.38%** 15	444	4.55
Preserving the city's character	**5.68%** 25	**5.68%** 25	**17.50%** 77	**23.41%** 103	**46.36%** 204	**1.36%** 6	440	4.00
Parks / recreation programs	**3.90%** 17	**7.57%** 33	**33.94%** 148	**32.11%** 140	**21.56%** 94	**0.92%** 4	436	3.60
Culture / City sponsored events	**7.74%** 34	**12.98%** 57	**35.99%** 158	**28.02%** 123	**14.81%** 65	**0.46%** 2	439	3.29
Transparency in government	**3.61%** 16	**2.71%** 12	**10.84%** 48	**14.67%** 65	**65.24%** 289	**2.93%** 13	443	4.39
Customer service	**4.52%** 20	**6.79%** 30	**20.59%** 91	**24.89%** 110	**42.31%** 187	**0.90%** 4	442	3.95
Communications with residents	**4.31%** 19	**4.76%** 21	**18.37%** 81	**26.53%** 117	**44.90%** 198	**1.13%** 5	441	4.04
Partnerships with community / schools / business	**8.18%** 36	**8.41%** 37	**22.50%** 99	**24.32%** 107	**35.68%** 157	**0.91%** 4	440	3.72
Quality of life	**4.56%** 20	**2.96%** 13	**12.07%** 53	**20.96%** 92	**56.72%** 249	**2.73%** 12	439	4.26

Sample City Manager Quality Survey (continued)

Q4 Please rank each of the following skills the next City Manager should have (5 being the most important and 1 as not important)

Answered: 449 Skipped: 1



Sample City Manager Quality Survey (continued)

Savannah City Manager Quality Survey — SurveyMonkey

	1	2	3	4	5	N/A	Total	Weighted Average
Strong leadership	4.51% 20	1.13% 5	3.39% 15	10.61% 47	79.01% 350	1.35% 6	443	4.61
Financial management	3.38% 15	3.15% 14	8.33% 37	20.72% 92	63.06% 280	1.35% 6	444	4.39
Transparent management style	3.83% 17	2.25% 10	13.06% 58	20.50% 91	58.78% 261	1.58% 7	444	4.30
Innovative and creative	4.10% 18	2.28% 10	14.81% 65	20.27% 89	57.86% 254	0.68% 3	439	4.26
Communication / presentation skills	3.62% 16	3.39% 15	13.12% 58	25.57% 113	53.62% 237	0.68% 3	442	4.23
Visionary	5.22% 23	2.95% 13	12.70% 56	20.63% 91	57.37% 253	1.13% 5	441	4.23
Works to achieve balance among all community interests: residents, businesses and developers	2.95% 13	6.35% 28	15.19% 67	26.98% 119	47.39% 209	1.13% 5	441	4.11
Experience working with diverse communities	6.07% 27	5.39% 24	14.16% 63	21.12% 94	52.36% 233	0.90% 4	445	4.09
Economic development	4.57% 20	5.25% 23	14.16% 62	28.54% 125	45.89% 201	1.60% 7	438	4.06
Community centered approach	4.78% 21	5.01% 22	17.31% 76	27.56% 121	44.65% 196	0.68% 3	439	4.03
Works closely with residents and seeks their viewpoint	4.08% 18	4.31% 19	17.46% 77	31.75% 140	41.72% 184	0.68% 3	441	4.03
Consensus builder	4.31% 19	6.12% 27	20.63% 91	24.04% 106	43.54% 192	1.36% 6	441	3.98
Customer service orientation	5.24% 23	5.92% 26	18.00% 79	28.93% 127	41.00% 180	0.91% 4	439	3.95
Willing to take risks	5.25% 23	5.02% 22	23.74% 104	26.26% 115	38.81% 170	0.91% 4	438	3.89
Educational background	3.64% 16	7.05% 31	22.95% 101	27.05% 119	37.27% 164	2.05% 9	440	3.89
Visible in the community	4.58% 20	7.09% 31	24.71% 108	26.32% 115	36.61% 160	0.69% 3	437	3.84
Public safety experience	4.49% 20	8.31% 37	26.97% 120	27.42% 122	31.69% 141	1.12% 5	445	3.74
Previous government experience	8.07% 36	7.17% 32	24.22% 108	23.54% 105	35.43% 158	1.57% 7	446	3.72
Knowledge of environmental issues	7.06% 31	8.43% 37	25.28% 111	24.83% 109	33.26% 146	1.14% 5	439	3.70

Savannah City Manager Quality Survey SurveyMonkey

Q5 Is there anything else you want to share about what you would like to see in our next City Manager?

Answered: 230 Skipped: 220

Put the NEEDS of residents of the City of Savannah FIRST! Before the tourists, the business developers, etc.
A dedication to addressing the gun violence in our city.
More visibility to the community as a whole including the unincorporated areas, not just to specific groups.
Interest in building a bike and pedestrian friendly city.
A major interest in the environment and sustainability of it.
A familiarity with and support for Complete Streets.
Good working relationship with citizens and police. Ability to work to preserve neighborhoods. Savannah is not just for tourists!
Highly ethical business practices. High moral values and integrity. Verifiable track record of previous accomplishments in government or business.
Increasing mobility using plans like "Complete Streets". Making public transportation available for all in getting around the city (shuttles); making it safe for biking; better recycling agenda (they're composting in San Francisco these days).
I'd like to see the City Manager riding his bike to work or walking to work and incorporate a plan to always include sidewalks and bike paths in infrastructure for existing and especially for new development.
Someone who will place traffic calming and safe streets as a top priority. We have virtually no traffic enforcement (60 mph on E 52nd, my street, is not uncommon and there is NO police enforcement).
We need to start making Savannah A Bike City friendly and make better changes for cyclists safety , so that we won't have another horrible accident like on BRAG again.
Commitment to transportation issues in traffic calming through downtown for pedestrians, bicycles, cars (speeding) and public transportation. Too many accidents, by any of these modes of transportation, are completely avoidable or at least able to be lessened by enforcement of existing laws or the development of prevention measures.
Focus on the planning, development and maintenance of complete streets.
Previous experience in a city with similar challenges would be ideal, along with a demonstrated ability to manage large public projects from start to finish.
He or she must be someone the city staff will respect and find good to work for. I guess this is having the skills that most employees like to see in their employer. The new City Manager should also have skills in delegating responsibility and giving credit to others for their successes.

*16 samples responses from the 230 received.

Appendix E

St. Johns County, FL Resolution Thanking CB&A for Its Outstanding Service

RESOLUTION NO. 2007-231

A RESOLUTION OF THE COUNTY COMMISSION OF ST. JOHNS COUNTY, FLORIDA, THANKING COLIN BAENZIGER & ASSOCIATES FOR ITS OUTSTANDING EFFORTS IN CONDUCTING THE EXECUTIVE SEARCH FOR THE COUNTY'S NEW ADMINISTRATOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, St. Johns County retained Colin Baenziger & Associates (CB&A) to identify and recommend strong candidates to be the County Administrator;

WHEREAS, CB&A's staff worked diligently to find and produce excellent candidates, and then provided the County Commission with comprehensive materials concerning the candidates' aptitude, experience, background, complete and thorough interviews, references, extensive checks of criminal, civil and financial history, verification of employment and education, and exhaustive reviews of Internet and newspaper archives of these candidates; and

WHEREAS, CB&A's process was completely open, fair and unbiased and was extremely well received by the County Commission, county staff, the press, and the public; and

WHEREAS, the County Commission wishes to express its gratitude to Colin Baenziger & Associates for its efforts on behalf of the county;

NOW BE IT THEREFORE RESOLVED BY THE COUNTY COMMISSION OF ST. JOHNS COUNTY, FLORIDA AS FOLLOWS:

Section 1: Recitals. The preceding recitals are true and correct and are incorporated herein by this reference.

Section 2: Acknowledgement. The County Commission wishes to express its sincere appreciation and gratitude to Colin Baenziger & Associates for its outstanding work and effort in assisting the county in finding its County Administrator.

Section 3: Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21 day of August, 2007.

ATTEST: Cheryl Strickland, Clerk

By: Pam Hatterman
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

By: Ben Rich
Ben Rich, Chairman

Rendition Date: 8/23/07

Appendix F

Comments from Dale Martin on CB&A's Vetting Process

Fernandina Observer™
A JOURNAL OF NEWS AND OPINION

Weekly comments from Dale Martin

By Dale Martin, City Manager, City of Fernandina Beach
March 18, 2016 1:00 a.m.

The vetting process employed by Mr. Colin Baenziger following my application to the City of Fernandina Beach was the most thorough review of my career, credentials, and references that I have ever experienced. In the months leading to my appointment here, I was interviewed in several other communities for similar City Manager positions. Despite getting to the interview stage in those communities, none of my references ever indicated to me that they had been contacted. As part of the selection process here, I was required to provide an exhaustive list of references, some very specific, such as my current Town Attorney, auditor, Chamber of Commerce, etc. To the best of my knowledge, every single reference provided was contacted.

The historic information provided to the City Commission for each candidate was extensive. Reading through the older newspaper articles rekindled so many memories- the personalities and issues from earlier days illustrate some peaks and valleys over the past twenty years. It has been a wonderful ride.

Note: Mr. Martin reminisces about his career for the remainder of the article. The full article can be found at:

http://fernandinaobserver.com/2016/03/18/weekly-comments-from-dale-martin-5/#more-65218

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: Approval to Purchase PC Equipment

Department: Information Technology

Presented by: Chris Lilly

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Purchase of replacement computers

Staff Recommendation

Approve of the purchase of the updated personal computer equipment and technical services

Background Information

IT regularly replaces old and outdated PC equipment on a five-year lifecycle to assure continued reliable performance of this aspect of City's critical infrastructure. Regular replacement of computer equipment keeps our warranty up-to date. More importantly, current equipment is able to handle the increased security measures that are necessary in today's environment.

The proposed purchase will utilize the NASPO ValuePoint Cooperative Purchasing Organization. Cooperative purchasing arrangements are permitted by state law and the City's Purchasing Code.

Fiscal Impacts

The cost to replace outdated personal computer equipment is $70,000, which is budgeted in the FY21 CIP Budget.

Attachments

1. NASPO Master Agreement Award to Dell with Amendment I and II
2. NASPO – Resolution for City of Murfreesboro
3. Council Authorization to Issue PO

AMENDMENT NO. 1 TO CONTRACT NO. MNWNC-108

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State"), and Dell Marketing L.P., One Dell Way, Mailstop RR1-33 Legal, Round Rock, TX 78682 ("Contract Vendor").

WHEREAS, the State has a Contract with the Contract Vendor identified as Contract No. MNWNC-108, April 1, 2015, through March 31, 2017 ("Contract"), to provide Computer Equipment: (Desktops, Servers, and Storage including Related Peripherals and Services); and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract allow the State to amend the Contract as specified herein, upon the mutual agreement of the Materials Management Division and the Contract Vendor in a fully executed amendment to the Contract.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. That Contract No. MNWNC-108 is extended through March 31, 2020, at the same terms and conditions.
2. The Contract Vendor shall provide Computer Equipment: (Desktops, Servers, and Storage including Related Peripherals and Services) at the prices set forth on the attached Exhibit B, Pricing Schedule.

This Amendment is effective beginning April 1, 2017, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect through contract expiration, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. DELL MARKETING, L.P.
The Contractor certifies that the appropriate person(s) have executed this Amendment on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: D. Wigington
Signature
Diane Wigington
Printed Name
Title: Contracts Program Manager
Date: 02/14/2017

By: _____
Signature
_____
Printed Name
Title: _____
Date: _____

2. OFFICE OF STATE PROCUREMENT
In accordance with Minn. Stat. § 16C.03, subd. 3.

By: Andy Doran
Title: Acquisition Management Specialist
Date: 2/15/17

3. COMMISSIONER OF ADMINISTRATION
Or delegated representative.

By: Laura J. Jarrett
Date: 2/16/2017

DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT

COMPUTER EQUIPMENT
2014-2020
Updated 04/01/2017

WSCA-NASPO
COOPERATIVE PURCHASING ORGANIZATION

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

1. BASELINE PRICING DELL RETAIL PRICE LIST		
LINK: http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf		
2. BAND DISCOUNTS – (CATEGORY EXCEPTIONS APPLICABLE IN ALL BANDS)	**DELL CATEGORY**	**MINIMUM DISCOUNT**
BAND 1 DESKTOP	A	15%
BAND 2 LAPTOP	A	15%
BAND 3 TABLET	H	4%
BAND 4 SERVER	A	13.5%
BAND 5 STORAGE	A	13.5%
IMPORTANT: The minimum discount is provided, refer to Contract Vendor's Website for any additional discounts and request a quote for bulk/volume discounts. All prices shall be FOB Destination, prepaid and allowed (with freight included in the price). If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance.		
CATEGORY EXCEPTIONS:		
Toner	F	1.5%
Value Latitude, OptiPlex, Workstation, Selected Products	H	4%
Selected Promo Offers; Inspiron; Selected Latitude; SC PowerEdge; Selected Dell | EMC; Dell Branded Peripherals/Imaging: PowerConnect, Axim, Projector, Printer	S	2.5%
Spare Parts, selected Dimension Brand	U, W, Z	.5%
3. THIRD PARTY PRODUCTS - (APPLICABLE IN ALL BANDS)	M	5.5%
CATEGORY EXCEPTIONS:		
Selected Third Party Products (software and peripherals)	X	.5%
Selected Third Party Printers	F	1.5%
4. SERVICES		
Services are at the option of Participating States. Participating Addendums by each State may address service agreement terms and related travel. States may negotiate additional services. The majority of Dell-branded hardware includes a one-year warranty. Customer may purchase warranty upgrades for 2, 3, 4 or 5 years for certain Dell-branded hardware as offered by Dell. For Dell standard warranty information see http://www.dell.com/learn/us/en/uscorp1/solutions/limited-hardware-warranties		
Selected Service on Poweredge Departmental Servers; Directline Service; 4-Hr On-Site Critical Care Plus; Business Care Plus On-Site Service (all years)	O	13.3%
On-site – Next Business Day On-site (extended yrs), Critical Care On-site Service (all yrs), other svcs	R,Z,Z1&ZS	.5%
5. LEASING		
Participating Addendum may identify if and how leasing agreement terms will be conducted.		
6. ADDITIONAL DISCOUNTS – Request a quote for discounts on bulk/volume purchases.		

a. Per Transaction Multiple Unit: Contact your Sales Representative for additional discounts for volume purchases.

Minimum Dollar Volume Associated with Single Transaction	Maximum Dollar Volume Associated with Single Transaction	Cat A only, Single Transaction, Maximum of 10 ship to Locations
$50,000.00	$99,999.99	Greater than or Equal to 1%
$100,000.00	$199,999.99	Greater than or Equal to 2%
$200,000.00	$499,999.99	Greater than or Equal to 4%
$500,000.00	$999,999.99	Greater than or Equal to 6%
$1,000,000.00	No Maximum	Greater than or Equal to 8%

b. Cumulative: Cumulative Discounts are managed at the Master Agreement Level based on total volume.

Cumulative Dell Spend "Gates"	Category A Discount (Adjustment to the Matrix)
Up to $2B	13.5%
$2B to $4B	14%
$4B to $6B	14.5%
$6B to $8B	15%
$8B to $10B	15.5%
Over $10B	16%

c. Other Discounts provided: For purchases made online via Dell.com, Dell offers an additional 0.5% per category, except for Category O. For online purchases of Category O Services, Dell will offer a 13.5% discount.

CERTIFICATE OF SIGNATURE AUTHORITY

This is to certify that the below named individuals of Dell Federal Systems, L.P. are authorized to execute agreements, proposal documents, certificates and representations on behalf of and in the name of Dell Federal Systems, L.P. or any other Dell entity in accordance with Dell's Contracts, Proposals and Statements of Work (SOW) US Signature Policy. This certification shall become effective upon execution and continue until rescinded in whole or in part. If the employment status, title or roles and responsibilities of any of the below named individuals changes then their authority will be revised according to their then current employment status, title or roles and responsibilities. This certification may be rescinded in whole or in part, at any time without prior notice. Interested parties may request an updated certificate by written request to the following address:

Dell Federal Systems, L.P.
Customer Engagement Management
Contracts, Proposals & SOW
Certificate of Authority Request
One Dell Way, Mailstop 8708
Round Rock, Texas 78682

John Lavorato, Executive Director – CEM
Bobbi Dangerfield, VP Global Relationship Business Operations
Joe Ayers, AVP - Federal
Max Peterson, AVP - Federal
Barbara Tomaschy, VP - Finance
Scott Sanders, Executive Director - Finance
Josh Bashara, Operations Director
Kathleen Hines, Contracts Director
Glen McGuire, Proposals Director
Jane McKenzie, Contracts Director
Rich Walsh, Contracts Director
Kim James, Audit & Compliance
Cindy Waidelich, Proposals Sr. Manager
Dana Anderson, Contract Manager
Pamala Aschenbrenner, Contract Manager, SOW
Lorri Bailey, Contract Manager
John Billings, Proposal Manager
Dennis Brand, Proposal Manager
Kevin Bromley, Contracts Manager
Eric Bufkin, Proposal Manager
Solange Calo, Proposal Manager
Lisa Campos, Proposal Manager
Aimee Cantrell, Proposal Manager
Renee Carrasco, Proposal Manager
Daniela Chambless, Proposal Manager
Michelle Chaney, Proposal Manager
Len Collett, Contract Manager
Mary Collins, Proposal Manager
Chris Collinson, Proposal Manager
Dennis Daley, Contract Manager
Mitchell Duncan, Proposal Manager
Montana Duncan, Contract Manager
Greg Fletcher, Proposal Manager
Meghan Filsakowski, Proposal Manager
Ani Fox, Proposal Manager
Jody Hahn, Proposal Manager
Jill Henderson, Contract Manager
Brian Johnson, Proposal Manager
Beth Jordan, Proposal Manager
Kate Kauffman, Contract Manager, SOW
Brice Kelly, Contract Manager
Liz Killmer, Contract Manager
Ashleigh Lane, Contract Manager
Stephanie Lendecky, Contract Manager
Scott Loras, Contract Manager
Melanie Mack, Proposal Manager
Christina McColly, Contract Manager
Lauren McCosham, Contract Manager
Staci McDonald, Proposal Manager
Felicia Middleton, Proposal Manager
Stephanie Miller, Contract Manager
Clare Mooney, Proposal Manager
Susan Morgan, Contract Manager
Jeannine Nagel, Proposal Manager
Kelly O'Shieles, Contract Manager
Stan Parish, Proposal Manager
Jennifer Parris, Contract Manager
Phyllis Pate, Contract Manager
Keon Robertson, Contract Manager, SOW
Tiffany Roper, Proposal Manager
Robert Saufferer, Contract Manager
Mary Shuman, Proposal Manager
Brian Sokoff, Proposal Manager
Susan Spalding, Contracts Advisor
Nicholas Stokes, Proposal Manager
Ted Thomas, Proposal Manager
Melissa Vaclavik, Proposal Manager
Christian von Wupperfeld, Contract Manager
Teresa Walden, Contract Manager
David White, Contract Manager
Diane Wigington, Contract Manager

Witness my hand on the following day:

Frank Muehleman
VP and General Manager – North America Public Business Group

6/6/2011
Date

Dell Confidential

AMENDMENT NO. 2 TO CONTRACT MNWNC-108

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State"), and Dell Marketing L.P., One Dell Way, Mailstop RR1-33 Legal, Round Rock, TX 78682 ("Contract Vendor").

WHEREAS, the State has a Contract with the Contract Vendor identified as Contract No. MNWNC-108, April 1, 2015, through March 31, 2020 ("Contract"), to provide Computer Equipment: Desktops, Laptops, Tablets, Servers, and Storage, including Related Peripherals and Services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract allow the State to amend the Contract as specified herein, upon the mutual agreement of the Office of State Procurement and the Contract Vendor in a fully executed amendment to the Contract.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. That Contract No. MNWNC-108 is extended through July 31, 2021, at the same terms, conditions, and prices.

This Amendment is effective beginning April 1, 2020, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect through contract expiration, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. DELL MARKETING L.P.

The Contractor certifies that the appropriate person(s) have executed this Amendment on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____
Signature

Sadie Robbins
Printed Name

Title: Sr. Contract Manager

Date: 12/19/19

By: _____
Signature

_____
Printed Name

Title: _____

Date: _____

2. OFFICE OF STATE PROCUREMENT

In accordance with Minn. Stat. § 16C.03, subd. 3

By: _____

Title: Acquisition Management Specialist

Date: 1.27.2020

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: _____

Date: 1/27/2020

RESOLUTION 18-R-07 to approve the NASPO ValuePoint Cooperative Purchasing Organization (NASPO-Value Point) as a purchasing cooperative option under the City's Procurement Code.

WHEREAS, the City of Murfreesboro has adopted a procurement code, Ordinances 13-O-38 and 14-O-55, adopting the provisions of State law (T.C.A. §12-3-1205) allowing the City to enter into agreements with other governmental entities for the joint exercise of purchasing authority as a means of meeting competitive bidding requirements; and,

WHEREAS, the NASPO ValuePoint Cooperative Purchasing Organization (NASPO-Value Point) is the cooperative purchasing arm of the National Association of State Procurement Officials (NASPO) and is a leading national government purchasing cooperative working to reduce the cost of goods and services by leveraging the purchasing power of public agencies in all 50 states; and,

WHEREAS, NASPO-Value Point was previously known as WCSA-NASPO; and

WHEREAS, in 2013, the City Council adopted Resolution 13-R-35, approving the City's participation in the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals, and Related Services); and

WHEREAS, since 2013, the State of Tennessee Central Procurement Office has elected to participate in several additional NASPO-ValuePoint contracts, and, by executing participating addenda with the NASPO-ValuePoint contractors, the Central Procurement Office has authorized local governments in Tennessee to procure goods and services under these contracts; and,

WHEREAS, the City wishes to have the ability to procure goods and services under the terms and conditions established in any NASPO-Value Point participating addendum executed by the State of Tennessee Central Procurement Office.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Pursuant to the powers granted by T.C.A. §12-3-1205, the City of Murfreesboro is hereby authorized to procure goods and services from any NASPO-ValuePoint contractor who has executed a participating addendum with the State of Tennessee Chief Procurement Office, in accordance with the terms and conditions of such participating addendum.

SECTION 2. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: December 6, 2018

Shane McFarland, Mayor

ATTEST:

Melissa B. Wright
City Recorder

APPROVED AS TO FORM:

Adam F. Tucker
City Attorney

mjp \\puckett\legal\files\council\resolutions\2018\07 - 18-r-07 naspo value point purchasing cooperative.docx 9/28/2018 7:57:43 AM #1

Authorization to Issue City Purchase Order to
Cisco Systems, Inc.
Pursuant to
NASPO ValuePoint Cooperative Purchasing Program
Computer Equipment Contracts 2015-2020
DESKTOPS, LAPTOPS, TABLETS, SERVERS, AND STORAGE INCLUDING RELATED PERIPHERALS AND SERVICES
Master Price Agreement Number MNWNC-108,
As Amended by State of Tennessee Master Contract Number 49580

The undersigned hereby certify that at its regular meeting on February 25, 2021, the Murfreesboro City Council approved the purchase of certain desktops, laptops, tablets, servers, and storage including related peripherals and services pursuant to the NASPO ValuePoint Purchasing Cooperative Program Contract Number MNWNC-108 Computer Equipment Contracts 2015-2020 with Dell Marketing L.P. ("Master Agreement"), as amended by the State of Tennessee Participating Addendum Master Contract No. 49580 ("Tennessee Addendum"), and further authorized the City Manager and Purchasing Director to issue a Purchase Order in the amount of $70,000 to Dell Marketing L.P., to initiate such purchase, such purchase order incorporating by reference and made subject to the terms and conditions set forth in the Master Agreement and Tennessee Addendum.

By:_____ _____
Shane McFarland, Mayor City Recorder

Date:_____

I certify that this method of purchase is permitted under Tennessee Code § 12-3-1201 and the Murfreesboro City Code § 2-10(E)(2)(A) and approve both Master Agreement and Tennessee Addendum as to form and legality.

_____
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 02/25/2021

Item Title: **School Technology Purchase**

Department: **City Schools**

Presented by: **Beth Prater, Finance Manager**

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Funding for the purchase of student computers.

Staff Recommendation

Recommend approval of purchase of computers for students from Dell, Inc.

Background Information

The City received $172,560 from the school system due to the receipt of a Remote Learning grant as reimbursement for school computers purchased from City funds. Additional computers are requested to be purchased with the replenished funds and are available for purchase from Dell, Inc. using an existing contract through the Wilson Count Board of Education.

Council Priorities Served

Responsible budgeting

The use of the Wilson County Board of Education bid is a cost-effective means of purchasing computers.

Fiscal Impact

Funds of $172,284 from County Shared Bonds and 2019 Loan Fund are available for this purchase.

Attachments

1. Dell Inc. sales quote #3000078190418
2. Dell Contract Code #51AHO between Dell Marketing and Wilson County Board of Education

Becky Sally

From: Dell (please do not reply) <automated_email@dell.com> on behalf of Dell Inc. <dell_automated_email@dell.com>
Sent: Wednesday, February 3, 2021 1:59 PM
To: Becky Sally
Subject: [BULK] Dell eQuote #:3000078190418

WARNING: This email originated outside of Murfreesboro City Schools. DO NOT CLICK links or attachments unless you recognize the sender and verify the content is safe.

'.

You have received an eQuote 3000078190418

An eQuote has been sent to you from your Dell Online Store.
This eQuote will expire on 03/05/2021

Who sent this eQuote

Saved by: april.zavisa@cityschools.net

To retrieve this eQuote

Login to Premier
Sign in to MURFREESBORO CITY SCHOOLS
Click on "Quotes" in the top menu bar and search for eQuote number 3000078190418

eQuote Name	Remote Learning Grant
Saved By	april.zavisa@cityschools.net
Account Name	MURFREESBORO CITY SCHOOLS
Contract Code	C000000381302

eQuote Summary

Description	Quantity	Unit Price	Subtotal
Chromebook 11 3100	586	$268.00	$157,048.00
VL CHROME EDUCATION	586	$26.00	$15,236.00
		eQuote Subtotal	$172,284.00

Promotional Discounts*	$0.00
Shipping*	$0.00
Shipping Discount*	$0.00
Environmental Disposal Fee*	$0.00

eQuote Total* **$172,284.00**

*The eQuote total, including applicable taxes and additional fees, may be viewable online.

Note: Your order may contain one or more items which are billed on a recurring basis. See Important Notes for details on your specific offering and, for customers with auto-renewing subscriptions, how to turn off automatic renewal.

eQuote Details

Description	Quantity	Price
rcrc1091185-5816041 | Chromebook 11 3100	586	$299,358.10
Premier discount		$142,310.10
(Unit Price after discount: $268.00 ea.)		$157,048.00

Module	Description	Product Code	Sku	ID
Chromebook 11 3100	Dell Chromebook 3100	G6IBSOE	[210-ARJL]	1
Base Options	Intel Celeron N4020 (Dual Core, up to 2.8GHz, 4M Cache, 6W) 2 USB Type-C, 2 USB 3.1	GJU7ZTD	[338-BUUK]	149
Memory	4GB 2400MHz LPDDR4 Non-ECC	G4IEATZ	[370-ADZI]	3
Hard Drive	16GB eMMC Hard Drive	GN7A3IO	[400-AWCY]	8
LCD	11.6" HD (1366 x 768) Anti-Glare Non-Touch, Camera & Microphone, WLAN Capable	GOJF5ID	[391-BDXY]	760
Keyboard	US English Keyboard, non-backlit	GUZSX6T	[580-AHRW]	4
Mouse	No Mouse	G8043UZ	[570-AADK]	12
Wireless	Intel® Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0	GDNTE1J	[555-BEVK]	19
Primary Battery	Primary 3-Cell 42WHr Battery	GXKQ9HO	[451-BCNK]	112
Power Supply	65W AC Adapter US 125V,1M	GRWQO1A	[537-BBBL] [492-BCNV]	1015
Placemat	Quick Start Guide	G9Z1G2A	[340-CKUZ]	60
Carrying Cases	No Carrying Case	G3WKGOY	[460-BBEX]	118
Documentation/Disks	Safety/Environment and Regulatory Guide (English/French Multi-language)	G7RB0GY	[340-AGIK]	21
Configuration Type	3100_R_2HFY20_010/US/BTS	FG0014	[998-DYKK]	572

Label	Label 0X02	GJPUAC4	[389-DPUI]	676
Packaging	Min Config Packaging	G2FU69L	[340-CRSG]	465
Processor Branding	Intel Celeron CPU Label	GYDI8P6	[389-BHZJ]	749
Transportation from ODM to region	Smart Selection Shipment, Chromebook (VS)	GRCZH4G	[800-BBQM]	200080
Packaging Label	POD Label	POD	[389-BKKL]	292
Modem	No UPC Label	G8WGTYN	[389-BCGW]	14
Retail	Non Retail Order	NRTL	[631-ABBH]	224
Color Choice	Non-Touch LCD Cover	GU2LHEM	[320-BCTK]	380
Hardware Support Services	3 Years Hardware Service with Onsite/In-Home Service after Remote Diagnosis	GFS6Q3O	[823-5168] [823-5180] [823-5184] [975-3461]	29
Accidental Damage	3 Years Accidental Damage Service	G274OHA	[823-5234]	33

VL CHROME EDUCATION Sku [A7611038]	586	$17,580.00
Premier discount		**$2,344.00**
(Unit Price after discount: $26.00 ea.)		$15,236.00

eQuote Subtotal	$172,284.00
Promotional Discounts*	$0.00
Shipping*	$0.00
Shipping Discount*	$0.00

eQuote Total* **$172,284.00**

*The eQuote total, including applicable taxes and additional fees, may be viewable online.

Let's connect.

Legal Disclaimer: Please note that Dell cannot be responsible for pricing or other errors and reserves the right to cancel any orders arising from such errors. The amount of tax and shipping added to your order depends on where you have asked for the

product to be shipped as well as on which products and/or services you've chosen to purchase. Your order is subject to Dell's Terms and Conditions of Sale which include a binding arbitration provision.

Subscription Customers: If your order includes a recurring billing subscription, you authorize Dell to charge your payment method on file on a recurring basis. You may opt out of automatic renewal or update payment information at any time through the web portal used to manage your subscription. Offer specific subscription terms for details (Commercial; Consumer).

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DELL CONTRACT CODE# 51AHO

CUSTOMER PURCHASE AGREEMENT FOR PRODUCTS AND SERVICES

between

Dell Marketing L.P.
One Dell Way
Round Rock, TX 78682
("Dell")

and

Wilson County Board of Education
415 Harding Drive
Lebanon, Tennessee 37087
("Customer")

This Customer Purchase Agreement ("CPA"), made between Customer and Dell as of the date of last signature below (the "**Effective Date**"), together with any Schedules, governs Customer's purchase of Products and Services from Dell for internal use. Customer and Customer's Affiliates may order from Dell and Dell's Affiliates under this CPA, in which case such Affiliates shall be "Customer" and "Dell" for the purposes of such orders. Dell and Customer are each referred to individually as a "party," and collectively as the "parties."

1. DEFINITIONS

A. "**Dell**" means Dell Marketing L.P. or the Dell Affiliate identified on the Order.

B. "**Dell Affiliate**" means a direct or indirect subsidiary of Dell Inc. located in the United States.

C. "**Hardware**" means computer hardware, related devices and other accessories including all embedded components (excluding Software).

D. "**Hardware Services**" means (a) services to be performed by or on behalf of Dell necessary to repair a defect in materials or workmanship of Hardware and as otherwise defined in the Hardware Schedule or SOW, (b) standard deployment services, such as Basic Deployment Services, ProDeploy or ProDeploy Plus services, or c) standard configuration services, including Static and Dynamic Imaging, Asset Tagging, Asset Reporting, standard System Configuration services (BIOS Settings, Hard Drive Partitioning, Application Installation and Operating System Settings).

E. "**Order**" means an order placed for Products and/or Services by (a) a written ordering document or agreement under this CPA that is executed by the parties, such as a signed Dell quotation or SOW, (b) Dell's online ordering process at Dell.com or other Dell electronic ordering process agreed to by Dell and Customer, or (c) a Customer purchase order accepted by Dell.

F. "**Products**" means Hardware, Software or both.

G. "**Professional Services**" means services, other than Hardware Services, to be performed by or on behalf of Dell pursuant to an SOW.

H. "**Schedule(s)**" means the Product Schedule or Services Schedule to this CPA, and any other schedules later executed by the parties under this CPA, as well as any attachments to such Schedule(s). Unless otherwise defined in a Schedule, capitalized terms in Schedules shall have the meaning defined in the CPA.

I. "**Services**" means either Hardware Services, Professional Services, or both.

J. "**SOW**" means any mutually agreed document or agreement describing Services to be provided by or on behalf of Dell to Customer, including without limitation, "Statements of Work," "Service Descriptions," "Specification Sheets," "Task Orders," "Order Forms" and any other such documents executed under the terms of a Professional Services Schedule hereto or otherwise available at Dell.com/servicecontracts/global.

K. "**Third-Party Products**" means any Products or Services that are not manufactured, created, licensed, branded or performed by or on behalf of Dell.

2. TERM; AUTO-RENEWAL

This CPA continues for a period of five (5) years from the Effective Date. Unless terminated under Section 10 ("Termination"), this CPA may be renewed on the anniversary of the Effective Date for one (1) additional five (5) year period (each period, a "**Term**"), unless either party provides written notice of non-renewal at least 30 days prior to the expiration of the then-current Term. Each Service and Software license will continue for the term stated in the applicable SOW or Software Agreement (as defined in Section 5.B), unless terminated earlier in accordance with its terms or this CPA. Hardware Service may be renewed if Customer pays a renewal invoice from Dell or continues to use the Hardware Service past its initial term.

3. ORDERING AND PAYMENT

A. **Quotes and Orders**. Customer must identify Dell's quotation (if any), the Dell Contract Code assigned to this CPA (if any), the Products and Services ordered, the requested shipment dates, and shipping and invoice addresses on all Orders. Each Order is subject to acceptance by Dell. Quoted prices are effective until the expiration date of the quote, but may change due to shortages in materials or resources. Orders for Third-Party Products are subject to availability and are cancellable only by Dell. Dell may, prior to shipment, cancel and refund Orders affected by typographical errors. Customer shall place all Orders in the country where the Products and Software are to be shipped and for Services, where the Services benefit is received.

B. **Payment.** Invoices are due and payable within 30 days of the invoice date unless the invoice states payment terms greater than 30 days. Payment must be made in the method and currency identified by Dell. Dell must approve in writing any assignment by Customer of its payment obligations to a third-party financing company (other than Dell Financial Services, LLC). Dell, without waiving any other rights or remedies and without liability to Customer, may suspend any or all Services until all overdue amounts are paid in full. Customer will pay all reasonable legal fees (including reasonable attorney's fees) and costs associated with collection of overdue amounts.

C. **Taxes**. Customer is responsible for payment of any sales, use, VAT, GST and any other similar taxes or governmental fees associated with Customer's Order, except for taxes based on Dell's net income, gross revenue or employment obligations. If Dell is obligated by applicable law to collect and remit any taxes or fees, then Dell will add the appropriate amount to Customer's invoices as a separate line item. If Customer qualifies for a tax exemption, Customer must provide Dell with a valid certificate of exemption or other appropriate proof of exemption. The charges stated on each line item of the invoice shall include all duties, levies or any similar charges and exclude VAT or equivalent sales or use tax. Customer shall also pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, goods and services, and excise taxes). Dell's invoice shall be in accordance with applicable law. If Customer is required by law to make a withholding or deduction from payment, Customer will make payments to Dell net of the required withholding or deduction, and will supply to Dell satisfactory evidence (e.g. official withholding tax receipts) that Customer has accounted to the relevant authority for the sum withheld or deducted. If such evidence is not provided to Dell within 60 days of remittance to the applicable tax authority, Dell will impose a penalty payment on Customer, and Customer will be liable for such penalty, in the amount of the withholding imposed on that particular transaction.

4. SERVICES

The following shall apply to all purchases of Services under this CPA:

A. **SOW**. Services shall be subject to the additional terms contained in any SOW executed or otherwise provided by Dell in connection with the Service.

B. **Third-Party Products**. If Customer provides or makes available Third-Party Products for Dell to use in connection with the Services, Customer (a) authorizes Dell to use such Third-Party Products as needed to provide the Services, (b) warrants that it has all consents, licenses, and sublicense rights as may be necessary to make the Third-Party Products available to Dell, and (c) agrees that Dell shall not be liable to Customer if Dell's authorized use causes warranties or other services contracts for the Third-Party Products to become void.

C. **Services Software**. "**Services Software**" is Software that Dell may make available to Customer as necessary to enable Customer to receive and use the Services. Services Software may be hosted by Dell or installed on Customer's computers. Customer agrees that it shall (i) only use the Services Software as necessary to receive

and/or use the Services during the term thereof, (ii) use any Services Software hosted by Dell in a lawful manner, without interfering with other Dell customers' use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Dell's or its suppliers' intellectual property rights in the Services Software.

D. **Customer Obligations**. Except as may be expressly agreed by the parties in writing, Customer shall be solely responsible to back up all data on its systems and to install all equipment or technology upgrades, refreshes, and replacements. Customer shall provide timely access to Customer personnel, systems and information as may be needed for Dell to perform the Services. If the Services are provided on Customer's premises, Customer shall provide, without charge to Dell, a reasonable work environment for Dell personnel that is in compliance with all applicable laws and regulations and that includes work space, reproduction, computer, and other equipment, supplies, and services all as may be needed to perform the Services.

E. **Data**. In connection with Dell's performance of or Customer's use of the Services or Services Software, Dell may obtain, receive, and/or collect data or information, including system-specific data (collectively, the "**Data**"). Customer grants Dell (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Services or the Services Software; (ii) a license to aggregate and use the Data in an anonymous manner in support of Dell's internal, marketing and sales activities; and (iii) the right to copy and maintain the Data on Dell's or its suppliers' servers as necessary to provide the Services. Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located in order for Dell to provide Services hereunder.

F. **Updates**. It may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a temporary outage of the Services Software.

5. SOFTWARE

Customer may purchase Software licenses under this CPA for Software licensed to Customer by Dell or a Dell Affiliate ("**Dell Licensed Software**") and for Software licensed to Customer by a third party ("**Third-Party Software**").

A. **"Software"** means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, and the printed materials, online and electronic documentation provided by Dell with the Software and any copies thereof.

B. **"Software Agreement"** means either (i) the software license agreements included with the software media packaging or presented to Customer during the installation or use of the Software, or (ii) if no license terms accompany Dell Licensed Software or are not otherwise made available to Customer by Dell, then the applicable licensing terms found at www.dell.com/licenseagreements will apply.

C. **"Software Terms"** means the terms in a Software Agreement for Dell Licensed Software that state (a) the Dell Affiliate that is the licensor of the Software (the "Licensor") (b) Software title, license definitions, rights, and restrictions; (c) Software warranties and remedies; (d) maintenance and support services for the Software; (e) the Licensor's rights in connection with a change of control of Licensor or a sale of its assets; (f) Customer's compliance obligations with respect to the Software; (g) the parties' rights and obligations with respect to a termination of the Software Agreement or a license granted thereunder, and (h) the parties' liability in the event of a misappropriation, misuse, or disclosure of the other party's intellectual property, including, but not limited to the Software.

D. **Governing Terms**. Dell Licensed Software shall be governed by this CPA, the Software Terms, and the applicable Order provided to Customer by Dell (if any). Third-Party Software shall be governed by the Software Agreement that is provided with such Software and, as between Dell and Customer, the sections of this CPA regarding payment, taxes, warranty, and liability.

6. LIMITED WARRANTY

DELL'S WARRANTY TERMS FOR PRODUCTS SHALL BE PROVIDED AS INDICATED IN THE PRODUCT SCHEDULE OR THE SOFTWARE TERMS. DELL'S WARRANTIES FOR SERVICES SHALL BE PROVIDED IN THE SERVICES SCHEDULE. EXCEPT AS

EXPRESSLY STATED BY DELL ELSEWHERE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, DELL (INCLUDING DELL AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) FOR ANY THIRD-PARTY PRODUCTS OR SERVICES; (c) FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM ANY PRODUCTS OR SERVICES; OR (d) THAT THE PRODUCTS OR SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR. PRODUCTS AND SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS, REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS ANY APPLICATION IN WHICH THE FAILURE OF THE PRODUCTS OR SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "**HIGH-RISK ACTIVITIES**").

WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICES NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS OR HARDWARE SERVICES. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED BY DELL "AS IS."

7. CONFIDENTIALITY

"**Confidential Information**" means information that is designated as confidential or should reasonably be understood to be confidential. Confidential Information may only be disclosed to the receiving party's personnel, professional advisors, agents, and subcontractors ("**Representatives**"), or governmental taxing authorities, on a "need-to-know" basis in connection with this CPA. Representatives shall be bound to treat the Confidential Information under terms at least as restrictive as those herein, and the receiving party shall be liable for unauthorized disclosures by its Representatives. Each party will use at least the same degree of care as it employs with respect to its own Confidential Information, but not less than a commercially reasonable standard of care. The foregoing shall not apply to information that (i) is independently developed without use of the other party's Confidential Information; (ii) has been obtained from a source which is not under a confidentiality obligation; or (iii) is or becomes publicly available without fault of the receiving party. If receiving party must disclose Confidential Information as required by law, it shall give reasonable prior notice to the disclosing party. These obligations shall continue for 3 years from the initial date of disclosure, except that obligations related to information about a party's trade secrets and intellectual property shall never expire.

8. INDEMNIFICATION

A. Dell shall defend and indemnify Customer against any third-party claim that Dell-branded Products, Services or any tangible items provided as part of the Services (excluding Third-Party Products and open source software) infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights ("**Claims**"). In addition, if Dell receives prompt notice of a Claim that Dell believes is likely to result in an adverse ruling, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products or Service-related deliverables, if any, or for Dell to continue performing the Services; (2) modify such Products or Services to make them non-infringing; (3) replace such Products or Services with a non-infringing substitute; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product or Service-related deliverables, if any. Dell shall have no obligation for any claim arising from (a) modifications of the Products or Services that were not performed by or on behalf of Dell; (b) misuse, or the combination or use with Third-Party Products; (c) Dell's compliance with Customer's written specifications or directions, including the incorporation of any software or other materials or processes Customer provides or requests or (d) Customer's failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement. Dell's duty to indemnify and defend under this Indemnification Section is contingent upon: (i) Customer's prompt written notice of the Claim (ii) Dell's right to solely control the defense and resolution of the Claim, and (iii) Customer's cooperation in defending and resolving the Claim. These are the exclusive remedies for any third-party intellectual property claim, and nothing in this CPA or elsewhere will obligate Dell to provide any greater indemnity.

B. Subject to the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act, Customer shall indemnify, to the extend allowed by law, Dell against any third-party claim resulting or arising from (1) Customer's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by Customer, or associated with non-Dell software or other components directed or requested by Customer to be used with, installed or integrated as part of the Products or Services; (2) Customer's violation of Dell's proprietary rights; (3) any inaccurate representation regarding the existence of an export license or any allegation made against Dell due to Customer's violation or alleged violation of applicable export laws; or (4) Customer transferring or providing access to Excluded Data to Dell.

C. Subject to the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act, each party shall indemnify, to the extend allowed by law, the other against any third-party claim for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in the performance of its obligations under this CPA.

D. The indemnified party will (a) promptly notify the indemnifying party in writing of any such claim and grant the indemnifying party sole control of the defense and resolution of such claim and (b) cooperate with the indemnifying party, at the indemnifying party's expense, in defending and resolving such claim.The indemnification provisions of this section shall be limited by the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act as applied to Customer.

9. COMPLIANCE WITH LAWS

A. Customer's purchase of Dell's Products or Services is for its own use, not for resale, export, re-export, or transfer. Customer is subject to and solely responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions, as well as comply with Dell's trade compliance policies. Customer's purchase may not be used, sold, leased, exported, re-exported, or transferred except with prior written authorization by Dell's trade compliance and/or legal teams and in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory that is the subject or target of, economic sanctions of the United States and other applicable jurisdictions.

B. Customer certifies that all items (including hardware, software, technology and other materials) it provides to Dell for any reason that contain or enable encryption functions either (i) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies or (ii) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve. Dell is not responsible for determining whether any Third-Party Product to be used in the Products and Services satisfies regulatory requirements of the country to which such Products or Services are to be delivered or performed, and Dell shall not be obligated to provide any Product or Service where the resulting Product or Service is prohibited by law or does not satisfy the local regulatory requirements.

C. Dell's privacy policies explain how Dell treats personal information and protects its customers' privacy and can be found at Dell.com/privacy.

10. TERMINATION

Either party may terminate this CPA for convenience by providing at least 30 days prior written notice to the other or by providing timely written notice of non-renewal under Section 2. Either party may terminate this CPA, a SOW, or a Software Agreement (a) for a material breach of the CPA, SOW, or Software Agreement by the other party whichis not cured within 30 days of the breaching party's receipt of written notice of the breach

Dell may terminate this CPA, a SOW, or a Software Agreement with 10 days' written notice if Customer does not make payment as required by this CPA or the applicable SOW or Software Agreement (where such payment is not subject to a good faith dispute).If this CPA is terminated for convenience (or not renewed), all then-existing SOWs and Software Agreements shall remain in force for their stated term and shall continue to be governed by this CPA. If this CPA or an SOW or Software Agreement is otherwise terminated, all rights and obligations of the parties under this CPA or the

terminated SOW or Software Agreement shall automatically terminate, except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

11. LIMITATION OF LIABILITY

A. EXCEPT FOR CLAIMS RESULTING FROM A PARTY'S GROSS NEGLIGENCE, FRAUD, CRIMINAL CONDUCT OR WILLFUL MISCONDUCT, A VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CPA OR THE PRODUCTS OR SERVICES, OR FOR ANY OF THE FOLLOWING: (a) LOSS OF REVENUE, INCOME, PROFIT (IN EACH CASE, EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS), SAVINGS OR SHARE VALUE; (b) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK, OR THE RECOVERY OF SUCH; (c) LOSS OF BUSINESS OPPORTUNITY; (d) BUSINESS INTERRUPTION OR DOWNTIME; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

B. EXCEPT FOR CLAIMS RESULTING FROM THE A PARTY'S GROSS NEGLIGENCE, FRAUD, CRIMINAL CONDUCT OR WILLFUL MISCONDUCT, CUSTOMER'S BREACH OF ITS PAYMENT OBLIGATIONS, VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RESTRICTIONS ON USE IN AN ORDER OR SOFTWARE AGREEMENT, OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, ACTIONS AND CAUSES OF ACTION RELATED TO ANY DISPUTE (AS DEFINED BELOW) SHALL BE LIMITED TO THE AMOUNTS PAID DURING THE 12 MONTH PERIOD PRECEDING THE DATE THAT THE DISPUTE FIRST AROSE, FOR (i) THE PRODUCT THAT IS THE SUBJECT OF THE DISPUTE OR (ii) THE SERVICES THAT ARE THE SUBJECT OF THE DISPUTE, IN EACH CASE EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES.

C. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS APPLY TO ALL DISPUTES AND CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, STATUTE, EQUITY OR OTHERWISE. THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL'S SALE OF PRODUCTS OR SERVICES TO CUSTOMER, AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12. ADDITIONAL TERMS

A. **Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an express or implied obligation on behalf of the other party except as specified in this CPA. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party. Dell has the right to assign, transfer, subcontract, or delegate in whole or in part this CPA, or any of its rights, duties, obligations or liabilities provided that if it delegates or subcontracts its duties in providing Services, Dell shall remain responsible for the performance of such Services under this CPA. Customer may not assign or transfer this CPA without Dell's permission, which shall not be unreasonably withheld.

B. **Excused Performance.** Neither party shall be liable to the other for any failure or delay in performing its obligations due to circumstances beyond its reasonable control, provided that the other party is promptly notified in writing, and such party uses reasonable commercial efforts to resume performance. The failure of Dell, its affiliates or their subcontractors to perform their obligations under this CPA will be excused to the extent such non-performance is caused by the acts or omissions of Customer, its Affiliates, agents, contractors or other third parties. This Section shall not relieve either party of its obligations under this CPA (including payment), but rather will only excuse a delay in performance.

C. **Personnel.** If Customer submits a written notice (with details of Customer's concerns) request to Dell to discontinue immediately or as of a certain date from using a particular individual or subcontractor (whether an individual or entity) to provide services under this CPA, Dell will work to quickly comply with the request and notify Customer of the steps to be taken to address the request; and, Customer understands and acknowledges that any change that may occur as a result of the request may have an impact on the timing and availability of the services and products that are impacted by any such change.

D. **Excluded Data.** Customer acknowledges that Products and Services provided under this CPA are not designed to process, store or be used in connection with any of the following categories of data: (i) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (ii) articles, services and related technical data designated as defense articles and defense services; (iii) ITAR (International Traffic in Arms Regulations) related data; and (iv) other personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law (collectively referred to as "**Excluded Data**"). Customer is solely responsible for reviewing data that will be provided to or accessed by Dell to ensure that it does not contain Excluded Data.

E. **U.S. Government Restricted Rights**. The software and documentation provided with the Products and Services are "commercial items" as that term is defined at 48 C.F.R. 12.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer of Dell-branded Products is Dell, One Dell Way, Round Rock, Texas 78682.

F. **Governing Law.** This CPA and any related SOW(s) and Software Agreements, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND DELL, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "**Dispute**") will be governed by the laws of the State of Tennessee, without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

G. **Venue.** The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in the State of Tennessee. The parties agree to submit to the personal jurisdiction of such courts and waive any right to have any Dispute resolved in any other venue. If any party breaches this provision by filing in any other court, the breaching party will owe the non-breaching party all their attorneys' fees and costs incurred in response to that breach.

H. **Limitation Period**. NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM OR DISPUTE FILED MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

I. **Dispute Resolution**. Customer and Dell will attempt to resolve any Dispute through negotiation. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

J. **Attorneys' Fees.** In any Dispute, each party will bear its own attorneys' fees and costs.

K. **Notices.** Notice to Dell under this CPA or any related Order must be in writing and sent by registered or certified mail (postage prepaid first-class mail and return receipt requested) by overnight delivery service or by electronic mail to the address below, to be effective upon receipt.

Dell Marketing L.P., Attn: Contracts Manager
One Dell Way, Round Rock, Texas 78682
Dell_Legal_Notices@dell.com

Wilson County Schools
Deputy Director of Schools
415 Harding Drive
Lebanon, TN 37087

L. **Entire Agreement; Order of Precedence; Severability**. This CPA, including its Schedules, attachments and Orders, each of which is incorporated in this CPA for all purposes, constitutes the entire agreement between the parties concerning the subject matter of this CPA. There are no representations, understandings or agreements, written or oral, relative to this CPA that are not fully expressed in this CPA. In entering into this CPA, neither party is relying upon any representations or statements of the other that are not fully expressed in this CPA; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statements not expressly set forth in this CPA. In the event of a conflict or ambiguity between the terms of this CPA, a Schedule, or an Order, the terms will take precedence in the following order: the Order, the Schedule, and

this CPA. In the event of a conflict or ambiguity between the terms of this CPA, a Software Agreement, or an Order, the terms will take precedence in the following order: the Order, the Software Terms, and this CPA. Notwithstanding the foregoing, any preprinted terms on Customer's purchase order shall be of no force or effect. Modifications to this CPA will be made only through a written amendment signed by both parties. If any provision of this CPA, or any Schedule or SOW is found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this CPA or the affected Schedule or SOW will remain in full force. No rights may arise by implication or estoppel, other than those expressly granted herein.

By their signatures below, Dell and Customer agree to the terms and conditions in this CPA:

Dell Marketing L.P. ("Dell")

By: Amanda Elizabeth Hudson
Signature

Amanda E. Hudson
Printed Name

Contracts Manager
Position

March 28, 2019
Date

Wilson County Board of Education ("Customer")

By: Donna L Wright
Signature
Donna L. Wright
Printed Name
Director of Schools
Position
3-22-19
Date

By: Larry Tomlinson
Signature
Larry Tomlin
Printed Name LARRY TOMLINSON
Chairman of the Board
Position
3/22/19
Date

Product Schedule to Customer Purchase Agreement

1. **General.** This Product Schedule ("Schedule"), in addition to the Customer Purchase Agreement ("CPA"), into which this is hereby incorporated, states the terms for Orders for Products and Hardware Services by Customer from Dell. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the CPA.

2. **Prices.** The prices charged for Products purchased under this Schedule shall be the fixed price for Standard Configurations as specified in Exhibit A to this Schedule or as otherwise quoted by Dell. Additional charges will apply if Customer requests Hardware Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Hardware Service.

3. **Shipping Charges; Title; Risk of Loss.** Shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Title to Hardware passes from Dell to Customer upon shipment. Delivery of Software is FOB Origin. Loss or damage that occurs during shipping (including returns) is the responsibility of the party that selected the carrier. Shipping and delivery dates are estimates only. Customer must notify Dell within 5 days of the invoice date if Customer believes any part of its order is missing, wrong, or damaged.

4. **Hardware Returns, Exchanges and Repairs.** Customer agrees to Dell's return policy at Dell.com/returnspolicy. Before returning or exchanging Hardware, Customer must contact Dell to obtain an authorization number for the return. Customer must return Hardware in its original or equivalent packaging, and Customer is responsible for risk of loss and shipping and handling fees. Additional fees may apply. If Customer fails to follow the return or exchange instructions, Dell will not be responsible for any loss, damage, or modification of Hardware, or processing of Hardware for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with Customer's purchase. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned. Title to returned or exchanged Hardware shall pass to Dell upon receipt at the specified Dell facility.

5. **Cancellation of Order.** Customer may change or cancel an order for Dell-branded Products only up until the time Dell begins manufacturing the Products. Otherwise, Customer may change or cancel an order as set forth in the applicable Dell quote or as expressly agreed by both parties.

6. **Exclusions.** Hardware Services do not include preventive maintenance or repairs required due to (a) software problems; (b) alteration, adjustment, or repair of the Hardware by anyone other than Dell or Dell's representatives; (c) accident, misuse, or abuse of the system or component (such as fire, water leakage, use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) that have not been caused by Dell; (d) moving of the system from one geographic location or entity to another; or (e) an act of nature.

7. **Suspension of Hardware Services.** Dell may suspend Hardware Services if Customer purchased the Hardware Services through a reseller and the agreement between Customer and such reseller expires or is terminated, or Customer's reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer.

8. **Limited Warranty.** The limited warranties for Dell-branded hardware shall be as stated in the documentation provided with the hardware. If there is no such documentation, then the warranties shall be as stated at Dell.com/warrantyterms. Dell warrants that Hardware Services shall be performed in a good and workmanlike manner. Customer's exclusive remedy and Dell's sole obligation for any breach of any Hardware Services warranty shall be for Dell to re-perform the non-conforming Hardware Services.

Exhibit A to Product Schedule
Special Pricing Structure for Fixed Configurations

Special Pricing. During the Special Pricing Period, the referenced/attached Dell Configurations will be available to Customer for Customer's direct purchases from Dell and only for Customer's own internal use at the stated prices (for purchases from and delivered within the United States). Customer may only use such purchased items for its' own internal business uses and the purchases may not be sold, transferred, leased, or otherwise provided to any other entity or individual. The stated prices are fixed prices for the specific Dell Configurations and may not be aggregated or combined with any other discounts for which Customer may be eligible. In addition, the pricing terms set out above only apply to the specific Dell Configurations and any modifications or other items will be quoted by Dell for acceptance by Customer or otherwise as agreed in writing by Customer and Dell.

The Dell Configurations may be revised as mutually agreed without amending the contract, via mutually agreed quotations through the online electronic ordering portal made available for use by Customer.

Quarterly Reviews and Product Transition. Dell's account team will meet with Customer on a quarterly basis to review pricing, as well as Customer's purchased volumes and purchase forecasts. If an above Dell Configuration reaches the end of its life cycle during the Special Pricing Term, Dell will continue to work with Customer to develop a plan for a smooth transition to a comparably configured (specifications and functionality at or above the overall system levels of the discontinued Dell Configuration). The prices for any future configurations offered to Customer are subject to change for: (i) any factor external to Dell that may have a material impact on Dell's business operations or supply chain (ii) in the event of structural or significant changes in the way Dell develops its list pricing; (iii) if key vendors to Dell significantly change their pricing structure to Dell; or (iv) if Customer breaches or otherwise materially fails to comply with its commitments under this Agreement. In the event of a pricing change (whether a reduction or an increase), the new pricing will apply only to future orders placed by the Customer, and the new pricing will be subject to acceptance and approval by Customer through orders through Customer's electronic ordering portal or by a formal amendment to this agreement.

Technology Changes. As technology changes rapidly in our industry, with new products and revisions coming in to the marketplace on a regular basis, Dell's policy is necessarily one of product update and revision. Dell may revise and discontinue products (including components thereto) at any time without notice. In the event a product is discontinued, Dell will provide a product of the same or greater functionality, providing the product is available as part of Dell's standard product listing. Should the original product be discontinued before the replacement product has reached price parity with the original product, Dell reserves the right to re-negotiate prices for the products.

Exhibit A to the Product Schedule

Special Pricing Structure for Catalog Offers

Discount Structure

For general purchases, Dell will provide the minimum discounts identified below for select offerings generally described in the below table. The discounts are based on Dell's then current retail pricing and Dell reserves the right to change the retail pricing (which would also change the discounted selling price) at any time to apply to future orders.

Discounts: Product classifications and Categories may be changed by Dell without notice.

Discount Category	Product Classification	Minimum Discount off Dell Retail Price
A	PowerEdge Departmental Servers, PowerApp Appliance Servers, PowerVault Storage Products, Precision Workstations, Selected Dell/EMC; Selected OptiPlex Desktops and Selected Latitude Notebooks, VxRail	11.5%
F	Toner; Third-Party Printers through Dell S&P	No discount
H	Value Latitude, OptiPlex , Workstation, Future Products to be Determined	5%
M	3rd Party Software & Peripherals – Mainstream Products	5%
O	Selected Service on PowerEdge Departmental Servers; Directline Service; 4-Hr On-Site Critical Care Plus, Business Care Plus-On-Site Service (all years)	13%
R	On-Site Service – NBD On-Site Service (Extended years), Critical Care On-Site Service (all years)	14.5%
S	Selected Promotional Offers; Inspiron; Selected Latitude, SC PowerEdge; Selected Dell/EMC Branded Peripherals/Imaging; Power Connect, Axim, Projector, Printer	2%
X	Software and Peripheral (S&P) Specific, Non-discountable Products	No discount
ZS	Non-Discountable Service	No discount

Dell's current published retail price list is available at http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf

In the event customers purchasing products and services receive more advantageous pricing based on the customer's requested solutions or participate in special promotional offers (included those that provide additional discounted or specially priced and bundled options), the above discounts will not be applicable. The final customer-accepted Dell Quote or Dell procurement response will contain the applicable pricing and other details for the ordered individual offerings or for bundled offering configurations or special offers. Customer understands that the bundled offering or special promotional offerings may include other discounted or reduced cost or no additional cost products and services and the Customer may compare the bundled offering and any additional services to the line item pricing and minimum discounts to the Dell retail price list.

Services Schedule to Customer Purchase Agreement

1. **General.** This Services Schedule ("**Schedule**"), in addition to the Customer Purchase Agreement ("**CPA**"), into which this Schedule is hereby incorporated, states the terms for Orders for Professional Services under the CPA.

2. **Orders.** An Order for Professional Services may be (a) in the form of an SOW or other order form executed by the parties; (b) as agreed to by Customer via a Dell online ordering process; or (c) a Customer purchase order for those Professional Services described in Service Descriptions at Dell.com/servicecontracts/global as of the date Dell receives the purchase order. For orders described in the preceding subsection (c), the Service Descriptions shall be deemed incorporated into the Order and preprinted terms on the purchase order shall not apply.

3. **Charges.**
   A. **Billing.** Professional Services shall be billed at the rates stated in the SOW, which shall either be (a) per-hour or per-eight hour day ("**Time and Materials**") or (b) a fixed price for the tasks to be performed and deliverables to be provided ("**Fixed Price**"). The hours or days stated in a Time and Materials Services SOW are a good faith estimate of the time required to perform the Professional Services described in the SOW, but not a commitment to complete them in that amount of time. However, Dell will only perform Professional Services beyond the contracted hours on the written authorization of Customer. Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.

   B. **Travel Expenses; Taxes**. Unless otherwise stated in an SOW, Customer shall (i) reimburse Dell for actual, reasonable travel-related and other out-of-pocket expenses incurred in connection with any Services and (ii) pay any applicable sales, use, or other taxes Dell is required to collect in connection with the Services, except that Dell shall be responsible for its franchise, property, and employment taxes and taxes based on its net income.

   C. **Cost of Living Adjustment.** This Section 3.C shall apply to SOWs with a term longer than 1 year. Dell may adjust prices on any anniversary of the effective date of such an SOW if on such date the ECI (as defined below) is higher than it was on the immediately preceding anniversary date. The permitted price adjustment shall be calculated by multiplying the then-existing price(s) by a factor equal to the new ECI divided by the immediately preceding ECI, minus one. Each price adjustment shall remain in effect until the next permitted adjustment.

   For purposes of this Schedule, "**ECI**" means the Employment Cost Index, Total Compensation, Not Seasonally Adjusted, Private Industry for Professional, Specialty and Technical Occupations published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index ceases to be published, then another comparable measure agreed to by Dell and Customer.

4. **Warranty.** Dell warrants that the Professional Services shall be performed by qualified personnel in a workmanlike manner consistent with or superior to good practice in the US information technology services industry. Customer's exclusive remedy and Dell's sole obligation for any breach of foregoing warranty shall be for Dell to re-perform the non-conforming Professional Services at no charge or cancel the fees applicable to the non-conforming Services. All breaches of the warranty stated in this Section must be reported within 30 days of the performance of the Services.

5. **Suspension of Professional Services.** Dell may suspend Professional Services if Customer purchased the Professional Services through a reseller and the reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer. If Professional Services is purchased through a reseller and the agreement between Customer and such reseller expires or is terminated prior to the end of a SOW, the terms between Customer and the reseller to which Dell is a third party beneficiary shall remain in force as between Dell and Customer.

6. **Intellectual Property.** During the course of providing Professional Services, Dell may create and provide to Customer items including, but not limited to documents, designs, computer code, know-how, and methodologies which are protected by the intellectual property law of the United States, Canada, or the location in which the Professional Services are being provided ("**IP**"). Subject to payment in full, Customer is hereby granted a perpetual, irrevocable (except for non-payment), non-transferable, non-sublicenseable license to use the IP and any pre-existing Dell intellectual property that may be provided to Customer as part of the Professional Services ("**Pre-existing Dell IP"**) for non-commercial purposes to manage its and its Affiliates' internal business operations. Except as may otherwise be expressly stated in an SOW, Dell shall have sole and exclusive ownership of all IP, except (a) Customer shall retain all its rights in any Customer information or pre-existing intellectual property that may be contained in the IP and (b) Dell may not disclose or distribute the IP to any third party unless it first removes any such Customer information or intellectual property. Other than the license granted to Customer in this Section, Dell shall retain all rights and ownership in all Pre-existing Dell IP.