

MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
April 8, 2021

PRAYER

Mr. Shawn Wright

PLEDGE OF ALLEGIANCE

Ceremonial Item

Proclamation: Blackman Girls Basketball Team; National Telecommunicators Week

Consent Agenda

1. Community Investment Program Funds Transfer (Finance)
2. Purchase of Taser Equipment (Police)
3. Banner Request to Hang Across East Main Street: Bradley Academy Museum and Cultural Center (Street)
4. Asphalt Purchases Report (Water Resources)
5. Annual Audit Contract (Water Resources)
6. 2021 Chemical Bid (Water Resources)

Minutes

7. Approval of City Council Minutes Revised March 10, 2021 and Regular Meeting March 25, 2021 (City Recorder)

Old Business

Ordinance

8. FY21 Budget Amendment Ordinance (2nd and final reading) (Administration)
 - a. Ordinance Amendment
 - b. 2nd Reading: Ordinance 21-O-04

Land Use matters

9. Ordinance 21-OZ-03: Rezoning Property Along South Bilbro Avenue (2nd and final reading) (Planning)
10. Ordinance 20-OZ-45: Rezoning property along West Thompson Lane (2nd and final reading) (Planning)

New Business

Resolution

11. FY21 Budget Amendment (Schools)
 - a. FY21 Budget Amendment
 - b. Resolution 21-R-08

On Motion

12. City Schools Reroofing Professional Services (Administration)
13. Airport Hangar 1 Replacement Construction (Administration)
14. Mercury Boulevard Sidewalk Project – Award of Construction Contract (Engineering)
15. Contract for Engineering Services – Mercury Boulevard Sidewalk Project (Engineering)
16. Construction Materials Testing for the Mercury Boulevard Sidewalk Project (Engineering)
17. Rucker Lane Phase 1 Project – Award of Construction Contract (Engineering)
18. Contract for Engineering Services - Rucker Lane Phase 1 Project (Engineering)
19. Construction Materials Testing for the Rucker Lane Phase 1 Project (Engineering)
20. Approval to Renew Microsoft Office 365 Services (Information Technology)
21. Parkland Conversion and Purchase of 73 Acres (Parks & Recreation)
22. Construction of Track at Discovery School (City Schools)
23. Amendment No. 3 to the Cherry Lane Phase 3 Agreement between the City and TDOT (Transportation)
24. Cherry Lane Phase 3 – Professional Services Contract for Right of Way Acquisition (Transportation)
25. Rutherford Boulevard Adaptive Signal Control Technology Project Amendment No. 1 TDOT Contract (Transportation)
26. Rutherford Boulevard Adaptive Signal Control Technology Project Professional Service Agreement for Signal System (Transportation)
27. Signal Maintenance Agreement for I-840 & Veterans Parkway Exit Ramp Signalization (Transportation)
28. Stones River Water Treatment Plant Switchgear Improvements (Water Resources)

- 29. Outside City Sewer Requests – Rutherford Co. EMS & Fire Stations (Water Resources)
- 30. Purchase of Easements along Salem Hwy. (Water Resources)

Licensing

Board & Commission Appointments

- 31. Cable Television Commission

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Community Investment Program Funds Transfer

Department: Finance

Presented by: Melissa Wright

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input checked="" type="checkbox"/>

Summary

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

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 Transfers have been approved:

Automated Side Loaders

Transfer \$200,000 from Solid Waste Trommel Screen to Automated Side Loaders.

Boom Trucks

Transfer \$200,000 from Solid Waste Trommel Screen and \$75,000 from Recycling Center Improvements to Boom Trucks.

Priorities Served

Responsible budgeting

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

Fiscal Impact

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

Attachments

CIP Funds Transfer Request – 2021 Bond



... creating a better quality of life

CIP Funds Transfer Request


Mr. Tindall:

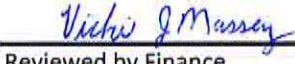
Submitted for your approval is the following request to transfer CIP funds.

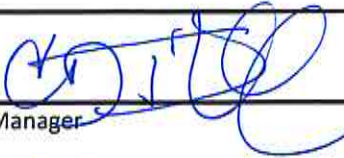
CIP Loan 2021 Bond

Transfer CIP funds from:		Transfer CIP funds to:	
Trommel Screen	\$ (200,000.00)	Automated Side Loaders	\$ 200,000.00
Trommel Screen	\$ (200,000.00)	Boom Trucks	\$ 200,000.00
Recycling Center Improvements	\$ (75,000.00)	Boom Trucks	\$ 75,000.00
TOTAL TRANSFER		TOTAL TRANSFER	\$ 475,000.00

Explanation: The following transfers have been requested - \$200,000 from the Trommel Screen to Automated Side Loaders, \$200,000 from the Trommel Screen to Boom Trucks, and \$75,000 from the Recycling Center Improvements to Boom Trucks. These transfers will reduce the Trommel Screen line item to \$0, will increase Automated Side Loaders line item to \$910,000, will increase the Boom Trucks line item to \$475,000 and will decrease the Recycling Center Improvements line item to \$200,000. These transfers will better prioritize equipment needs in the Solid Waste Department.

 4-1-21
Budget Director Signature Date

 4-1-21
Reviewed by Finance Date

Approved ☒ 
City Manager
Declined ☐ 4-1-21
Date

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

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Purchase of Taser Equipment

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Purchase of taser equipment for the Police Department.

Staff Recommendation

Approve the purchase of 14 tasers and equipment from Axon Enterprise, Inc.

Background Information

The Police Department has been awarded funding for the purchase of taser equipment from the 2020 Edward Byrne Memorial Justice Assistance Grant Application (JAG) Program.

The purchase of 14 units is available through our current contract with Axon Enterprise, Inc. for a total cost of \$29,802.

Council Priorities Served

Safe and Livable Neighborhoods

Tasers are a critical law enforcement tool that allows the officers to have a non-lethal use of force option when encountering situations in the field.

Fiscal Impact

The cost of the proposed purchase, \$29,802, is budgeted for FY21 from the grant funding received in the amount of \$28,362. The difference of \$1,440 is available in the operating expense budget for FY21.

Attachments

1. Axon Enterprise, Inc. Quote #Q263521-44280-991JG
2. Contract Between the City of Murfreesboro and Axon Enterprise, Inc.
3. JAG 2020 Budget Detail



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-263521-44280.991JG

Issued: 03/25/2021

Quote Expiration: 04/15/2021

Account Number: 452352

Payment Terms: Net 30
Delivery Method: Fedex - Ground

SHIP TO

Don Fanning
Murfreesboro Police Dept. - TN
1004 N. Highland Blvd
Murfreesboro, TN 37130
US

BILL TO

Murfreesboro Police Dept. - TN
1004 N. Highland Blvd
Murfreesboro, TN 37130
US

SALES REPRESENTATIVE

Joe Gauthier
Phone:
Email: jgauthier@axon.com
Fax:

PRIMARY CONTACT

Don Fanning
Phone: (615) 849-2670
Email: 0273@murfreesborotn.gov

Year 1

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
22003	YELLOW X2 CEW, HANDLE		14	1,332.38	1,332.38	18,653.32
22501	RIGHT-HAND HOLSTER, X2, BLACKHAWK		14	85.43	85.43	1,196.02
22012	TPPM, TACTICAL BATTERY PACK, PINKY EXTENDER, X2/X26P		14	71.06	72.56	1,015.84
22013	KIT, DATAPORT DOWNLOAD, USB, X2/X26P		5	229.90	229.90	1,149.50
22014	WARRANTY, 4 YEAR, X2		14	413.82	413.82	5,793.48
22185	25 FT SMART CARTRIDGE, X2 NS		48	41.54	41.54	1,993.92
Subtotal						29,802.08
Estimated Shipping						0.00
Estimated Tax						0.00
Total						29,802.08
Grand Total						29,802.08

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Joe Gauthier at jgauthier@axon.com or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

The trademarks referenced above are the property of their respective owners.

Axon Internal Use Only		
		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:
Review 1	Review 2	
Comments:		

**FOURTH AMENDMENT
TO THE
CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
AXON ENTERPRISE, INC**

This Fourth Amendment ("Fourth Amendment") to the Contract entered May 20, 2016 ("Contract") is effective as of this First Day of July 2020, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Axon Enterprise, Inc., a corporation of the State of Arizona, ("Contractor").

RECITALS

WHEREAS, on May 20, 2016, the City entered into a contract with Axon Enterprise, Inc., for Taser Equipment for the Murfreesboro Police Department; and,

WHEREAS, the term of the contract between the City and Contractor is currently from July 1, 2019 to June 30, 2020, and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to Clause 2 of the current Contract for an additional year; and

WHEREAS, Clause 2 of the Contract and Section 1.3.3 of the Invitation to Bid provided for the extension of the contract for a second, third, fourth and fifth contract periods contingent upon the City's satisfaction with supplied product, service, and delivery; and,

WHEREAS, Clause 2 of the Contract and Section 1.3.3 (2) of the Invitation to Bid provided that price increases on bid items after the initial period will be negotiable and subject to mutual agreement by City and Contractor; and,

WHEREAS, Clause 2 of the Contract and Section 1.3.3 (3) of the Invitation to Bid provided that Contractor must submit price increases prior to March 1 of each year (2017, 2018, 2019, and 2020) for approval and acceptance by the City Manager; and,

WHEREAS, Contractor has submitted the price increases for the 2021 Contract year as set forth on Attachment A to this Amendment; and,

WHEREAS, the City approves and accepts the price increases set forth on Attachment A for the 2021 Contract year; and:

NOW THEREFORE, the City and Contractor mutually agree:

1. Extend the term of the current Contract, from July 1, 2020 until June 30, 2021.
2. Update the pricing in accordance with the attached Exhibit A, which will be effect until December 31, 2020. Any future price increases are subject to the mutual agreement of the City and Contractor in accordance with Section 1.3.3 of the City's Invitation to Bid ("ITB-60-2016-Police Tasers").
3. All other terms of the contract shall remain the same.


[signatures appear on the following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of Sept. 24th, 2020 (the "Effective Date").

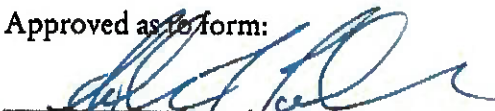
CITY OF MURFREESBORO


Shane McFarland, Mayor

AXON ENTERPRISES, INC.


Robert Driscoll, VP, Assoc. Gen.

Approved as to form:


Adam F. Tucker, City Attorney

BUDGET AND BUDGET NARRATIVE
FY 2020 JAG LOCAL ALLOCATION AMOUNTS \$25,000 OR MORE
GMS APPLICATION NUMBER 2020-H9113-TN-DJ

MURFREESBORO POLICE DEPARTMENT

BUDGET NARRATIVE

The Murfreesboro Police Department proposes to use the City's share of the award to purchase Conducted Energy Devices (CED) which will increase the amount of non-lethal options available for officers available for our officers.

BUDGET DETAIL SHEET

2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

2020-H7624-TN-DJ

Federal Award Amount \$56,724.00

Rutherford County's Share \$28,362.00

City of Murfreesboro's Share \$28,362.00

Proposed Spending Plan for the City of Murfreesboro					
Item No.	Description	Quantity	Vendor	* Cost Each	Total Cost
1	YELLOW X2 CEW, HANDLE WITH WARRANTY	14	Axon Enterprise, Inc.	\$1,671.00	\$23,394.00
2	TPPM, TACTICAL BATTERY PACK, PINKY EXTENDER, X2/X26P	14	Axon Enterprise, Inc.	\$69.50	\$973.00
3	RIGHT-HAND HOLSTER, X2, BLACKHAWK	14	Axon Enterprise, Inc.	\$70.50	\$987.00
4	25 FT SMART CARTRIDGE, X2	48	Axon Enterprise, Inc.	\$39.75	\$1,908.00
5	KIT, DATAPORT DOWNLOAD, USB, X3/X26P	5	Axon Enterprise, Inc.	\$220.00	\$1,100.00
				Total	\$28,362.00
					\$0.00

* These figures are estimates, based on information from vendors. Any additional funds needed to purchase this equipment will be taken from MPD equipment budget line item.

BUDGET AND BUDGET NARRATIVE
FY 2020 JAG LOCAL ALLOCATION AMOUNTS \$25,000 OR MORE
GMS APPLICATION NUMBER 2020-H9113-TN-DJ

Rutherford County Sheriff's Office

BUDGET NARRATIVE

The Rutherford County Sheriff's Office wishes to purchase three PVS -31 BNVD Night Vision Kits using grant funding. The Night Vision systems will be used by our SWAT team during low light or no light situations while conducting tactical operations. Those tactical operations may include but are not limited to hostage rescue, high risk warrant services, armed barricaded subjects, area searches for dangerous felons, and rescue operations. By utilizing the Night Vision Kits it will allow the tactical operator to see in total darkness while not utilizing any white light making it safer for not only the operator but for the suspect and citizens as well. This purchase aligns with BJAs project identifier. The equipment will be used by the SWAT task force to purchase tactical equipment for Surveillance and Officer and Citizen Safety.

BUDGET DETAIL SHEET

2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

2020-H7624-TN-DJ

Federal Award Amount	\$56,724.00
Rutherford County's Share	\$28,362.00
City of Murfreesboro's Share	\$28,362.00

Proposed Spending Plan for the City of Murfreesboro					
Item No.	Description	Quantity	Vendor	* Cost Each	Total Cost
1	BNVD Night Vision Kits	3	Tomahawk Strategic Solutions	\$13,500.00	\$40,500.00
2	Shipping	1		\$45.00	\$45.00
				Total	\$40,545.00
					(\$12,183.00)

* These figures are estimates, based on information from vendors. Any additional funds needed to purchase this equipment will be taken from Rutherford County Sheriff Office equipment budget line item.

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Main Street Banner Request

Department: Street Department

Presented by: Jami Coffelt

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Main Street banner for the Juneteenth Celebration at Bradley Museum and Cultural Center.

Staff Recommendation

Approve a banner to be displayed from June 11th- June 21st, 2021.

Background Information

Juneteenth is the American holiday commemorating the June 19th, 1865 announcement of the abolition of slavery in the U.S. state of Texas and more generally, the emancipation of enslaved African Americans throughout the former Confederate States of America.

Council Priorities Served

Establish strong City brand

Banners hung across East Main Street engages our community in various activities and communicates special events to the general public thereby enhancing the City reputation through an active community involvement.

Fiscal Impact

None



March 30, 2021

To the Mayor and City Council,

Murfreesboro Parks and Recreation is requesting to hang a banner across East Main Street from June 11, 2019 – June 21, 2021 to promote the Juneteenth Celebration at Bradley Museum & Cultural Center which will be held June 17 - 19, 2021. This American holiday commemorates the June 19, 1865, announcement of the abolition of slavery in the U.S. state of Texas, and more generally the emancipation of enslaved African Americans throughout the former Confederate States of America.

Jami Coffelt has indicated these dates are available.

Thank you,

A handwritten signature in cursive script that reads "Melinda Tate".

Melinda Tate
Marketing Coordinator
Murfreesboro Parks & Recreation
(615) 890-0355 ext. 6802
mtate@murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Asphalt Purchases Report

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input checked="" type="checkbox"/>

Summary

Report of asphalt purchases.

Staff Recommendation

The asphalt reporting of purchases, consistent with purchases associated as perishable, fuel-based commodity is provided as information only.

Background Information

Purchases of asphalt are made throughout the month and reported with MWRD's O&M's 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, 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 safe drivability of roadways affected by water resources operations focuses on customer service.

Fiscal Impacts

The overall costs associated with asphaltic material purchases for these O&M projects are in the range of \$150,000 to \$175,000 per year. Costs are appropriately budgeted.

Attachments

Asphalt Purchases Report

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2021

	Blue Water		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$65.00	\$75.00	\$54.50	\$62.50	\$55.22	\$63.13	
Aug	\$65.00	\$75.00	\$53.50	\$61.50	\$54.17	\$62.06	
Sep	\$65.00	\$75.00	\$53.50	\$61.50	\$54.03	\$61.97	
Oct	\$65.00	\$75.00	\$53.50	\$61.50	\$53.93	\$61.83	
Nov	\$65.00	\$75.00	\$53.85	\$61.75	\$53.79	\$61.65	
Dec	\$65.00	\$75.00	\$53.75	\$61.75	\$53.58	\$61.37	
Jan			\$53.75	\$61.75	Closed		
Feb			\$54.00	\$62.00	Closed		
Mar			\$55.25	\$62.50	\$56.38	\$64.67	
Apr							
May							
Jun							

MWRD OPERATIONS & MAINTENANCE	
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Asphalt Purchases FY 2021

[illegible]

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Annual Audit Contract

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Consider annual audit bid for Murfreesboro Water Resources Department and Stormwater Fund.

Staff Recommendation

Approve the bid from Jobe, Hastings & Associates and allow MWRD/Stormwater Department to sign the State's electronic contract.

Background Information

The annual audit report is a requirement of the State of Tennessee. The bid includes Murfreesboro Water Resources Department and Stormwater fund.

Jobe, Hastings & Associates is a local CPA firm with expertise in government auditing. Experienced audit managers will be assigned to perform and supervise the work.

Council Priorities Served

Responsible budgeting

The performance of an independent audit allows MWRD and Stormwater funds to meet State requirements, provides assurance that national reporting and accounting standards are being followed, and ensures the financial information presented to the public is accurate.

Fiscal Impact

The cost is budgeted in the FY22 MWRD/Stormwater budgets at \$30,000 combined.

Attachments

Jobe, Hastings & Associates proposal



JOBE, HASTINGS & ASSOCIATES

Certified Public Accountants

745 SOUTH CHURCH STREET – BELMONT PARK
P.O. BOX 1175 MURFREESBORO, TN 37133-1175
(615) 893-7777 FAX: (615) 896-5990
www.jobehastings.com

James R. Jobe, CPA
Donna K. Hastings, CPA (*inactive*)
Joel H. Jobe (*1944 – 2006*)

January 22, 2021

Mr. Darren Gore
Murfreesboro Water Resources Department
P.O. Box 1477
Murfreesboro, TN 37130

Re: Audit Proposal

Dear Mr. Gore:

Thank you for the opportunity to perform the audits of the Murfreesboro Water Resources Department and the Murfreesboro Stormwater Fund for the prior fiscal year. We appreciate the confidence that you have shown in our firm by allowing us the opportunity to submit a proposal for the coming fiscal year.

We are pleased to submit our proposal to audit the financial statements of the Murfreesboro Water Resources Department and the Murfreesboro Stormwater Fund for the year ending June 30, 2021. The audits will be financial and compliance audits and will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, as well as those prescribed by the Comptroller of the Treasury of the State of Tennessee. Furthermore, the audit of the Water Resources Department will be conducted in accordance with all requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), if applicable.

We propose to perform the audits of the Murfreesboro Water Resources Department and the Murfreesboro Stormwater Fund for a total combined fee of \$29,300 (\$25,600 for the Murfreesboro Water Resources Department and \$3,700 for the Stormwater Fund.) This fee is based on the amount of time we feel is necessary to perform the audits in an efficient but comprehensive manner as required by the standards.

Your selection of us as auditors will enable us to begin interim audit testing prior to the fiscal year ending June 30, 2021, and meet with departmental personnel to plan the audit time-line to ensure that the deadline of October 30, 2021 is met.

If you need any additional information other than what we have provided, please let us know. We appreciate your business and look forward to continuing to work with you.

Sincerely,

James R. Jobe, CPA
Partner

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: 2021 Chemical Bid

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance ☐
Resolution ☐
Motion ☒
Direction ☐
Information ☐

Summary

The results of the 2021 Chemical Bid for the water treatment plant.

Staff Recommendation

Approve chemical bids from the lowest responsible and responsive bidder for water treatment chemicals.

Background Information

Bids were publicly opened on March 1, 2021, for water treatment chemicals to be used at the Stones River Water Treatment Plant. There were five chemicals bid for FY22. The chemicals are calcium oxide (quicklime), citric acid, sodium chloride, sodium hydroxide and sodium bicarbonate.

Council Priorities Served

Responsible budgeting

MWRD bids chemicals annually that are either not in the best interest of the Department to extend or contracts that cannot be extended.

Fiscal Impact

The price of the chemicals is reflected in the FY22 Operating Budget with a contract price through June 30, 2022. The estimated annual expense for FY22 Operating Budget is in the table below.

Company Name	Chemical	Unit Price	Estimated Annual Expense
Brenntag	Citric Acid	\$6.500	\$16,000
Brenntag	Sodium Hydroxide	\$0.1600	\$5,000
Brenntag	Sodium Bicarbonate	\$0.1995	\$10,000
Carmeuse	Calcium Oxide	\$0.129125	\$255,000
Univar	Sodium Chloride	\$0.1780	\$55,000

COUNCIL COMMUNICATION

Meeting Date: 04/8/2021

Item Title: Minutes of City Council Meetings

Department: Finance

Presented by: Melissa Wright

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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 March 10, 2021 minutes have been revised because of a typo on the Council Communication for the Community Development acquisition request. The original letter listed the property as 731 North Walnut Street and the true address was 734 North Walnut Street. A corrected letter has been received and the minutes have been revised for approval, the revised address is on page two of the attached March 10, 2021 minutes.

Attachments

1. March 10, 2021 (Revised – Regular Meeting)
2. March 25, 2021 (Regular Meeting)

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, March 10, 2021 in the Community Room at Murfreesboro Municipal Airport, 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
Kirt Wade
Shawn Wright

Vice-Mayor Scales Harris participated telephonically at this meeting. Council Member Ronnie Martin arrived late to the 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
Chad Gehrke, Airport Director
Matthew Blomeley, Assistant Planning Director
Joshua Miller, Administrative Assistant

Mayor McFarland announced that Item No. 6 on the Agenda, January Dashboard Information, was to be heard first.

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

(Insert letter dated March 10, 2021 here with
regards to January 2021 Dashboard packet.)

The January 2021 Dashboard update, which included Financial, Building & Codes, Risk Management, Construction Data, City Schools Cash Flow Statements, and Revenue & Expenditure Budget Comparison Reports, was presented to Council with no discussion taking place.

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

(Insert letter dated March 10, 2021 here with regards to approval of Minutes
of City Council Meetings from November 5, 2020 through January 21, 2021.)

Mr. LaLance made a motion to approve the minutes as written and presented for the public comment meeting held on November 5, 2020; the regular meeting held on November 5, 2020; the regular meeting held on November 12, 2020; the regular meeting held on

November 19, 2020; the public comment meeting held on December 3, 2020; the regular meeting held on December 3, 2020; the regular meeting held on December 9, 2020; the regular meeting held on December 17, 2020; the public comment meeting held on January 7, 2021; the regular meeting held on January 7, 2021; the regular meeting held on January 13, 2021; and the regular meeting held on January 21, 2021. Mr. Wade seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

Mr. Sam Huddleston, Executive Director, Development Services, announced that a public comment meeting was to be held on March 30, 2021 regarding the City's Community Development 2020-2024 Five-Year Consolidated Plan and the 2020 Action Plan.

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

(Insert letter dated March 10, 2021 here with regards to CDBG Property Acquisition of 734 North Walnut Street.)

Mr. Sam Huddleston, Executive Director, Development Services, presented the request of the Community Development Department to approve Community Development Block Grant (CDBG) assistance to Greenhouse Ministries for the purchase of 734 North Walnut Street.

Mr. Wade made a motion to approve Community Development Block Grant (CDBG) assistance to Greenhouse Ministries by providing \$125,000 to assist with the purchase of 734 North Walnut Street in which the City will enter into a Sub-recipient agreement with Greenhouse Ministries and Greenhouse Ministries will provide a minimum 25% match in purchase and improvements and will enter a 10-year rental agreement which will end with Greenhouse Ministries receiving the title to the property. Mr. Shacklett seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

Mr. Martin arrived at this time.

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

(Insert letter dated March 10, 2021 here with regards to potential renaming of Mercury Boulevard.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the report from the Planning Department regarding the potential renaming of Mercury Boulevard to Dr Martin Luther King Jr Boulevard. Mr. Blomeley stated that the impact to emergency service providers would be minimal, that there would be some impact to property owners and tenants and that this name change would provide an opportunity to rectify a confusing situation with a 600' segment of Mercury Boulevard that is east of South Rutherford

Boulevard. If the name change is implemented staff will recommend incorporating that 600' segment into John Bragg Highway.

Mr. Wade made a motion to send a recommendation to the Planning Commission that they rename Mercury Boulevard to Dr Martin Luther King Jr Boulevard. Mr. Shacklett seconded the motion. A roll call vote was conducted and all members of the Council voted "Aye".

Mr. LaLance asked that the City consider providing monetary acknowledgement to the property owners and tenants for the hassle involved with changing an address.

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

(Insert letter dated March 10, 2021 here
with regards to Impact Fees Analysis.)

Mayor McFarland stated that he would abstain from any discussion regarding the impact fees decision.

Mr. L. Carson Bise II, President of TischlerBise, presented an analysis of the potential revenue that could be produced with the implementation of development impact fees to the City, presented how the computation to determine impact fee amounts is developed, presented a maximum amount that could be charged for recreation and street capital improvement projects, and provided a fee comparison with other municipalities. Mr. Bise answered questions from Council regarding collecting data for implementing fees for schools and emergency services as well as justifying the recreation fee amount. Based on questions and discussion with Mr. Bise, Council directed him to gather data regarding implementing fees for schools and emergency services as well as develop a timeframe for gathering the data and conducting stakeholder meetings.

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

(Insert letter dated March 10, 2021 here with
regards to MED Proceeds Committee.)

Mayor McFarland announced that nine people had submitted questionnaires to serve on the MED Proceeds Committee. He suggested that each Council Member select their top four choices and the top four choices would serve on the MED Proceeds Committee with Council Member Rick LaLance as the Council representative. Mr. Bob Mifflin, Mr. Andy Womack, Ms. Amy Farrar, and Mr. Eric Meriwether were selected as the four members of the MED Proceeds Committee.

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

(Insert letter dated March 10, 2021 here with regards to Beer Permit applications for Rock N Roll Sushi at 3053 Medical Center Pkwy., Ste. D, Pisco 305 at 452 N Thompson Ln., Ste. C, Fresh Bite at 451 N Thompson Ln, Ste. A and Walmart Fuel Station #5148 at 1157 Fortress Blvd.)

Mr. Wade made a motion to approve Beer Permits for Rock N Roll Sushi, 3053 Medical Center Parkway, Suite D (New Location); Pisco 305, 452 N Thompson Lane, Suite C (New Location); Fresh Bite, 451 N Thompson Lane, Suite A (Ownership and Name Change) and Walmart Fuel Station #5148, 1157 Fortress Boulevard (New Location), pending building and codes inspections. Mr. Martin seconded the motion. A roll call vote was conducted and all members of the Council voted "Aye".

Mr. Chad Gehrke, Airport Director, demonstrated the airport's new aviation tracking software, VirTower, that collects real time data regarding flight patterns, flight touchdowns, flight takeoffs, and that the data shows the activity of the Murfreesboro Municipal Airport.

There being no further business, Mayor McFarland adjourned this meeting at 1:32 p.m.

SHANE MCFARLAND – MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

March 25, 2021

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, March 25, 2021, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright

Vice-Mayor Scales Harris participated telephonically at this meeting and Council Member Rick LaLance was absent and excused.

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Jennifer Brown, Assistant 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
Raymond Hillis, Executive Director/
Public Works
Erin Tucker, Budget Director
Kayla Walker, Development Project Director
Pam Russell, Human Resources Director
Cathy Smith, Purchasing Director
Chad Gehrke, Airport Director
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Helen Glynn, Assistant Community Development Director
Joshua Miller, Administrative Assistant

Mayor McFarland commenced the meeting by asking everyone to join him in a moment of silence for Mr. Jason Reynolds a former reporter for the Murfreesboro Post who covered City Council meetings and recently passed away.

Council Member Kirt Wade led those gathered with a prayer followed by the Pledge of Allegiance.

Ms. Pam Russell, Human Resources Director, recognized STARS Award recipient Mr. Jeff Todd, Street Department, who went above and beyond the call of duty when, as he drove down Joe B Jackson Parkway, he noticed smoke coming from a side street. Mr. Todd immediately called 911 and attempted to evacuate the building. His efforts resulted in the neighboring buildings being saved. Mayor McFarland presented a plaque recognizing Mr. Todd's ability to represent the best of what Murfreesboro City Employees have to offer, exhibiting core values and creating a better quality of life for citizens.

The Consent Agenda was presented to the Council for approval:

1. Mandatory Referral for Right-of-Way Abandonment of Vaughn Street (Planning)
2. Purchase of Office Furniture (Police)
3. Purchase of Radar Units (Police)
4. Approval of use of Competitive Sealed Proposals for Professional Collection Services (Purchasing)
5. Asphalt and Concrete Purchase Report (Street)
6. Main Street Banner Request: St. Clair Senior Center September 27 – October 7, 2021 (Street)
7. Vehicle Purchase Contract Amendment (Water Resources)
(Insert letters from Planning, Police (2), Purchasing, Street (2) & Water Resources Departments here.)

Mr. Wade made a motion to approve the Consent Agenda. Mr. Shacklett seconded the motion. A roll call vote was conducted 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 March 25, 2021 here with regards to approval of Minutes of City Council Meetings from February 4, 2021 through March 11, 2021.)

Mr. Martin made a motion to approve the minutes as written and presented for the public comment meeting held on February 4, 2021; the regular meeting held on February 4, 2021; the regular meeting held on February 10, 2021; the regular meeting held on February 25, 2021; the public comment meeting held on March 4, 2021; the regular meeting held on March 4, 2021; the regular meeting held on March 10, 2021 and the special meeting held on March 11, 2021. Mr. Wright seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

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

(Insert letter dated March 25, 2021 here with regards to rezoning approximately 13.1 acres located along West Thompson Lane, west of Northboro Court [2020-418].)

Mayor McFarland announced that he would abstain from any discussion and vote regarding this development.

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to rezone approximately 13.1 acres along the north side of West Thompson Lane from Residential Single-Family Fifteen (RS-15) District to Planned Residential Development (PRD) District (Kings Landing Villas PRD). He stated that Council had deferred this matter on December 17, 2020 expressing concerns about the proposed

plan and introduced Mr. Clyde Rountree, Huddleston-Steele Engineering, Inc., who stated that changes regarding the density, garages for townhome products and architectural elevations for single-family detached homes had been made to the proposed development plans.

An ordinance, entitled "ORDINANCE 20-OZ-45 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 13.1 acres along the north side of West Thompson Lane from Residential Single-Family Fifteen (RS-15) District to Planned Residential Development (PRD) District (Kings Landing Villas PRD); Black Diamond Development, applicant [2020-418]," was read to the Council and offered for passage on first reading upon motion made by Mr. Shacklett, seconded by Mr. Martin. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright

Nay: None

Abstain: Shane McFarland

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

(Insert letter dated March 25, 2021 here with regards to
Fiscal Year 2021 Budget Amendment Ordinance 21-O-04.)

An ordinance, entitled "ORDINANCE 21-O-04 amending the 2020-2021 Budget (5th Amendment)," was read to the Council and offered for passage on first reading upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

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

(Insert letter dated March 25, 2021 here with regards to rezoning
for approximately 1.28 acres located at the northeast corner
of South Bilbro Avenue and East State Street [2020-422].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 21-R-PH-03 adopted by the City Council on February 25, 2021, to consider rezoning of approximately 1.28 acres located at the northeast corner of

South Bilbro Avenue and East State Street; Blue Sky Construction, Inc., applicant [2020-422]. Notice of said public hearing was published in the March 9, 2021 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 of approximately 1.28 acres located at the northeast corner of South Bilbro Avenue and East State Street from RS-8 (Single Family Residential District 8) and CCO (City Core Overlay District) to PRD (Planned Residential District and CCO and stated that he had given each Council Member a letter of questions from Mr. Paul Anthony Brothers, a next door neighbor to the proposed development. He introduced Mr. Clyde Rountree, Huddleston-Steele Engineering, Inc., who gave a presentation on the proposed 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 1.28 acres located at the northeast corner of South Bilbro Avenue and 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 21-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 1.28 acres located along South Bilbro Avenue and East State Street from Single-Family Residential Eight (RS-8) District and City Core Overlay (CCO) District to Planned Residential Development (PRD) District (The Row on Bilbro PRD) and City Core Overlay (CCO) District; Blue Sky Construction, Inc., applicant(s) [2020-422]," was read to the Council and offered for passage on first reading upon motion made by Mr. Wright, seconded by Mr. Martin. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Kirt Wade
Shawn Wright
Bill Shacklett
Shane McFarland

Nay: None

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

(Insert letter dated March 25, 2021 here with regards to sewer allocation variance - Old Salem Road – The Journey Home.)

Mr. Greg McKnight, Planning Director, presented the request to approve The Journey Home's request for additional density above the sewer allocation ordinance's zoning allowance. He stated that the proposed development will use more water than the ordinance allows, by approximately 1.4 sfu's, but staff views the impact this facility will have on the City as a greater benefit.

Mr. Shacklett made a motion to approve The Journey Home's request for 2.0 Sfu's additional density above the sewer allocation ordinance's zoning allowance. Mr. Wade seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye" except Mr. Martin who voted "Nay".

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

(Insert letter dated March 25, 2021 here with regards to amendment to TischlerBise Impact Fees Contract.)

Mr. Craig Tindall, City Manager, presented the recommendation to approve the amendment to the Contract with TischlerBise for add-ons to the scope of services regarding Impact Fees Analysis in an amount of \$39,940, funded from Economic Development Contractual Services.

Mr. Shacklett made a motion to approve the amendment to the Contract with TischlerBise for add-ons to the scope of services regarding Impact Fees Analysis in an amount of \$39,940, funded from Economic Development Contractual Services. Mr. Wade seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

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

(Insert letter dated March 25, 2021 here with regards to Contract with Quadrex Aviation LLC. for Airport Safety and Capacity Study.)

Mr. Chad Gehrke, Airport Director, presented the request of the Airport to approve the Contract with Quadrex Aviation LLC. for an Airport Safety and Capacity Study in the amount of \$29,812 with the City and MTSU sharing the cost.

Mr. Shacklett made a motion to approve the Contract with Quadrex Aviation LLC. for an Airport Safety and Capacity Study in the amount of \$29,812 with the City and MTSU sharing the cost. Mr. Martin seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

Mayor McFarland stated that once the study was completed, he would like to hold a joint meeting with the City Council and the Airport Commission to discuss the study results and the overall future vision for the airport.

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

(Insert letter dated March 25, 2021 here with regards to 2019 Planning Grant Subrecipient Agreement.)

Ms. Helen Glynn, Assistant Community Development Director, presented the request of the Community Development Department to approve the Subrecipient Agreement with Housing, Health and Human Services Alliance of Rutherford County (H³ARC) in order to develop more formal decision making and operating standards for the local Continuum of Care goal.

Mr. Shacklett made a motion to approve the Subrecipient Agreement with Housing, Health and Human Services Alliance of Rutherford County (H³ARC) in order to develop more formal decision making and operating standards for the local Continuum of Care goal. Mr. Wade seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Infrastructure/City Engineer was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to Chaffin Place Improvements – Professional Services Agreement.)

Mr. Chris Griffith, Executive Director of Public Infrastructure/City Engineer, presented the request of the Engineering Department to approve the Professional Services Agreement with Energy, Land and Infrastructure, LLC for Chaffin Place Improvements near Old Fort Parkway in the amount of \$112,360 coming from CIP Funds.

Mr. Wade made a motion to approve the Professional Services Agreement with Energy, Land and Infrastructure, LLC for Chaffin Place Improvements near Old Fort Parkway in the amount of \$112,360 coming from CIP Funds. Mr. Martin seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Infrastructure/City Engineer was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to acquisition of Right of Way and Easements for Warrior Drive.)

Mr. Chris Griffith, Executive Director of Public Infrastructure/City Engineer, presented the request of the Engineering Department to approve funding in the estimated amount of \$24,500 for the acquisition of right of way and easements along Warrior Drive for the Warrior Drive Widening Project at New Salem Highway.

Mr. Wade made a motion to approve funding in the estimated amount of \$24,500 for the acquisition of right of way and easements along Warrior Drive for the Warrior Drive Widening Project at New Salem Highway. Mr. Shacklett seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Infrastructure/City Engineer was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to Final Change Order for Robert Rose Drive-Right Turn Lane.)

Mr. Chris Griffith, Executive Director of Public Infrastructure/City Engineer, presented the request of the Engineering Department to approve the Final Change Order with Bell and Associates Construction for Robert Rose Drive Right Turn Lane Construction Project in the amount of \$48,681 coming from project funds allocated in the 2019 CIP Budget.

Mr. Martin made a motion to approve the Final Change Order with Bell and Associates Construction for Robert Rose Drive Right Turn Lane Construction Project in the amount of \$48,681 coming from project funds allocated in the 2019 CIP Budgets. Mr. Wade seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

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

(Insert letter dated March 25, 2021 here with regards to Insurance Brokerage and Risk Management Services.)

Mr. Adam Tucker, City Attorney, presented the recommendation of the Legal Department to approve the Contract with Arthur J. Gallagher Risk Management Services, Inc. in the amount of \$30,000 per year for three years with the option to renew for two additional one-year terms funded from the City's Self-Insured Risk Fund.

Mr. Wade made a motion to approve the Contract with Arthur J. Gallagher Risk Management Services, Inc. in the amount of \$30,000 per year for three years with the option to renew for two additional one-year terms funded from the City's Self-Insured Risk Fund. Mr. Shacklett seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Project Development Director was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to Agreement for Fencing Installation and Relocation at Miller Coliseum & Caroline Farms.)

Ms. Kayla Walker, Project Development Director, presented the request to approve the Contract with Premier Fence, LLC. in the amount of \$36,189 funded from the 2019 Loan for fencing installation and relocation between Miller Coliseum and Caroline Farms.

Mr. Wade made a motion to approve the Contract with Premier Fence, LLC. in the amount of \$36,189 funded from the 2019 Loan for fencing installation and relocation between Miller Coliseum and Caroline Farms. Mr. Martin seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Works was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to Guardrail Replacement.)

Mr. Raymond Hillis, Executive Director of Public Works, presented the request of the Street Department to approve the Guardrail Replacement Contract with LU Inc. in the amount of \$131,753 coming from Risk Management Funds and the Street Department Budget.

Mr. Martin made a motion to approve the Guardrail Replacement Contract with LU Inc. in the amount of \$131,753 coming from Risk Management Funds and the Street Department Budget. Mr. Wright seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Works was presented to the Council:

(Insert letter dated March 25, 2021 here with regards to purchase of Rock Salt.)

Mr. Raymond Hillis, Executive Director of Public Works, presented the request of the Street Department to approve the purchase of 1500 tons of rock salt through State Contract 66848 with Morton Salt, Inc. in the amount of \$122,490.

Mr. Wade made a motion to approve the purchase of 1500 tons of rock salt through State Contract 66848 with Morton Salt, Inc. in the amount of \$122,490. Mr. Wright seconded the motion. A roll call vote was conducted and all members of the Council present voted "Aye".

The Assistant Finance Director announced that there were not any Licensing, Board and Commission appointments or any Statements to be considered.

Mayor McFarland stated his desire to create some type of formal recognition for department heads who have retired to memorialize their years of service and impact on the City.

There being no further business, Mayor McFarland adjourned this meeting at 6:58 p.m.

SHANE MCFARLAND – MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: FY21 Budget Amendment Ordinance

Department: Budget

Presented by: Erin Tucker

Requested Council Action:

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Amendment to the City's FY21 Budget.

Staff Recommendation

Amend Ordinance 21-O-04 before second reading, and then approve as amended.

Background Information

GENERAL FUND

Wholesale Beer Tax Revenues are projected to come in over budget by \$38,000.

Street

Street Department depleted their salt reserves during the February snow and ice storm. \$150,000 is needed to replenish this stock. There is a possibility that this will be reimbursed by FEMA if a Federal disaster is declared for Rutherford County.

Street Lighting is projected to go over budget by \$100,000 due to additional lighting expenses incurred.

Economic Development

Hotel/Motel Taxes are projected to come in over budget by \$520,000. The transfer to the Rutherford County Chamber of Commerce portion of this tax is anticipated to go over budget by \$78,000.

Parks & Recreation

The chilling tower and HVAC unit at Patterson Park Community Center is failing and needs to be replaced at an estimated cost of \$230,000.

Department Transfers

The Drug Fines revenues are expected to increase by up to \$50,000 this year. The General Fund transfers these fines to the Drug Fund. This budgeted transfer needs to be increased in both General Fund and Drug Fund.

Community Development

As in prior years, the Community Development budget is being adjusted to align with the actual grant award for the current year, which was not available until after budget adoption, as well as, the final amounts of carryover from the previous years' grants. Revenues and expenditures are increasing by \$357,139.41.

Golf Department

Pro-Shop sales are projected to come in over budget by \$35,000. The corresponding supplies for resale expenditure is also projected to come in over budget by \$30,000.

AIRPORT FUND

Aviation fuel sales are projected to come in over budget by \$350,000. The corresponding supplies for resale expenditure is also projected to come in over budget by \$260,000.

DRUG FUND

The additional City Court Revenues of \$50,000 and corresponding Transfer in From General Fund of \$50,000 will be used for additional undercover operations and related Drug Fund expenses.

DEBT SERVICE FUND

The City refinanced the 2012 TMBF Loan in October. This budget amendment is needed to record the principal, interest and issuance costs related to this debt refinance. The debt and premium proceeds received cover the cost of paying off the old debt.

OTHER CAPITAL SOURCES FUND

The City received \$9.67 million in County Shared Bond proceeds from Rutherford County Schools in October. These funds and related capital expenses were not budgeted. This budget amendment will cover capital needs for Schools for the remainder of FY21.

Council Priorities Served

Responsible budgeting

The budget amendments reflect the increased revenues and related expenses for the specified funds.

Fiscal Impact

The amendment to the FY21 Budget will have no effect to fund balance for Debt Service and Drug Funds. The General Fund amendment results in a \$5,000 increase to fund balance. The Other Capital Sources Fund amendment results in an increase to fund balance of \$8.5 million to be used for school capital needs. The Airport Fund amendment results in a \$90,000 increase to fund balance.

Attachments

FY21 Budget Ordinance 21-O-04 and Exhibit A

ORDINANCE 21-O-04 amending the 2020-2021 Budget (5th Amendment).

WHEREAS, the City Council adopted the 2020-2021 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 20-O-18, on June 10, 2020 to implement the 2020-2021 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the 2020-2021 Budget by this Ordinance to incorporate expenditure decisions made during the 2020-2021 fiscal year.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The 2020-2021 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. That this Ordinance take effect immediately upon and after its passage upon second and final reading, as an emergency Ordinance, an emergency existing, and it being imperative to provide for the necessary expenses, general and special, of said City of Murfreesboro for the Fiscal Year 2020-2021 at the earliest practicable time, the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

DocuSigned by:
Adam F. Tucker

43A9035E51F9401
Adam F. Tucker
City Attorney

SEAL

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
General Fund				
<u>Revenues</u>	<u>Revenues</u>			
General	Hotel/Motel Tax Revenue	\$ 1,600,000.00	\$ 2,120,000.00	\$ 520,000.00
General	Wholesale Beer Tax	\$ 3,614,000.00	\$ 3,652,000.00	\$ 38,000.00
Police Department	Drug Related Fines	\$ 15,000.00	\$ 65,000.00	\$ 50,000.00
Community Development	Community Development Grants	\$ 1,286,503.00	\$ 1,643,642.41	\$ 357,139.41
Golf Department	Pro-Shop Income	\$ 215,000.00	\$ 250,000.00	\$ 35,000.00
				<u>\$ 1,000,139.41</u>
<u>Expenditures</u>	<u>Expenditures</u>			
Street Department	Sodium Chloride	\$ 40,000.00	\$ 190,000.00	\$ 150,000.00
City Manager Department	Chamber of Commerce	\$ 240,000.00	\$ 318,000.00	\$ 78,000.00
General	Transfer to Drug Fund	\$ 25,000.00	\$ 75,000.00	\$ 50,000.00
Street Department	Street Light - Electric & Maint	\$ 2,000,000.00	\$ 2,100,000.00	\$ 100,000.00
Parks & Recreation Dept.	Buildings Expense	\$ 65,770.00	\$ 295,770.00	\$ 230,000.00
Community Development	Administration	\$ 193,300.00	\$ 202,250.00	\$ 8,950.00
Community Development	Acquisition	\$ 350,000.00	\$ 409,729.51	\$ 59,729.51
Community Development	Public Service Grants	\$ 154,968.00	\$ -	\$ (154,968.00)
Community Development	Child Abuse Prevention	\$ -	\$ 14,570.00	\$ 14,570.00
Community Development	Childcare Services	\$ -	\$ 11,870.00	\$ 11,870.00
Community Development	Youth/Crime Prevention	\$ -	\$ 9,960.00	\$ 9,960.00
Community Development	Healthcare	\$ -	\$ 42,810.00	\$ 42,810.00
Community Development	Job Training	\$ -	\$ 25,670.00	\$ 25,670.00
Community Development	Homeless Prevention	\$ -	\$ 29,430.00	\$ 29,430.00
Community Development	Domestic Abuse	\$ -	\$ 15,300.00	\$ 15,300.00
Community Development	Elderly	\$ -	\$ 8,390.00	\$ 8,390.00
Community Development	Housing Rehabilitation	\$ 150,000.00	\$ 157,544.90	\$ 7,544.90
Community Development	Public Facilities	\$ 250,000.00	\$ 527,883.00	\$ 277,883.00
Golf Department	Supplies for Resale	\$ 170,000.00	\$ 200,000.00	\$ 30,000.00
				<u>\$ 995,139.41</u>
CHANGE IN FUND BALANCE (CASH)	CHANGE IN FUND BALANCE (CASH)	\$ (3,355,900.00)	\$ (3,350,900.00)	5,000.00

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Airport Fund</u>				
<u>Revenues</u>	<u>Revenues</u>			
	Aviation Gasoline	\$ 1,700,000.00	\$ 2,050,000.00	\$ 350,000.00
				<u>\$ 350,000.00</u>
<u>Expenditures</u>	<u>Expenditures</u>			
	Supplies for Resale	\$ 1,400,000.00	\$ 1,660,000.00	\$ 260,000.00
				<u>\$ 260,000.00</u>
CHANGE IN FUND BALANCE (CASH)	CHANGE IN FUND BALANCE (CASH)	\$ 577,980.00	\$ 667,980.00	90,000.00
<u>Debt Service Fund</u>				
<u>Revenues</u>	<u>Revenues</u>			
	Premiums on Bonds Sold		\$ 2,050,000.00	\$ 2,050,000.00
	Sale of Bonds		\$ 18,760,000.00	\$ 18,760,000.00
				<u>\$ 20,810,000.00</u>
<u>Expenditures</u>	<u>Expenditures</u>			
	Issuance Cost		\$ 139,000.00	\$ 139,000.00
	Note Principal		\$ 20,671,000.00	\$ 20,671,000.00
				<u>\$ 20,810,000.00</u>
CHANGE IN FUND BALANCE (CASH)	CHANGE IN FUND BALANCE (CASH)	\$ -	\$ -	-
<u>Other Capital Sources Fund</u>				
<u>Revenues</u>	<u>Revenues</u>			
	County Shared Bonds	\$ -	\$ 9,668,000.00	\$ 9,668,000.00
				<u>\$ 9,668,000.00</u>
<u>Expenditures</u>	<u>Expenditures</u>			
	Cap Outlay County Shared Bonds	\$ 617,100.00	\$ 1,757,100.00	\$ 1,140,000.00
				<u>\$ 1,140,000.00</u>
CHANGE IN FUND BALANCE (CASH)	CHANGE IN FUND BALANCE (CASH)	\$ (1,472,800.00)	\$ 7,055,200.00	8,528,000.00

Department		Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Drug Fund</u>					
<u>Revenues</u>		<u>Revenues</u>			
		City Court Revenues	\$ 25,000.00	\$ 75,000.00	\$ 50,000.00
		Transfer in from General Fund	\$ 25,000.00	\$ 75,000.00	\$ 50,000.00
					<u>\$ 100,000.00</u>
<u>Expenditures</u>		<u>Expenditures</u>			
		Undercover Operations	\$ 125,000.00	\$ 225,000.00	\$ 100,000.00
					<u>\$ 100,000.00</u>
CHANGE IN FUND BALANCE (CASH)	CHANGE IN FUND BALANCE (CASH)		\$ 1,400.00	\$ 1,400.00	-

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Rezoning property along South Bilbro Avenue
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Rezone approximately 1.28 acres located at the northeast corner of South Bilbro Avenue and East State Street.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

Blue Sky Construction, Inc. presented a zoning application [2020-422] for approximately 1.28 acres located at the northeast corner of South Bilbro Avenue and East State Street to be rezoned from RS-8 (Single-Family Residential District 8) and CCO (City Core Overlay District) to PRD (Planned Residential District) and CCO. During its regular meeting on February 3, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On March 25, 2021 Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This rezoning will enable reinvestment and redevelopment in the City's downtown, which will contribute to the continued growth of downtown both as a place to live and to do business.

Attachments:

Ordinance 21-OZ-03

ORDINANCE 21-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 1.28 acres located along South Bilbro Avenue and East State Street from Single-Family Residential Eight (RS-8) District and City Core Overlay (CCO) District to Planned Residential Development (PRD) District (The Row on Bilbro PRD) and City Core Overlay (CCO) District; Blue Sky Construction, Inc., applicant(s) [2020-422].

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to rezone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be zoned and approved as Planned Residential Development (PRD) District and City Core Overlay (CCO) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That 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:

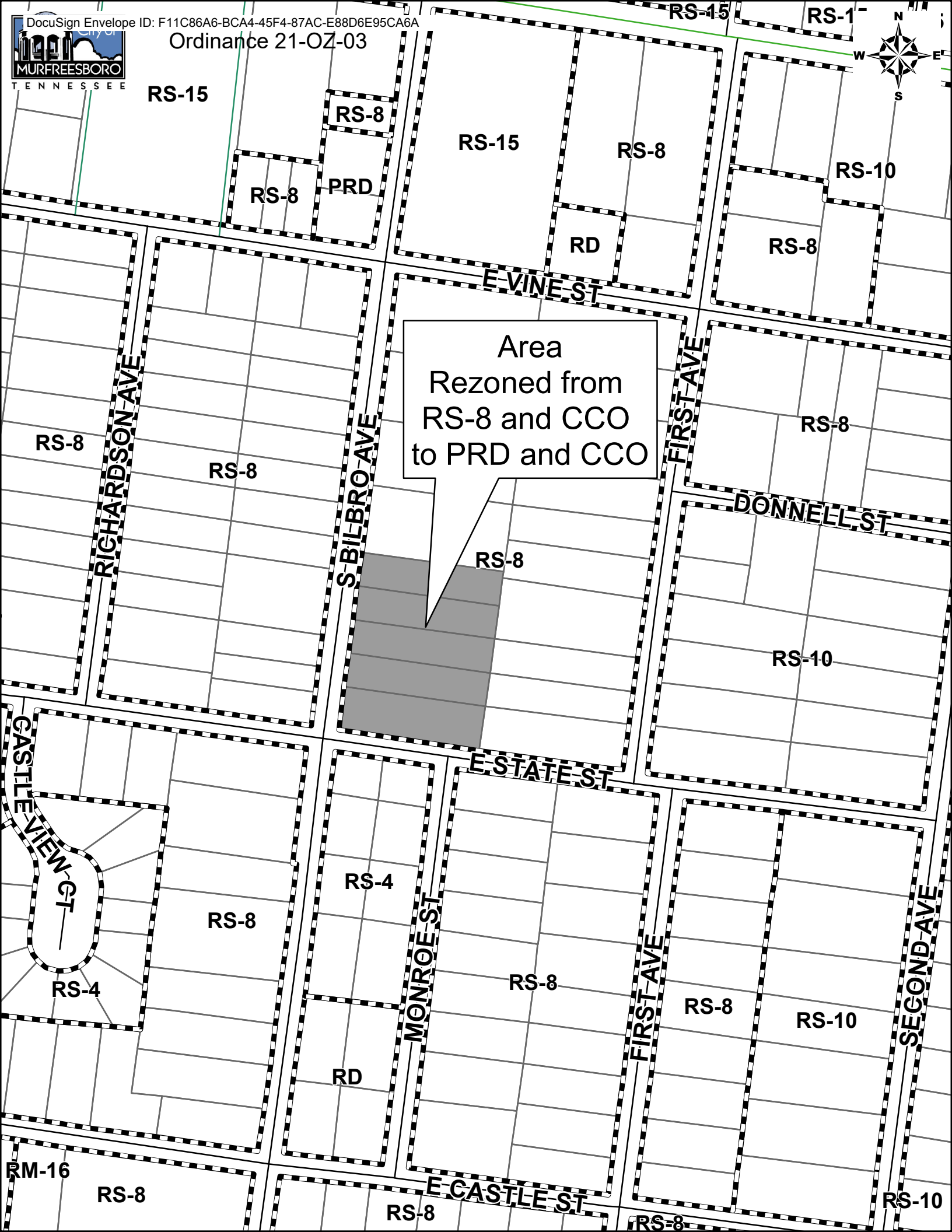
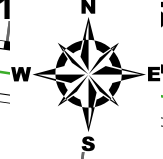
APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

SEAL



COUNCIL COMMUNICATION

Meeting Date: 04/08/2020

Item Title: Rezoning property along West Thompson Lane
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Rezone approximately 13.1 acres located along West Thompson Lane, west of Northboro Court.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

Black Diamond Development presented a zoning application [2020-418] for approximately 13.1 acres located along West Thompson Lane to be rezoned from RS-15 (Single-Family Residential District 15) to PRD (Planned Residential District). During its regular meeting on November 4, 2020, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 17, 2020 Council held a public hearing and then voted to defer action on first reading after expressing concerns about the plan. The applicant subsequently revised the plan to address Council's concerns. On March 25, 2021 Council considered this matter under Old Business and approved it on First Reading.

Council Priorities Served

Expand infrastructure

This applicants for this residential development have indicated that their plans will incorporate drainage improvements for the adjacent Northboro subdivision.

Attachments:

Ordinance 20-OZ-45

ORDINANCE 20-OZ-45 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 13.1 acres along the north side of West Thompson Lane from Residential Single-Family Fifteen (RS-15) District to Planned Residential Development (PRD) District (Kings Landing Villas PRD); Black Diamond Development, applicant [2020-418].

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That, the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to rezone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Residential Development (PRD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That 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:

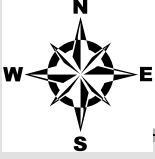
APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

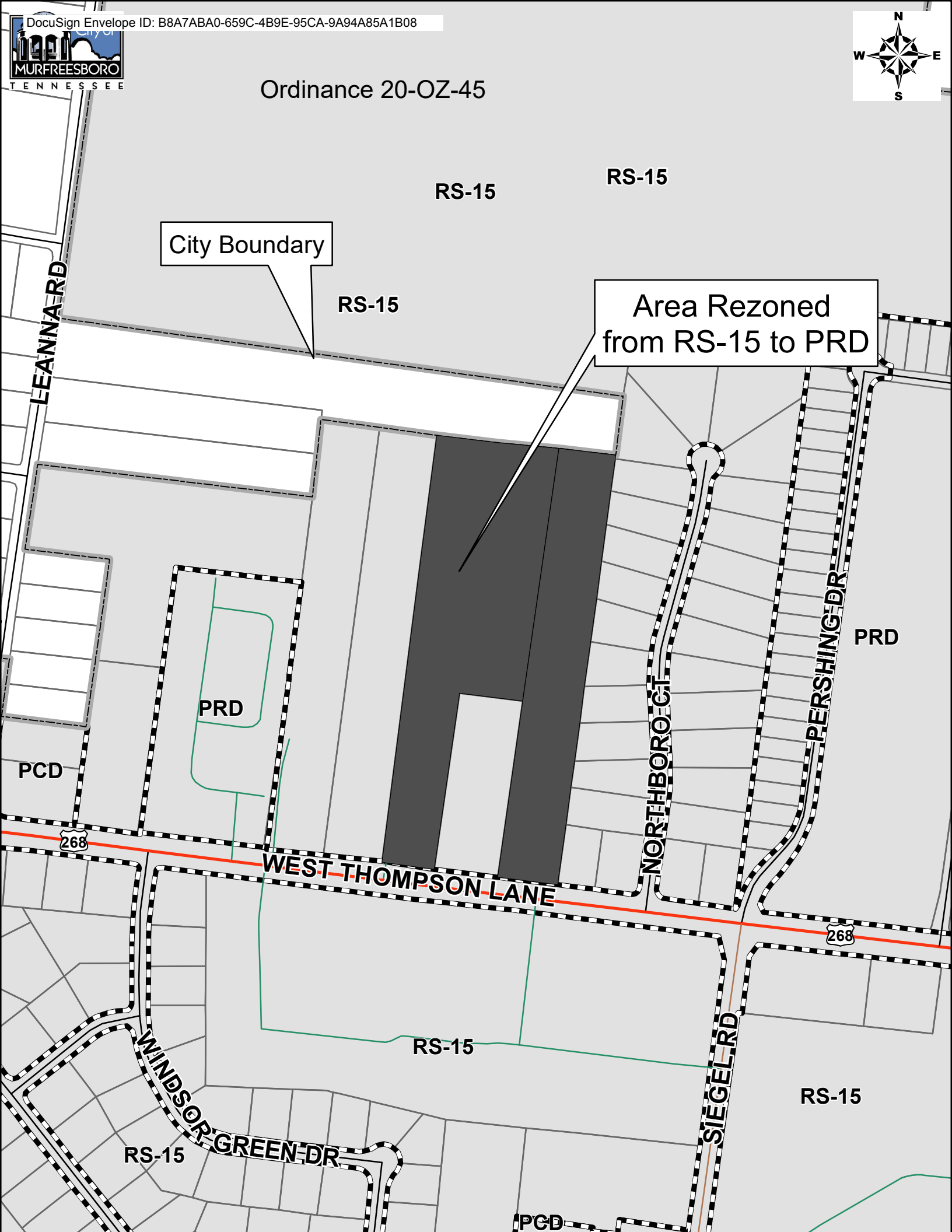
DocuSigned by:
Adam F. Tucker

43A2035E51F9401...
Adam F. Tucker
City Attorney

SEAL



Ordinance 20-OZ-45



COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: FY21 Budget Amendment
Department: City Schools
Presented by: Trey Duke, Director of Schools
Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input checked="" type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Budget new Elementary and Secondary School Emergency Relief (ESSER) 2.0 federal funds

Staff Recommendation

Approve Resolution 21-R-08

Background Information

In March 2021, City Schools was awarded \$5,642,067 in ESSER 2.0 funds. These are one-time federal grant funds made available through the US Department of Education for the period of March 13, 2020 through September 30, 2023. These funds are intended to support the District's academic and non-academic needs during the COVID-19 pandemic.

On March 23, 2021 the School Board approved the line item budget as presented.

Council Priorities Served

Responsible budgeting

Presenting budgets for federal awards ensures compliance with state law, School Board policy and City Council policy.

Fiscal Impact

These funds will be budgeted in the Schools Federal Projects fund. An estimated \$650,000 will be reimbursed to the General Purpose School fund over the grant term for COVID-19 related expenditures.

Attachments

1. ESSER 2.0 budget in Schools Federal Projects Fund
2. FY21 Murfreesboro City Schools Budget Resolution

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
Federal Projects Fund				
<u>Revenues</u>				
	Revenues			
	ESSER 2.0	\$ -	\$ 5,642,066.76	\$ 5,642,066.76
				<u>\$ 5,642,066.76</u>
Expenditures				
<u>Expenditures</u>				
Regular Instruction Teachers		\$ -	\$ 210,000.00	\$ 210,000.00
Regular Instruction Other Salaries		\$ -	\$ 212,000.00	\$ 212,000.00
Regular Instruction Substitutes		\$ -	\$ 150,000.00	\$ 150,000.00
Regular Instruction Social Security		\$ -	\$ 35,410.00	\$ 35,410.00
Regular Instruction Retirement		\$ -	\$ 43,403.00	\$ 43,403.00
Regular Instruction Medicare		\$ -	\$ 6,794.00	\$ 6,794.00
Regular Instruction Instructional Supplies & Materials		\$ -	\$ 562,000.00	\$ 562,000.00
Regular Instruction Textbooks		\$ -	\$ 850,000.00	\$ 850,000.00
Regular Instruction Other Supplies & Materials		\$ -	\$ 5,000.00	\$ 5,000.00
Regular Instruction Instruction Equipment		\$ -	\$ 1,394,560.00	\$ 1,394,560.00
Special Education Education Equipment		\$ -	\$ 380,000.00	\$ 380,000.00
Health Services Medical Personnel		\$ -	\$ 72,065.00	\$ 72,065.00
Health Services Social Security		\$ -	\$ 4,481.00	\$ 4,481.00
Health Services Retirement		\$ -	\$ 6,517.00	\$ 6,517.00
Health Services Medical Insurance		\$ -	\$ 3,900.00	\$ 3,900.00
Health Services Dental		\$ -	\$ 82.00	\$ 82.00
Health Services Medicare		\$ -	\$ 1,049.00	\$ 1,049.00
Health Services Other Supplies & Materials		\$ -	\$ 83,083.00	\$ 83,083.00
Health Services Staff Development		\$ -	\$ 87,194.76	\$ 87,194.76
Other Student Support Evaluation & Testing		\$ -	\$ 71,836.00	\$ 71,836.00
Other Student Support Other Contracted Services		\$ -	\$ 95,000.00	\$ 95,000.00
Support Services/Regular Instruction Other Salaries & Wages		\$ -	\$ 102,960.00	\$ 102,960.00
Support Services/Regular Instruction Social Security		\$ -	\$ 6,190.00	\$ 6,190.00
Support Services/Regular Instruction Retirement		\$ -	\$ 10,000.00	\$ 10,000.00
Support Services/Regular Instruction Life Insurance		\$ -	\$ 200.00	\$ 200.00
Support Services/Regular Instruction Medical		\$ -	\$ 5,800.00	\$ 5,800.00
Support Services/Regular Instruction Dental		\$ -	\$ 290.00	\$ 290.00
Support Services/Regular Instruction Medicare		\$ -	\$ 1,500.00	\$ 1,500.00
Support Services/Regular Instruction Other Contracted Services		\$ -	\$ 77,237.00	\$ 77,237.00
Support Services/Regular Instruction Staff Development		\$ -	\$ 50,000.00	\$ 50,000.00
Education Technology Internet Connectivity		\$ -	\$ 210,000.00	\$ 210,000.00
Education Technology Software		\$ -	\$ 81,868.00	\$ 81,868.00
Office of the Principal Assistant Principal		\$ -	\$ 48,560.00	\$ 48,560.00
Office of the Principal Clerical Personnel		\$ -	\$ 18,000.00	\$ 18,000.00
Office of the Principal Social Security		\$ -	\$ 4,000.00	\$ 4,000.00
Office of the Principal Retirement		\$ -	\$ 6,850.00	\$ 6,850.00
Office of the Principal Medicare		\$ -	\$ 920.00	\$ 920.00
Office of the Principal Communications		\$ -	\$ 2,667.00	\$ 2,667.00
Transportation Bus Drivers		\$ -	\$ 66,920.00	\$ 66,920.00

Transportation Other Salaries & Wages	\$	25,920.00	\$	25,920.00
Transportation Social Security	\$	5,760.00	\$	5,760.00
Transportation State Retirement	\$	11,300.00	\$	11,300.00
Transportation Medicare	\$	1,350.00	\$	1,350.00
Transportation Gasoline	\$	3,000.00	\$	3,000.00
Transportation Transportation Equipment	\$	226,400.00	\$	226,400.00
Regular Capital Outlay Other Capital Outlay	\$	400,000.00	\$	400,000.00
			\$	5,642,066.76

CHANGE IN FUND BALANCE (CASH) CHANGE IN FUND BALANCE (CASH)

Lin Quinlan
 Reviewed by Finance Director/Finance Manager

3/18/2021
 Date

Approved <input checked="" type="checkbox"/>	<i>Bobby Duke III</i> Director of Schools	<i>3/18/21</i> Date
Declined <input type="checkbox"/>		

RESOLUTION 21-R-08 amending the 2020-2021 Murfreesboro City Schools Budget (4th Amendment).

WHEREAS, the City Council adopted the 2020-2021 Murfreesboro City Schools Budget by motion; and,

WHEREAS, the City Council adopted Resolution 20-R-15 on June 4, 2020 to implement the 2020-2021 Murfreesboro City Schools Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the 2020-2021 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The 2020-2021 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on Exhibit A.

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:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

COUNCIL COMMUNICATION

Meeting Date: 04/08/2020

Item Title: City Schools Reroofing Professional Services

Department: Administration

Presented by: Kayla Walker, Project Development

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Approve Architectural Services Agreement for the reroofing design for City Schools.

Staff Recommendation

Staff recommends approval of the architectural services agreement in the amount of \$51,041.

Background Information

Staff requested a proposal from Johnson and Bailey Architects for architectural services for the reroofing sections of Bradley Academy, Reeves Rogers Elementary, Mitchell-Neilson Elementary and Hobgood Elementary. This project will consist of replacing roofing with a new 60 mil EPDM and insulation board at the four schools. Once this project is complete it will put each of these sites under a uniform EPDM roofing system and resolve many reoccurring roof issues at these sites. This will also increase energy efficiency and help with current leaks the schools are experiencing. The estimated construction cost for this project package is \$939,449.

Council Priorities Served

Expand Infrastructure

The reroofing of these four school buildings aims to maintain and prolong the school's health and safety.

Fiscal Impact

The primary funding source for this project is from the County Shared Bonds in the Other Capital Sources Fund.

Attachments

AIA Owner – Architect Agreement

Johnson + Bailey Architects P.C.



February 10, 2021

Mr. Larry Willeford
Maintenance Supervisor
Murfreesboro City Schools
710 New Salem Highway
Murfreesboro, TN. 37129

Re: Murfreesboro City Schools
Reroofing Budget for 2021
J+B No. GC

Dear Mr. Willeford:

In response to your request, Johnson + Bailey Architects is pleased to submit the following recommendation for scope of work, proposed budget, and Proposal for Architectural Services for the referenced project.

This project will consist of replacing a total of 98,763 square feet of existing (mostly Garland) roofing with new 60 mil. thick EPDM roofing and insulation board, at four school buildings. This work will provide EPDM roofing for all roof areas, and will increase the energy efficiency by increasing the thermal resistance of the roofs.

Please find attached the following:

- 1) Floor Plans for Bradley Academy, Reeves Rogers Elementary School, Mitchell-Neilson Elementary School, and Hobgood Elementary School. These drawings have been color coded by MCS Maintenance Department to indicate the roof areas without EPDM roofing.
- 2) Spreadsheet titled, "MCS Reroofing Budget 2021".

The unit reroofing cost listed is an average based on recent school building reroofing costs. The coring cost listed should be sufficient to determine the thickness of the existing perimeter nailer assemblies and the condition of the roof deck systems. This would also cover the cost of pull-tests for the existing lightweight concrete roofs.

We propose to provide full architectural services for the State of Tennessee Architectural Fee Schedule, which is calculated by the formula $35/(\log P - 1.15)$ where P is the construction cost. This comes to 7.26% for a construction cost of \$938,248. Additionally, we propose to reduce this fee by one quarter based on our familiarity with these buildings, for a fee of 5.44%. This fee includes coordination of core sampling and testing, design of new roofing systems, roofing attachment systems, and roofing edge systems. It also includes preparation of bidding documents, project bidding, and construction phase services as described in AIA Document B101 - 2017, Standard Form of Agreement Between Owner and Architect.

Your consideration of Johnson + Bailey Architects for this project is sincerely appreciated. If you find the above acceptable, we will prepare an AIA Document B101 - 2007, Standard Form of Agreement Between Owner and Architect for execution.



Mr. Larry Willeford
Murfreesboro City Schools
Reroofing Budget for 2021
February 10, 2021
Page 2

If you have any questions concerning this matter, please do not hesitate to call.

Sincerely,

JOHNSON + BAILEY ARCHITECTS P.C.

A handwritten signature in black ink, appearing to read 'R. Lyle Lynch'.

R. Lyle Lynch, AIA

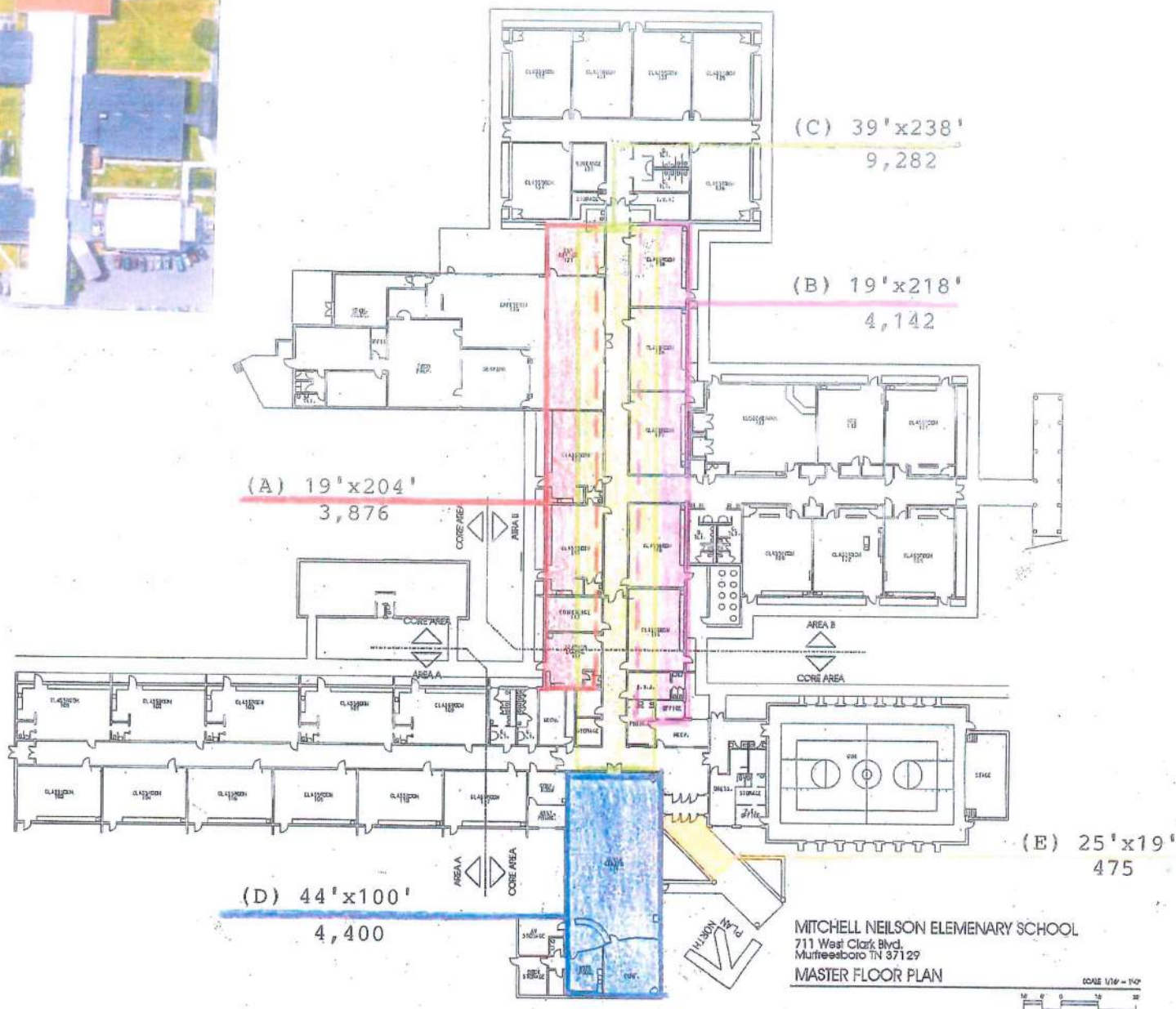
encl: as stated

MCS Reroofing Budget 2021

Roof Section	Section Dimensions	Section Area	Cost Per Sq. Ft.	Cost
Mitchell-Neilson Elementary School				
Section-A	19'x204'	3,876	\$9.50	\$36,822.00
Section-B	19'x218'	4,142	\$9.50	\$39,349.00
Section-C	39'x238'	9,282	\$9.50	\$88,179.00
Section-D	44'x110'	4,840	\$9.50	\$45,980.00
Section-E	25'x19'	475	\$9.50	\$4,512.50
Sub Total				\$214,842.50
Coring Cost				\$250.00
Design Fee				\$11,687.43
Total				\$226,779.93
Bradley Academy				
Gym	60'x109'	6,540	\$9.50	\$62,130.00
Coring Cost				\$100.00
Design Fee				\$3,379.87
Total				\$65,609.87
Hobgood Elementary School				
Section-A	Shape	5,363	\$9.50	\$50,948.50
Section-B	23'x182'	4,186	\$9.50	\$39,767.00
Section-C	59'x107'	6,313	\$9.50	\$59,973.50
Section-D	39'x247'	9,633	\$9.50	\$91,513.50
Section-E	21'x218'	4,578	\$9.50	\$43,491.00
Sub Total				\$285,693.50
Coring Cost				\$250.00
Design Fee				\$15,541.73
Total				\$301,485.23
Reeves-Rogers Elementary School				
Section-A	75'x136'	10,200	\$9.50	\$96,900.00
Section-B	11'x68'	748	\$9.50	\$7,106.00
Section-C	89'x104'	9,256	\$9.50	\$87,932.00
Section-D	13'x40'	520	\$9.50	\$4,940.00
Section-E	10'7"X71'	760	\$9.50	\$7,220.00
Section-F	10'X64'	640	\$9.50	\$6,080.00
Section-G	89'x60'	5,340	\$9.50	\$50,730.00
Section-H	42'x44'	1,848	\$9.50	\$17,556.00
Section-I	68'x96'	6,528	\$9.50	\$62,016.00
Section-J	17'x60'	1,020	\$9.50	\$9,690.00
Section-K	25'x107'	2,675	\$9.50	\$25,412.50
Sub Total				\$375,582.50
Coring Cost				\$600.00
Design Fee				\$20,431.69
Total				\$396,614.19
Total Construction Cost				\$938,248.50
Total Coring Cost				\$1,200.00
Total Design Fee (5.44%)				\$51,040.72
Total Budget				\$990,489.22



MITCHELL NE. ON ELEMENTARY



MITCHELL NEILSON ELEMENARY SCHOOL
711 West Clark Blvd.
Murfreesboro TN 37129
MASTER FLOOR PLAN

JB
Johnson
Bailey
Architects
P.C.

City Center
100 East First St.
Murfreesboro Tennessee
37130
915-890-8500
Fax: 615-890-8554

Energy
Efficient
School
Initiative
Phase 2
Renovations

Washington
City School

PROJECT NO. DATE

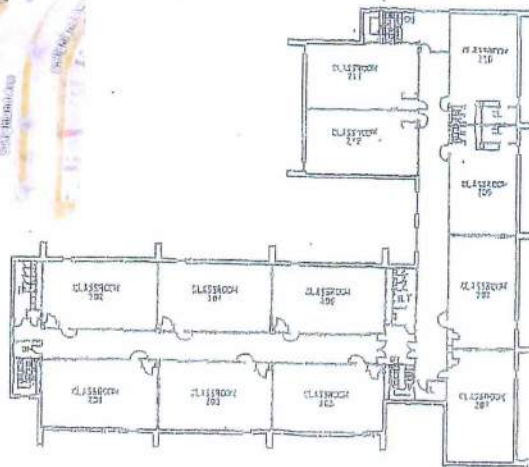
NOTES:

PROJECT NO. 1101
DATE 07-23-11
DRAWN BY S.D.S.
CHECKED BY R.A.L.

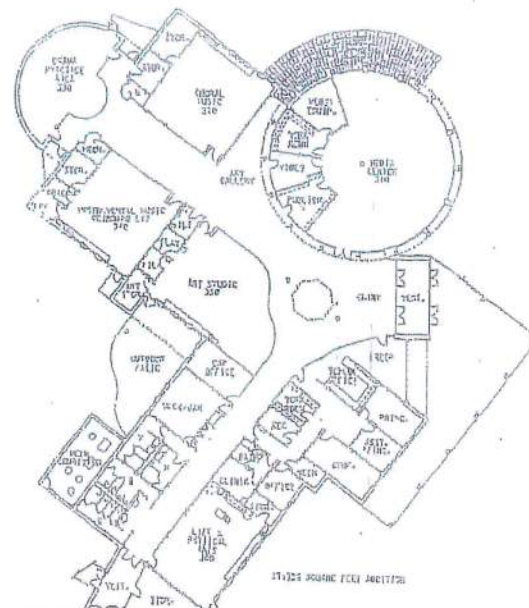
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BRADLEY ELEMENTARY

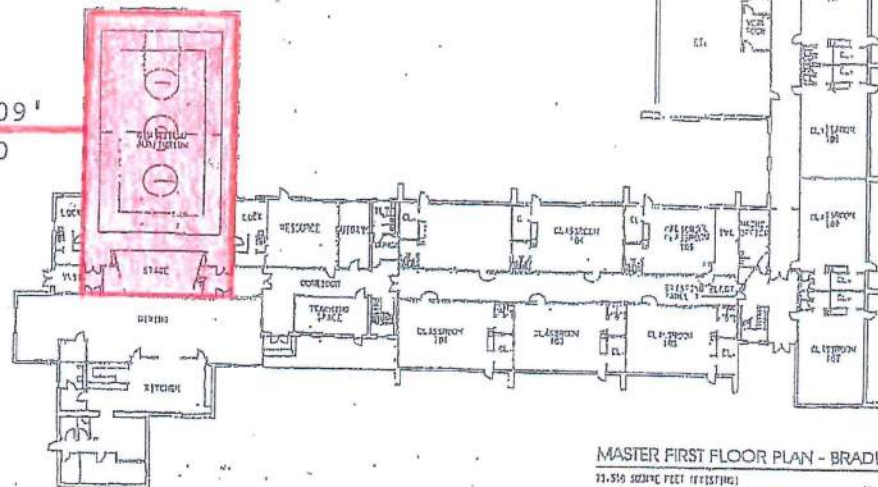


MASTER SECOND FLOOR PLAN - BRADLEY
11,000 SQUARE FEET



MASTER FIRST FLOOR PLAN - BRADLEY
22,510 SQUARE FEET (EXISTING)

Gym 60'x109'
6,540



Johnson + Bailey Architects P.C.

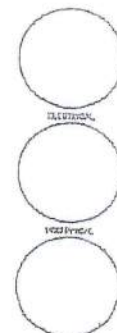
City Center
100 East The Pl.
Madison, Wisconsin 53703
608.770.1600
Fax: 608.770.1601

Renovations to
Wood
BRADLEY
Wood
Hess & Hupp
Hess & Hupp
Hess & Hupp
Hess & Hupp

Madison
City School

REVISION	DATE

SEE SHEET 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000



ARCHITECTURAL
PROJECT NO. 100
DATE 4-13-04
DRAWN BY CAL
CHECKED BY SHL

HOBGOOD ELEMENTARY

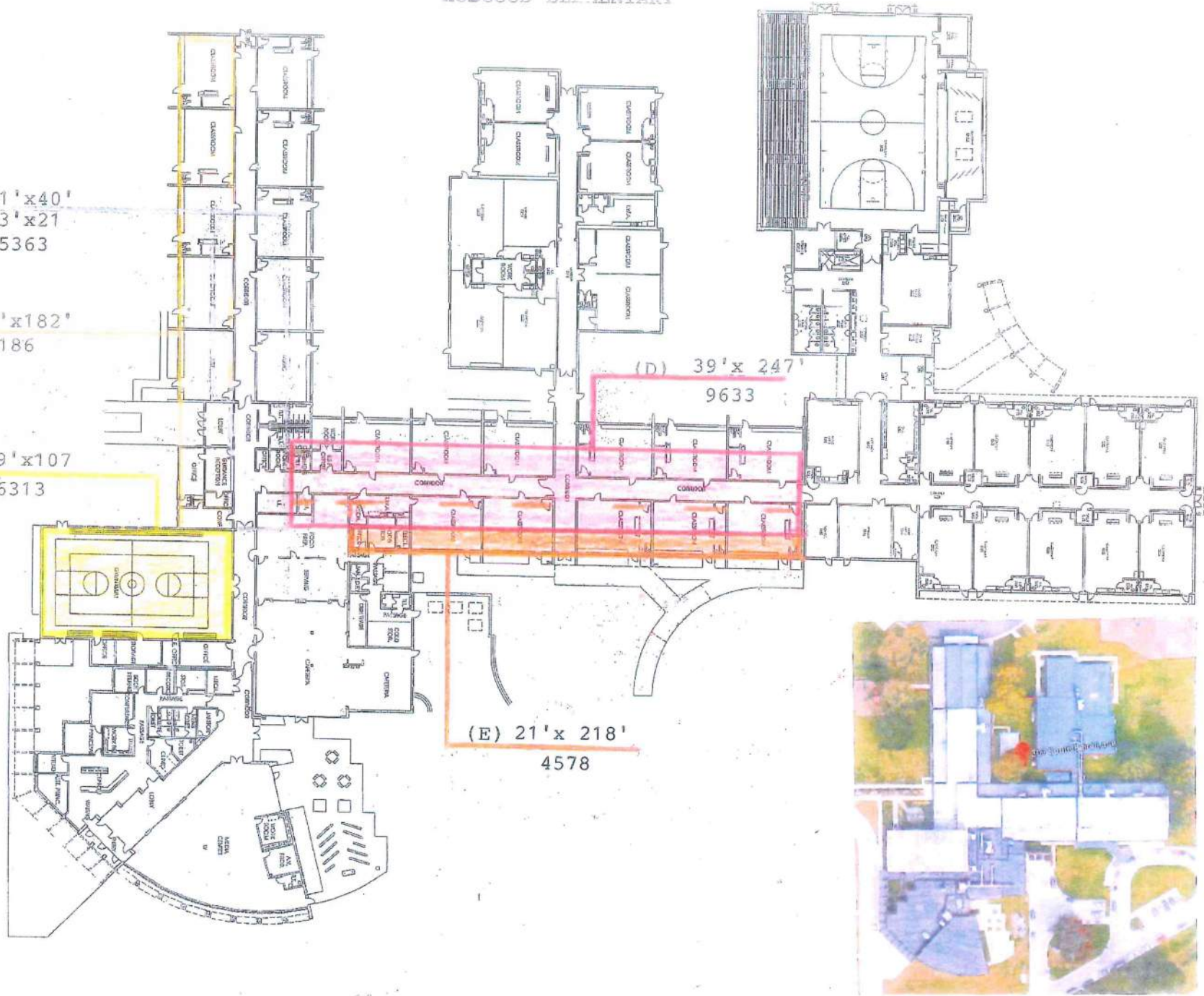
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(B) 23'x182'
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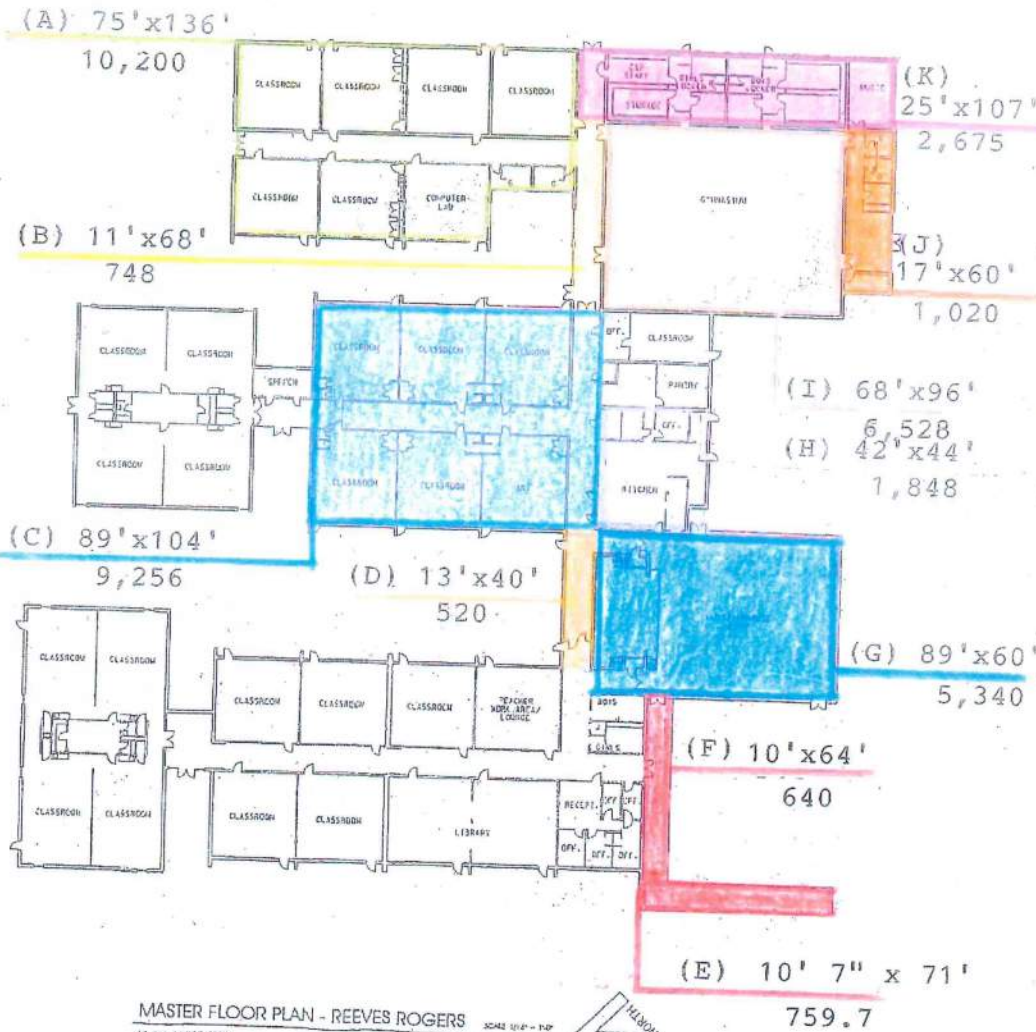
(C) 59'x107
6313

(D) 39'x 247'
9633

(E) 21'x 218'
4578



REEVES ROGERS



MASTER FLOOR PLAN - REEVES ROGERS
31,712 SQUARE FEET

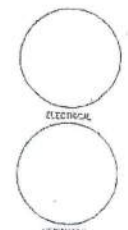


Johnson Bailey Architects P.C.

City Center
100 East Van St.
Marion, MA 02753
Tel: 860-450-4550
Fax: 860-450-4544

Renovations to
Bathrooms
Reception
REEVES ROGERS
Elementary
Balswell-Hill School
Primary
Marionboro
City Schools

REVISION	DATE



PROJECT NO. 089
DATE 4-27-01
DRAWN BY C.E.J.
CHECKED BY C.E.J.

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifteenth (15th) day of March in the year Two Thousand Twenty One (2021)

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

and the Architect:
(Name, legal status, address and other information)

Johnson + Bailey Architects P.C.
100 Est Vine Street
City Center, Suite 700
Murfreesboro, Tennessee 37130

for the following Project:
(Name, location and detailed description)

Reroofing of
Bradley Academy
Hobgood Elementary School
Mitchell-Neilson School
Reeves Rogers Elementary School
Murfreesboro, Tennessee
J+B No. 2105

The Owner and Architect agree as follows.

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.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See attached Johnson + Bailey Architects P.C. letter dated February 8, 2021.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

To be determined

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Init.

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User Notes:

(1197631857)

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

(Paragraph deleted)

(Paragraphs deleted)

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

§ 1.1.12 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 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.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. Architect shall not cancel or modify any insurance coverage required by this Agreement without at least 30-days' prior written notice to Owner.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and One Million Dollars (\$ 1,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Hundred Thousand Dollars (\$ 100,000.00) each accident, One Hundred Thousand Dollars (\$ 100,000.00) each employee, and One Hundred Thousand Dollars (\$ 100,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations

Init.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

2.5.9 Indemnification Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from claims including all costs, expenses and reasonable attorney's fees, to the extent losses and damages are caused by Architect's negligent acts, errors or omissions in performing professional services under this Agreement, except for claims arising out of the negligence of the Owner.

2.6 The Architect shall review laws, codes and regulations applicable to the Architect's services. The Architect shall exercise due professional care in endeavoring to comply with requirements imposed by governmental authorities having jurisdiction over the Project including, but not limited to, applicable ADA standards. Architect shall use the standard care utilized by other architects in designing projects under the applicable standards, in identifying requirements imposed by governmental authorities, and shall identify to the Owner requirements that may be interpreted in different ways of which conflict with other requirements.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall review the services and information for completeness and sufficiency and provide timely written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.1.7 The Architect shall assist the Owner in determining allowable construction time and amount of liquidated damages.

3.1.8 In accordance with the standard of care, the Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of

Init.

all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval thereof. Owner's approval of the documents must be in writing to be binding against either party.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval of the documents and any adjustments must be in writing to be binding against either party.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point of time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents and any adjustments or actions suggested by the Architect must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

3.6.1.4 The Architect shall be responsible for conducting progress meetings not less than monthly or as needed and for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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.

§ 3.6.2.2 The Architect and Owner shall have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon timely so as not to affect the Contract Time or the Contract Sum.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents; provided however, the Owner, with advise and assistance from the Architect, shall make final decisions on matters relating to aesthetic effect, Contract Sum and Contract Time..

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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 (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, timely so as not to affect the Contract Time or Contract Sum..

§ 3.6.4.2 The Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information

Init.

given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize 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. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

1. confirm proposed change is a material change to the Contract;
2. confirm appropriate credits are included for Work not completed;
3. verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
4. confirm that the appropriate back up documentation is included and mathematically correct including markups and taxes pursuant to the requirements of the Contract Documents.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall review, approve and forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Contractor, to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect & Owner
§ 4.1.1.2 Multiple preliminary designs	Architect's Basic Services
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Not Provided
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Not Provided
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect's Basic Services
§ 4.1.1.21 Telecommunications/data design	Not Provided
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided

Init.

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

The Architect is to perform all required Programming and Design Services, and to coordinate all work with the Owner's Consultants.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

Init.

- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

(Paragraphs deleted)

- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give timely written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

(Paragraphs deleted)

- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 One (1) review of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Weekly visits to the site by the Architect during construction
- .3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspection for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner, with Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

Init.

5.3.1 The Owner has the right to reject any portion of the Architect's services on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design services or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Services. If at any time, the Architect's services is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design services or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to services previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional services or Changes in Services without such written approval by Owner.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 To the extent reasonably required for the timely and safe design and construction of the Project, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Architect shall assist Owner in obtaining these services.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 In accordance with the standard of care, the Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect. The Owner shall provide timely written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall timely 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.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect, in consultation with the Owner, shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;

Init.

- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding, or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive irrevocable, royalty-free, right and license to use the Architect's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including timely payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovations, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by the Owner or Owner's representatives using the Architect's Instruments of Service.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect from liability for claims and causes of action arising from such use.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, within the period specified by applicable Tennessee law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

(Paragraph deleted)

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, in accordance herewith, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and shall negotiate with the Owner any expenses incurred in the interruption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption

Init.

and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules for completion.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

(Paragraphs deleted)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

9.10 In the event of any termination under this Article, the Architect consents to the owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement 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 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Paragraphs deleted)

A percentage of construction cost calculated by the Formula $[35/(\text{Log}P-1.15)] * 0.75$ where P is the construction cost, (25% discount).

- 3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly Rates for services indicated in this Agreement.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly Rates for services indicated in this Agreement.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Hourly Rates for services indicated in this Agreement.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic & Design Development Phase	Thirty Five	percent (35	%)
Construction Documents Phase	Forty	percent (40	%)
Bidding or NegotiationPhase	Five	percent (5	%)
Construction Phase	Twenty	percent (20	%)
Total Basic Compensation	One hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Architectural Services	
Principal Architect	\$175.00 Per Hour
Staff Architect	\$125.00 Per Hour
Intern Architect	\$ 90.00 Per Hour
Interior Designer	\$100.00 Per Hour
Field Representative	\$ 85.00 Per Hour
Draftsman	\$ 85.00 Per Hour
Administrative Personnel	\$ 65.00 Per Hour

Init.

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

(Paragraphs deleted)

.3 Fees paid for securing approval of permitting and other fees required by authorities having jurisdiction over the Project;

.4 Printing, reproductions, plots, and standard form documents;

(Paragraphs deleted)

.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

(Paragraphs deleted)

.13 **Third party exploration test for investigations of existing roof substrates.**

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

Three Percent per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
(Paragraphs deleted)

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

Johnson + Bailey Architects P.C. letter dated February 8, 2021.

This Agreement entered into as of the day and year first written above.

City of Murreesboro

Johnson + Bailey Architects P.C.

OWNER (Signature)

Shane McFarland, Mayor

Date: _____

(Printed name and title)

ARCHITECT (Signature)

James Richard Pettit, President

Date: 03.15.2021

(Printed name, title, and license number, if required)

Owner

APPROVED AS TO FORM:

(Signature)

Adam Tucker, City Attorney

Date: 3/16/2021

(Printed name, title, and license number, if required)

Additions and Deletions Report for AIA® Document B101™ – 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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:24:14 ET on 03/15/2021.

PAGE 1

AGREEMENT made as of the Fifteenth (15th) day of March in the year Two Thousand Twenty One (2021)

...

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

...

Johnson + Bailey Architects P.C.
100 Est Vine Street
City Center, Suite 700
Murfreesboro, Tennessee 37130

...

(Name, location and detailed description)

Reroofing of
Bradley Academy
Hobgood Elementary School
Mitchell-Neilson School
Reeves Rogers Elementary School
Murfreesboro, Tennessee
J+B No. 2105

PAGE 2

See attached Johnson + Bailey Architects P.C. letter dated February 8, 2021.

...

To be determined

PAGE 3

To be determined

...

To be determined

...

~~.4~~ — Other milestone dates:

~~:~~

~~§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)~~

~~§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)~~

~~§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

~~§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)~~

~~§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)~~

~~§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)~~

~~.1~~ — Geotechnical Engineer:

~~.2~~ — Civil Engineer:

~~3~~ — Other, if any:
— *(List any other consultants and contractors retained by the Owner.)*

~~§ 1.1.10~~ The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

...

None

...

None

PAGE 4

~~§ 1.3.1~~ 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.

...

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. Architect shall not cancel or modify any insurance coverage required by this Agreement without at least 30-days' prior written notice to Owner.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and One Million Dollars (\$ 1,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.5.5 Employers' Liability with policy limits not less than One Hundred Thousand Dollars (\$ 100,000.00) each accident, One Hundred Thousand Dollars (\$ 100,000.00) each employee, and One Hundred Thousand Dollars (\$ 100,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed ~~operations~~.
operations

PAGE 5

2.5.9 Indemnification Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from claims including all costs, expenses and reasonable attorney's fees, to the extent losses and damages are caused by Architect's negligent acts, errors or omissions in performing professional services under this Agreement, except for claims arising out of the negligence of the Owner.

2.6 The Architect shall review laws, codes and regulations applicable to the Architect's services. The Architect shall exercise due professional care in endeavoring to comply with requirements imposed by governmental authorities having jurisdiction over the Project including, but not limited to, applicable ADA standards. Architect shall use the standard care utilized by other architects in designing projects under the applicable standards, in identifying requirements imposed by governmental authorities, and shall identify to the Owner requirements that may be interpreted in different ways of which conflict with other requirements.

...

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt review the services and information for completeness and sufficiency and provide timely written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

...

3.1.7 The Architect shall assist the Owner in determining allowable construction time and amount of liquidated damages.

3.1.8 In accordance with the standard of care, the Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

PAGE 6

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

...

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's ~~approval~~approval thereof. Owner's approval of the documents must be in writing to be binding against either party.

...

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's ~~approval~~approval of the documents and any adjustments must be in writing to be binding against either party.

PAGE 7

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point of time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents and any adjustments or actions suggested by the Architect must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding.

PAGE 8

3.6.1.4 The Architect shall be responsible for conducting progress meetings not less than monthly or as needed and for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section ~~4.2.3, 4.3.3,~~ 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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.

§ 3.6.2.2 The Architect ~~has and~~ Owner shall have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon ~~or otherwise with reasonable promptness~~timely so as not to affect the Contract Time or the Contract Sum.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents ~~and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's Documents. The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents; provided however, the Owner, with advise and assistance from the Architect, shall make final decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents-effect, Contract Sum and Contract Time..~~

PAGE 9

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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 timely so as not to affect the Contract Time or Contract Sum..

PAGE 10

§ 3.6.5.1 The Architect may ~~order~~ authorize 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. Subject to ~~Section 4.2~~, the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

1. confirm proposed change is a material change to the Contract;
2. confirm appropriate credits are included for Work not completed;
3. verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
4. confirm that the appropriate back up documentation is included and mathematically correct including markups and taxes pursuant to the requirements of the Contract Documents.

PAGE 11

§ 3.6.6.4 The Architect shall review, approve and forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Contractor, to review the facility operations and performance.

...

§ 4.1.1.1 Programming	<u>Architect & Owner</u>
§ 4.1.1.2 Multiple preliminary designs	<u>Architect's Basic Services</u>
§ 4.1.1.3 Measured drawings	<u>Not Provided</u>
§ 4.1.1.4 Existing facilities surveys	<u>Not Provided</u>
§ 4.1.1.5 Site evaluation and planning	<u>Not Provided</u>
§ 4.1.1.6 Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.7 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.8 Civil engineering	<u>Not Provided</u>
§ 4.1.1.9 Landscape design	<u>Not Provided</u>
§ 4.1.1.10 Architectural interior design	<u>Not Provided</u>
§ 4.1.1.11 Value analysis	<u>Not Provided</u>

§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	<u>Not Provided</u>
§ 4.1.1.13 On-site project representation	<u>Not Provided</u>
§ 4.1.1.14 Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.15 As-designed record drawings	<u>Not Provided</u>
§ 4.1.1.16 As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.17 Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18 Facility support services	<u>Not Provided</u>
§ 4.1.1.19 Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20 Architect's coordination of the Owner's consultants	<u>Architect's Basic Services</u>
§ 4.1.1.21 Telecommunications/data design	<u>Not Provided</u>
§ 4.1.1.22 Security evaluation and planning	<u>Not Provided</u>
§ 4.1.1.23 Commissioning	<u>Not Provided</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25 Fast-track design services	<u>Not Provided</u>
§ 4.1.1.26 Multiple bid packages	<u>Not Provided</u>
§ 4.1.1.27 Historic preservation	<u>Not Provided</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<u>Not Provided</u>
§ 4.1.1.29 Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.30 Other Supplemental Services	<u>Not Provided</u>

PAGE 12

The Architect is to perform all required Programming and Design Services, and to coordinate all work with the Owner's Consultants.

PAGE 13

- ~~.6 — Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
- ~~.7 — Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- ~~.9 — Evaluation of the qualifications of entities providing bids or proposals;~~

...

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt-timely written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- ~~.1 — Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~.2 — Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 — Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~.4 — Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~

...

- .1 ~~(→) reviews~~ One (1) review of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(→) Weekly~~ visits to the site by the Architect during construction
- .3 ~~(→) inspections~~ One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(→) inspections~~ One (1) inspection for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.2 The ~~Owner~~ Owner, with Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

PAGE 14

5.3.1 The Owner has the right to reject any portion of the Architect's services on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design services or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Services. If at any time, the Architect's services is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design services or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to services previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional services or Changes in Services without such written approval by Owner.

§ 5.5 ~~The~~ To the extent reasonably required for the timely and safe design and construction of the Project, the Owner shall furnish services of geotechnical engineers, engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Architect shall assist Owner in obtaining these services.

...

§ 5.11 ~~The Owner shall provide prompt~~ In accordance with the standard of care, the Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect. The Owner shall provide timely written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall ~~promptly~~ timely 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.

PAGE 15

~~§ 5.15~~ Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

...

~~§ 6.3~~ In preparing estimates of the Cost of Work, the Architect, in consultation with the Owner, shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

...

- .1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;

PAGE 16

~~§ 6.7~~ If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding, or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under this Article 6, Section 6.6.

...

~~§ 7.3~~ Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive irrevocable, royalty-free, right and license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11, obligations, including timely payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including

Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovations, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by the Owner or Owner's representatives using the Architect's Instruments of Service.

~~§ 7.3.1~~ In the event the Owner uses the Instruments of Service without retaining the ~~authors-author~~ of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all ~~from liability for~~ claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.use.

...

~~§ 8.1.1~~ The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, ~~in accordance with the requirements of the binding dispute resolution method selected in this 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 Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~Tennessee law.

PAGE 17

~~§ 8.1.3~~ The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

...

[☒] Litigation in a court of competent jurisdiction

...

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1~~ 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, dispute or other matter in question 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, dispute or other matter in question.

~~§ 8.3.2~~ The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.3~~ The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1~~ Either party, at its sole discretion, 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).

~~§ 8.3.4.2~~ Either party, at its sole discretion, 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.

~~§ 8.3.4.3~~ The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

~~§ 8.4~~ The provisions of this Article 8 shall survive the termination of this Agreement.

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, in accordance herewith, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the ~~Owner shall pay the Architect~~ Architect shall be paid all sums due prior to suspension and shall negotiate with the Owner any expenses incurred in the interruption ~~and resumption~~ of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the ~~Project~~, Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, ~~the Architect shall be compensated~~ the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules shall be equitably adjusted for completion.

PAGE 18

~~§ 9.7~~ In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

1 — Termination Fee:

2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

...

9.10 In the event of any termination under this Article, the Architect consents to the owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.

PAGE 19

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.

...

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

~~1~~ — Stipulated Sum
 — (Insert amount)

~~2~~ — Percentage Basis
 — (Insert percentage value)

— () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.A percentage of construction cost calculated by the Formula $[35/(\text{LogP}-1.15)] * 0.75$ where P is the construction cost, (25% discount).

...

...

...

Hourly Rates for services indicated in this Agreement.

PAGE 20

Hourly Rates for services indicated in this Agreement.

...

Hourly Rates for services indicated in this Agreement.

...

Schematic & Design	Thirty Five	percent (35	%)
Development Phase				
Design-Development Phase		percent (%)
	Forty	percent (40	%)
Construction Documents				
Phase				
Procurement Phase	Five	percent (5	%)

Bidding or Negotiation Phase

Twenty percent (20 %)

Construction Phase

...

Total Basic Compensation	one <u>One</u> hundred percent (<u>100</u> %)
--------------------------	---

...

Architectural Services

<u>Principal Architect</u>	<u>\$175.00 Per Hour</u>
<u>Staff Architect</u>	<u>\$125.00 Per Hour</u>
<u>Intern Architect</u>	<u>\$ 90.00 Per Hour</u>
<u>Interior Designer</u>	<u>\$100.00 Per Hour</u>
<u>Field Representative</u>	<u>\$ 85.00 Per Hour</u>
<u>Draftsman</u>	<u>\$ 85.00 Per Hour</u>
<u>Administrative Personnel</u>	<u>\$ 65.00 Per Hour</u>

PAGE 21

- ~~.1~~ Transportation and authorized out-of-town travel and subsistence;
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting. .3 Fees paid for securing approval of permitting and other fees required by authorities having jurisdiction over the Project;
- ~~.4~~ Printing, reproductions, plots, and standard form documents;
- ~~.5~~ Postage, handling, and delivery;
- ~~.6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

...

- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses;
- ~~.11~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~.12~~ Other similar Project related expenditures. .13 Third party exploration test for investigations of existing roof substrates.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

~~§ 11.9 Architect's Insurance.~~ If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

...

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

~~%—Three Percent per annum~~

PAGE 22

~~2 — 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.)~~

~~3 — Exhibits:~~

~~(Check the appropriate box for any exhibits incorporated into this Agreement.)~~

~~[] — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~

~~(Insert the date of the E204-2017 incorporated into this agreement.)~~

~~[] — Other Exhibits incorporated into this Agreement:~~

~~(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)~~

...

Johnson + Bailey Architects P.C. letter dated February 8, 2021.

This Agreement entered into as of the day and year first written above.

City of Murreesboro

Johnson + Bailey Architects P.C.

...

Shane McFarland, Mayor

Date:

James Richard Pettit, President

Date:

...

Owner

APPROVED AS TO FORM:

(Signature)

Adam Tucker, City Attorney

Date:

(Printed name, title, and license number, if required)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James Richard Pettit, 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 15:24:14 ET on 03/15/2021 under Order No. 2529373163 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

PRESIDENT

(Title)

03.15.21

(Dated)

COUNCIL COMMUNICATION

Meeting Date: 04/08/2020

Item Title: Airport Hangar 1 Replacement – Construction

Department: Administration

Presented by: Kayla Walker, Project Development

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Approve amendment for the of the design-build contract with Morgan Construction.

Staff Recommendation

Staff recommends approval of the amendment in the amount of \$4,266,941 for design and construction.

Background Information

Morgan Construction and Allen & Hoshall were selected by the Murfreesboro Public Building Authority as the design build team for the Hangar 1 Replacement Project at the Murfreesboro Airport. The design-build contract was presented and approved by Council on October 10, 2020 with a proposed estimate of \$4.2 m. Due to the current economic climate, after drawings were completed and sent out to bid the proposed cost came in at \$4,266,941. This puts the total construction cost of Hangar 1 at \$4,352,000 which includes the proposed amendment, owner furnished items, and construction material testing.

Council Priorities Served

Improve economic development

The new hangar project will expand Airport infrastructure with the construction of a new modern and versatile hangar facility allowing for the use of one or more tenants and providing for the creation of highly skilled jobs within the City.

Fiscal Impact

The increase in project costs is \$152,000, for total design and construction cost of \$4,352,000. Costs will be partially funded through a \$2m Tennessee Airport Economic Development Grant. An additional \$2m was budgeted in FY21 to transfer from General Fund with the remaining costs to be funded through Airport Fund balance.

Attachments

AIA Amendment A141 for Construction of Hangar 1 Replacement Project

AIA[®] Document A141[™] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141[™]-2014, Standard Form of Agreement Between Owner and Design-Builder dated the 31st day of March in the year 2021 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

Murfreesboro Airport Hangar # 1 Replacement
1930 Memorial Blvd.
Murfreesboro, TN 37130

THE OWNER:
(Name, legal status and address)

City of Murfreesboro, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

THE DESIGN-BUILDER:
(Name, legal status and address)

Morgan Construction Company, Inc.
P.O. Box 4404
690 Manufacturers Road
Chattanooga, TN 37405

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

☒ [X] Stipulated Sum, in accordance with Section A.1.2 below

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

- [] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- [] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be Four Million, Two Hundred Sixty-six Thousand, Nine Hundred Forty-one Dollars and Zero Cents (\$ 4,266,941.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

See Attached Proposal Dated 3/30/21

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Progress payments will be adhered to as outlined in A141-2014 Article 9

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 25th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 10th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

(Paragraph deleted)

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add 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), less retainage of five percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

(Paragraph deleted)

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than Thirty-eight (38) weeks from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

See Attached Schedule

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section

Title

Date

Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

See Attached Schedule A

Number

Title

Date

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Init.

Title

Date

Pages

Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

See Attached Proposal Dated 3/30/21

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

James Lewis

.2 Project Manager

Evan Rector

.3 Others

Walter Ford- President

Clint Underwood- VPE

Matt Williams- VPO

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

Init.

ARTICLE A.5 COST OF THE WORK

A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure

to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

(Paragraphs deleted)

§ A.5.4 Other Agreements

(Paragraph deleted)

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

(Paragraphs deleted)

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

CITY OF MURFREESBORO

Morgan Construction Company, Inc.

OWNER (Signature)

Shane McFarland, Mayor

DESIGN-BUILDER (Signature)

Walter L. Ford President

Init.

(Printed name and title)

Approved as to form:

Adam F. Tucker, City Attorney

WALTER L. FORD, JR., PRESIDENT

(Printed name and title)

Init.

/



March 30, 2021

Kayla Walker
Director of Planning
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37310

Via Email: kwalker@MurfreesboroTN.gov

RE: Hangar Replacement Murfreesboro, TN – Budget #4 - REVISED

Dear Kayla,

Attached you will find our Budget #4 for this project at \$4,266,941. We would like to also let you know of some important points as listed below:

Revisions:

- 1) Excludes any landscaping or irrigation work. Disturbed area will have seed and straw installed for stabilization.
- 2) Excludes the mechanical screen.
- 3) Excludes approximately 400 square yards of the connector road (see attached paving area in red).
- 4) Includes the PG 76-22 asphalt mix as recently directed by TAD to Allen & Hoshall.
- 5) Excludes the Lanlink, Twins, and ADS proposals.
- 6) Excludes the four (4) wheeled fire extinguishers. To be furnished by the City.
- 7) Excludes window treatments.
- 8) Excludes a polyurethane coating or concrete densifier/hardener/sealer system (Ashford Formula) in the hangar and shops.
- 9) Includes a \$20,000 allowance for door hardware as directed by the City. WMS Trimble is creating a door hardware schedule for review and approval.
- 10) Includes utilizing all available existing water filled barricades on-site. Assumed to be 40 – 8' units or 320 linear feet.
- 11) Excludes any future Fuel Farm Infrastructure or running fiber conduit from the terminal to the hangar.

Owner Allowances:

- 1) Includes a \$8,000 Gas fees allowance per City request.
- 2) Includes a \$20,000 Electrical fees allowance per City request.
- 3) Includes a \$3,900 Water/Sewer fees allowance per Greg Harvey's email attached.
- 4) Includes a \$15,000 monument sign allowance.



- 5) Includes a \$12,000 allowance for a dumpster enclosure.

Deduct Options:

- 1) Deduct Payment and Performance Bond. Deduct (\$52,643)

GENERAL:

- 1) Budget is based on the attached Schedule A.
- 2) Includes design fees for Civil, Structural, Architectural, Mechanical, Electrical, Plumbing, Sprinkler and Site Lighting. Excludes design for Landscaping, Geotechnical Reports, Asbestos Report, Environmental Reports, Testing and/or Special Inspections.
- 3) Includes Builder's Risk insurance.
- 4) Includes \$17,644 for building permit. Excludes any aid to construction costs or any other permits or fees above the allowance amounts for utility fees.

SITE:

- 1) Includes raising the existing manhole and vacuum testing the sewer system.
- 2) Includes demolition, grading, storm drainage, paving, curb & gutter, signage, site utilities, etc.

Unit Pricing

- i. Removal of trench rock - 275/CY
 - ii. Removal of mass rock - 275/CY
 - iii. Export unsuitable soils, import and compact suitable soils - \$36/CY
- 3) Includes temporary fencing and barricades.
- 4) All grading & excavation for site work, footings, plumbing, electrical and utilities to be performed on a classified basis. Removal of rock, wet or unsuitable soils from site, de-mucking, etc. is excluded. Morgan has been directed that the Owner is retaining approximately \$163,433 in undercut/rock removal allowance.
- 5) Excludes storm water quality monitoring. We exclude any de-watering or well pointing of excavations which may be necessary due to groundwater.



- 6) Excludes removal of asbestos, underground tanks, hazardous waste, or any other hazardous materials from site.
- 7) Excludes removal or relocation of above or below ground utilities other than those shown.
- 8) Excludes all utility company fees required to bring services to building above the allowance amounts listed.
- 9) Excludes off-site work such as deceleration lanes, signals, etc.
- 10) Excludes a water quality unit and/or water storage or ponds (none indicated on drawings).
- 11) Includes a concrete dumpster pad, 16'-6" wide by 30' depth, 4,000 psi concrete, 8" thick on 4" of stone base, 6"x6" welded wire, #10 rebar placed in middle slab, 1" dowel bars, 20" long placed 12" o.c. at construction joint.

BUILDING:

- 1) Includes concrete package per design for foundations.
- 2) Brick veneer is included as drawn.
- 3) All roofs are sloped, pre-engineered metal building type.
- 4) Includes hollow metal doors and frames, wood doors, storefront as shown.
- 5) Includes 4 bi-fold, strap lift, hangar doors.
- 6) Includes metal studs, drywall, insulation, acoustical ceilings in office area.
- 7) Includes DensGlass exterior sheathing in lieu of ½" plywood as noted in wall sections.
- 8) Includes hard tile, resilient tile, carpet tile and rubber base.
- 9) Includes toilet accessories as required for office toilets and TLT 3. Future toilets are not included.
- 10) Excludes blinds at office windows.
- 11) Includes fire alarm system.



12) Excludes Twins, ADS, and Lanlink Proposals as directed.

We want to thank you for the opportunity to quote this project. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Chastain", written over a horizontal line.

Jared Chastain
Estimator

cc: Clint Underwood, Walter Ford, Matt Williams

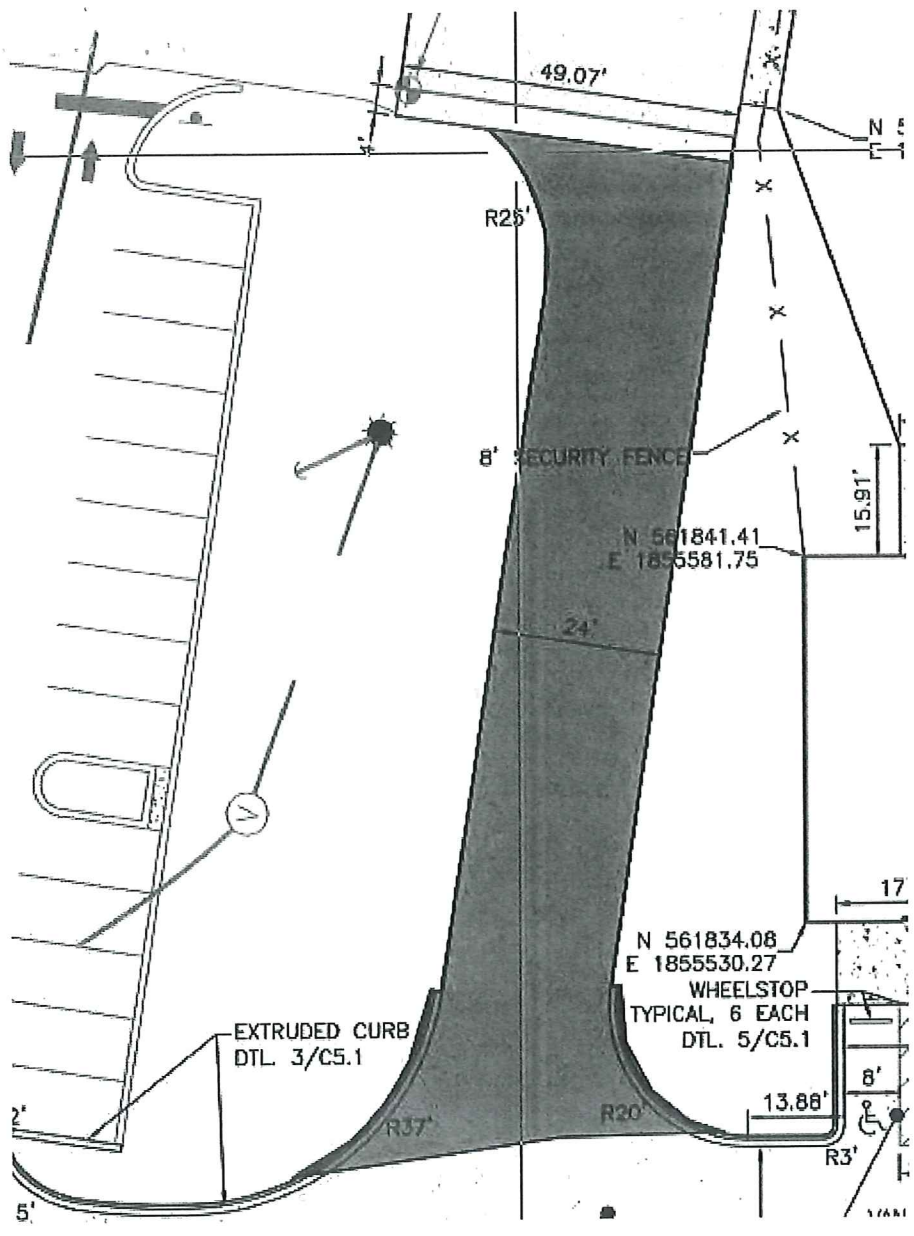
The following pricing is based upon the current drawings and specifications listed in the attached Schedule A. The owner has reviewed the drawings and agrees that we, Morgan Construction Company, Inc., have met the owner's design criteria and expectations. Signing below will constitute acceptance by The City of Murfreesboro.

Signature:

Print Name:

City of Murfreesboro

SUMMARY						
CODE	ITEM	TOTAL	DESIGN	SITE	BUILDING	TOTAL
GC	GENERAL CONDITIONS	\$496,551	\$282,170	\$37,832	\$176,549	\$496,551
	SITEWORK & DEMOLITION	\$839,629	\$0	\$839,629	\$0	\$839,629
SHELL	CONCRETE	\$498,312	\$0	\$0	\$498,312	\$498,312
	MASONRY	\$58,611	\$0	\$0	\$58,611	\$58,611
	STEEL	\$4,789	\$0	\$0	\$4,789	\$4,789
	WOOD	\$13,061	\$0	\$0	\$13,061	\$13,061
	ROOFING & CAULKING	\$45,961	\$0	\$0	\$45,961	\$45,961
FINISH	DOORS	\$179,491	\$0	\$0	\$179,491	\$179,491
	STOREFRONT	\$51,217	\$0	\$0	\$51,217	\$51,217
	DRYWALL	\$125,310	\$0	\$0	\$125,310	\$125,310
	PAINTING	\$40,997	\$0	\$0	\$40,997	\$40,997
	FLOORING	\$15,046	\$0	\$0	\$15,046	\$15,046
	TOILET PART/ACC	\$2,615	\$0	\$0	\$2,615	\$2,615
	DIVISION 10	\$15,000	\$0	\$0	\$15,000	\$15,000
	EQUIPMENT	\$0	\$0	\$0	\$0	\$0
	METAL BUILDING	\$730,145	\$0	\$0	\$730,145	\$730,145
	PLUMBING	\$106,824	\$0	\$0	\$106,824	\$106,824
	HVAC	\$158,716	\$0	\$0	\$158,716	\$158,716
	SPRINKLER	\$73,895	\$0	\$0	\$73,895	\$73,895
	ELECTRICAL	\$440,546	\$0	\$100,739	\$339,807	\$440,546
ALLOW	ALLOWANCES	\$0	\$0	\$0	\$0	\$0
	SUBTOTAL	\$3,896,716	\$282,170	\$978,200	\$2,636,346	\$3,896,716
			\$14.22	\$49.30	\$132.88	
	SUB-TOTAL COST	\$3,896,716	\$282,170	\$978,200	\$2,636,346	\$3,896,716
	CONTINGENCY @ 3%	\$116,901	\$8,465	\$29,346	\$79,090	\$116,901
	OH & P @ 5%	\$200,681	\$14,532	\$50,377	\$135,772	\$200,681
	SUB-TOTAL	\$4,214,298	\$305,167	\$1,057,923	\$2,851,208	\$4,214,298
	ADD FOR BOND	\$52,643	\$3,812	\$13,215	\$35,616	\$52,643
	TOTAL BUDGET #4	\$4,266,941	\$308,979	\$1,071,138	\$2,886,824	\$4,266,941



MORGAN CONSTRUCTION COMPANY, INC.
SCHEDULE A

Page 1 of 2

2012 **Murfreesboro Hangar**
Murfreesboro, TN

3/25/21

SHEET	TITLE	Bid Set DATE	REVISION NUMBER	CURRENT DATE
		-	-	-
	Project Manual	3/1/21	-	-
	Report of Geotechnical Exploration			
	Boring Report Prepared By K.S. Ware & Assoc.	10/30/19	-	-
	Anaylitical Report of Quonset Hut	1/22/20	-	-
G0.0	COVER SHEET	2/23/21	-	-
G0.1	SHEET INDEX	2/23/21	2	3/19/21
G0.2	LIFE SAFETY, CODE REVIEW, & BUILDING DATA	2/23/21	1	3/16/21
C0.1	EXISTING CONDITIONS AND DEMOLITION PLAN	2/23/21	-	-
C1.1	EROSION CONTROL PLAN STAGE 1	2/23/21	-	-
C1.2	EROSION CONTROL PLAN STAGE 2	2/23/21	-	-
C1.3	EROSION CONTROL PLAN STAGE 3	2/23/21	-	-
C1.4	EROSION CONTROL NOTES AND DETAILS	2/23/21	-	-
C2.1	SITE LAYOUT PLAN	2/23/21	1	3/17/21
C3.1	GRADING AND DRAINAGE PLAN	2/23/21	1	3/19/21
C4.1	SITE UTILITY PLAN	2/23/21	1	3/19/21
C5.1	DETAILS	2/23/21	1	3/17/21
C5.2	DETAILS	3/17/21	1	3/19/21
L1.0	PLANTING PLAN	3/16/21	1	3/19/21
A0.1	ABBREVIATIONS AND SYMBOLS	2/23/21	1	3/16/21
A0.2	WALL TYPES	2/23/21	2	3/19/21
A1.1	DIMENSION FLOOR PLAN	2/23/21	2	3/19/21
A1.2	REFERENCE FLOOR PLAN	2/23/21	2	3/19/21
A1.3	ENLARGED PLANS	2/23/21	2	3/19/21
A1.4	ENLARGED PLANS	2/23/21	2	3/19/21
A1.5	ENLARGED PLANS & PLAN DETAILS	2/23/21	1	3/16/21
A1.6	ENLARGED PLANS & DETAILS	2/23/21	-	-
A3.1	REFLECTED CEILING PLANS	2/23/21	2	3/19/21
A3.2	REFLECTED CEILING PLAN	2/23/21	2	3/19/21
A4.1	ROOF PLAN	2/23/21	-	-
A4.2	ROOF DETAILS	2/23/21	1	3/16/21
A5.1	EXTERIOR ELEVATIONS	2/23/21	1	3/19/21
A6.1	BUILDING SECTIONS	2/23/21	1	3/16/21
A7.1	WALL SECTIONS	2/23/21	2	3/19/21
A7.2	WALL SECTIONS	2/23/21	2	3/19/21
A7.3	WALL SECTIONS & DETAILS	2/23/21	1	3/16/21
A10.1	DOOR TYPES & DOOR DETAILS	2/23/21	2	3/19/21
A10.2	DOOR DETAILS	2/23/21	-	-
A10.3	DOOR DETAILS	2/23/21	-	-
A10.4	WINDOW TYPES AND DETAILS	2/23/21	1	3/16/21
A11.1	INTERIOR ELEVATIONS AND DETAILS	2/23/21	-	-
A12.1	FINISH PLAN	2/23/21	1	3/16/21
S0.0	GENERAL NOTES	2/23/21	-	-

MORGAN CONSTRUCTION COMPANY, INC.
SCHEDULE A

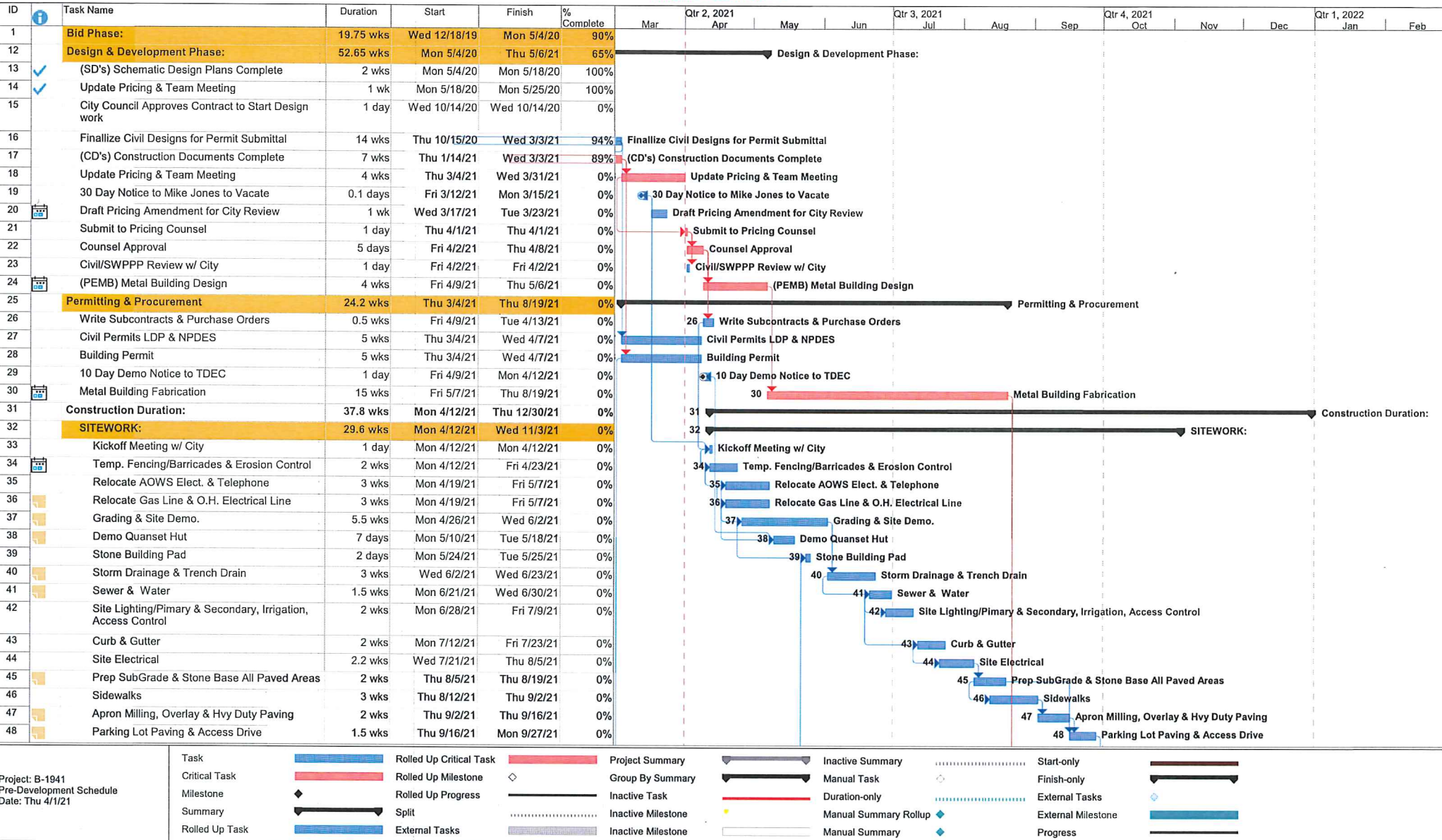
Page 2 of 2

2012 **Murfreesboro Hangar**
Murfreesboro, TN

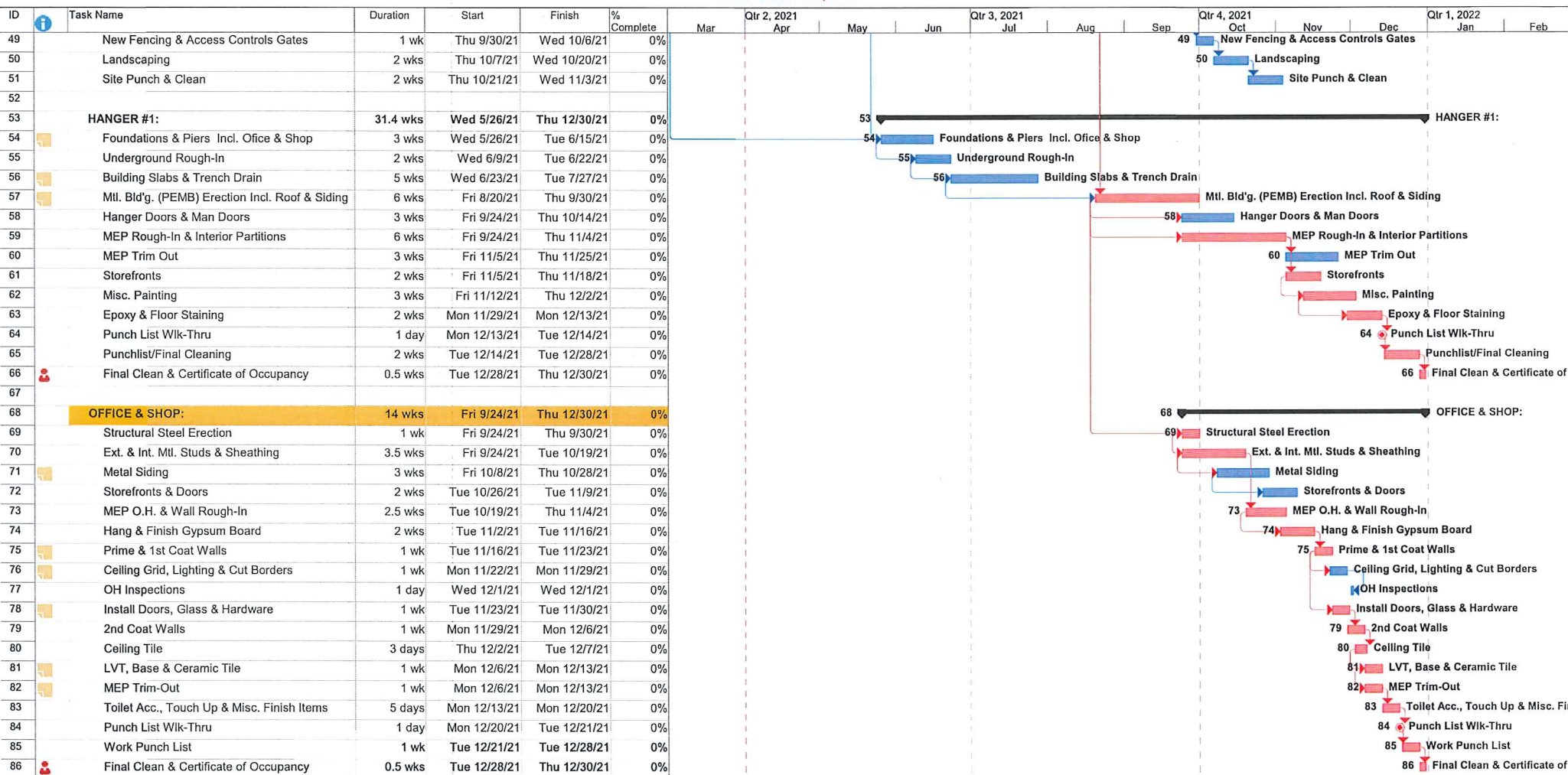
3/25/21

SHEET	TITLE	Bid Set DATE	REVISION NUMBER	CURRENT DATE
S0.1	SPECIAL INSPECTIONS	2/23/21	-	-
S2.1	FOUNDATION PLAN	2/23/21	1	3/19/21
S2.2	SLAB LAYOUT PLAN	2/23/21	1	3/19/21
S3.1	SECTIONS & DETAILS	2/23/21	1	3/19/21
S4.1	MISCELLANEOUS FOUNDATION SECTIONS	2/23/21	-	-
S5.1	PEMB ADDITIONAL FRAMING & DEFLECTION CRITERIA	2/23/21	-	-
M1.1	FLOOR PLAN - MECHANICAL SCHEDULES & SEQUENCES OF OPERATION -	2/23/21	2	3/17/21
M2.1	MECHANICAL	2/23/21	1	3/19/21
M3.1	DETAILS - MECHANICAL	2/23/21	-	-
M3.2	DETAILS - MECHANICAL	2/23/21	-	-
P0.1	LEGEND, SCHEDULE, & DETAILS - PLUMBING	2/23/21	1	3/16/21
P0.2	DETAILS - PLUMBING	2/23/21	1	3/16/21
P0.3	DETAILS - SITE FIRE PROTECTION	2/23/21	1	3/19/21
P1.1	MAIN FLOOR PLAN - UNDERGROUND PLUMBING	2/23/21	1	3/16/21
P1.2	MAIN FLOOR PLAN - ABOVEGROUND PLUMBING	2/23/21	1	3/16/21
E0.1	LEGEND, FIXTURE SCHEDULE, & DETAILS - ELECTRICAL	2/23/21	1	3/16/21
E0.2	SINGLE-LINE DIAGRAM ELECTRICAL	2/23/21	1	3/19/21
E0.3	DETAILS - ELECTRICAL	2/23/21	-	-
E0.4	PANELBOARD SCHEDULES - ELECTRICAL	2/23/21	-	-
E1.1	SITE PLAN - ELECTRICAL	2/23/21	2	3/19/21
E2.1	FLOOR PLAN - LIGHTING - ELECTRICAL FLOOR PLAN - POWER & COMMUNICATIONS -	2/23/21	1	3/16/21
E3.1	ELECTRICAL	2/23/21	1	3/16/21
FA1.0	FIRE ALARM PLAN	2/23/21	-	-
FP1.0	FIRE PROTECTION PLAN	2/23/21	-	-

**South Terminal
Hangar #1 Repalcement
Murfreesboro, TN**



South Terminal
Hangar #1 Repalcement
Murfreesboro, TN



Project: B-1941
Pre-Development Schedule
Date: Thu 4/1/21

Task		Rolled Up Critical Task		Project Summary		Inactive Summary		Start-only	
Critical Task		Rolled Up Milestone		Group By Summary		Manual Task		Finish-only	
Milestone		Rolled Up Progress		Inactive Task		Duration-only		External Tasks	
Summary		Split		Inactive Milestone		Manual Summary Rollup		External Milestone	
Rolled Up Task		External Tasks		Inactive Milestone		Manual Summary		Progress	

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Mercury Boulevard Sidewalk Project – Award of Construction Contract

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Bid results for the construction of the Mercury Boulevard Sidewalk project.

Staff Recommendation

Approve the award of the project to the low bidder, Charles Deweese Construction, LLC.

Background Information

This project consists of installing sidewalks along Mercury Blvd from SE Broad Street to Middle Tennessee Blvd. This also includes drainages improvements, ADA compliant pedestrian crosswalks, and signal upgrades on each end of the project. A low bid in the amount of \$1,100,292 was submitted by Charles Deweese Construction. TDOT has issued a concurrence with the award of the contract. The Engineer's estimate for the project was \$1,300,967.

Council Priorities Served

Safe and Livable Neighborhoods

The addition of sidewalks to City streets enhances the safety and livability of neighborhoods and the roadway system.

Fiscal Impact

The City has been obligated a total of \$1,144,898 in Federal grants to install sidewalks along this portion of Mercury Boulevard. The City is participating in a 20% match of these Federal through State grants for the construction phase of this project. The local City match is \$286,224 and is allocated in the 2018 CIP. An amendment is being processed to receive the remaining \$117,720 Federal funds for this project.

Attachments

1. Letter of Recommendation to Award Contract from Neel Schaffer.
2. Bid Tabulation for Mercury Boulevard Sidewalk Project.

MEMORANDUM

TO: Chris Griffith, P.E.
City Engineer, City of Murfreesboro, TN

FROM: Neel-Schaffer, Inc.
Gregory Judy, P.E. and Whitney Sullivan

DATE: March 3, 2021

REFERENCE: Project Bid Tabulation & Review
Mercury Blvd Sidewalks Phase 1 – From SE Broad St to Middle Tennessee
Blvd; Project Number – 75LPLM-F3-067; PIN 125173-00

The bids for Phase 1 of the Mercury Blvd Sidewalk – Phase 1 Project were opened Tuesday, February 23rd at 2:00 p.m. local time within Murfreesboro City Hall. Bids were received from 4 bidders. All bid packages were examined. The bids in order received are shown below.

Bidder List:

1. Adams Contracting LLC - \$1,248,899.65
2. Charles Deweese Construction – \$1,100,291.88
3. Roy T. Goodwin Contractors, Inc. – \$2,360,881.54
4. Sessions Paving Company - \$1,406,298.15

All bid packages were reviewed for responsiveness and the bids tabulated. It was noted that there were four (4) bid package holders on record and four (4) bids were received prior to the deadline. Review also noted that the submittal from Roy T. Goodwin Contractors, Inc. was found to be incomplete by virtue of having a blank cover form, submitting an unbound package and not meeting the project's DBE goal. For these reasons, the bid package submitted by Roy T. Goodwin Contractors was found to be unresponsive. All other submittals were found to be in order and responsive without irregularities. Charles Deweese Construction was found to be the apparent low-bidder. Charles Deweese Construction submitted its DBE award information (Form 8-5) within three days of the bid opening and meets the established DBE goal. The DBE companies offered by Charles Deweese Construction were found on TDOT's certified DBE list. TDOT pre-qualification by Charles Deweese Construction requires renewal before 03/31/2021.

Review Results

Based on our review of the submitted bid packages, we find that the city of Murfreesboro may consider Charles Deweese Construction as the low-bid and responsive company at a total bid of \$1,100,291.88.

BID TABULATION - ESTIMATED ROADWAY QUANTITIES										ENGINEERS ESTIMATE	
ITEM NO.	CONSTRUCTION STAKES, LINES AND GRADES	UNIT	QUANTITY	Adams Constr.		Charles Deweese		Sessions		UNIT PRICE	TOTAL COST
				UNIT	EXTENSION	UNIT	EXTENSION	UNIT	EXTENSION		
105-01	CONSTRUCTION STAKES, LINES AND GRADES	LS	1	15,000.00	\$15,000.00	11,500.00	\$11,500.00	25,000.00	\$25,000.00	10,000.00	\$10,000.00
201-01	CLEARING AND GRUBBING	LS	1	20,000.00	\$20,000.00	3,500.00	\$3,500.00	16,000.00	\$16,000.00	6,000.00	\$6,000.00
202-01	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	25,000.00	\$25,000.00	18,500.00	\$18,500.00	5,000.00	\$5,000.00	4,000.00	\$4,000.00
203-01	ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED)	C.Y.	2,531	24.00	\$60,744.00	15.50	\$39,230.50	26.50	\$67,071.50	25.00	\$63,275.00
203-03	BORROW EXCAVATION (UNCLASSIFIED)	C.Y.	1,411	40.00	\$56,440.00	15.50	\$21,870.50	60.00	\$84,660.00	30.00	\$42,330.00
203-07	FURNISHING & SPREADING TOPSOIL	C.Y.	1,530	35.00	\$53,550.00	35.85	\$54,850.50	32.00	\$48,960.00	35.00	\$53,550.00
203-06	WATER	M.G.	60	10.00	\$600.00	12.20	\$732.00	15.00	\$900.00	30.00	\$1,800.00
204-06.01	FLOWABLE FILL (GENERAL)	C.Y.	75	220.00	\$16,500.00	250.00	\$18,750.00	200.00	\$15,000.00	300.00	\$22,500.00
209-03.21	FILTER SOCK (12 INCH)	L.F.	4,953	3.70	\$18,326.10	4.15	\$20,554.95	4.20	\$20,802.60	5.00	\$24,765.00
209-05	SEDIMENT REMOVAL	C.Y.	43	10.00	\$430.00	14.95	\$642.85	10.00	\$430.00	25.00	\$1,075.00
209-08.02	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	76	4.50	\$342.00	4.89	\$371.64	5.10	\$387.60	6.00	\$456.00
209-08.03	TEMPORARY SILT FENCE (WITHOUT BACKING)	L.F.	4,340	1.90	\$8,246.00	2.41	\$10,459.40	2.10	\$9,114.00	2.50	\$10,850.00
209-09.43	CURB INLET PROTECTION (TYPE 4)	EACH	20	130.00	\$2,600.00	175.00	\$3,500.00	150.00	\$3,000.00	300.00	\$6,000.00
209-40.33	CATCH BASIN PROTECTION (TYPE D)	EACH	10	260.00	\$2,600.00	375.00	\$3,750.00	300.00	\$3,000.00	400.00	\$4,000.00
209-40.42	CATCH BASIN FILTER ASSEMBLY(TYPE 2)	EACH	4	1,050.00	\$4,200.00	685.00	\$2,740.00	1,100.00	\$4,400.00	600.00	\$2,400.00
209-40.46	CATCH BASIN FILTER ASSEMBLY(TYPE 6)	EACH	1	420.00	\$420.00	550.00	\$550.00	500.00	\$500.00	800.00	\$800.00
209-40.47	CATCH BASIN FILTER ASSEMBLY(TYPE 7)	EACH	1	420.00	\$420.00	900.00	\$900.00	500.00	\$500.00	1,000.00	\$1,000.00
303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	640	35.00	\$22,400.00	27.50	\$17,600.00	31.00	\$19,840.00	28.00	\$17,920.00
307-01.08	ASPHALT CONCRETE MIX (PG64-22) (BPMB-HM) GRADING B-M2	TON	107	250.00	\$26,750.00	185.00	\$19,795.00	238.00	\$25,466.00	120.00	\$12,840.00
402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	1	900.00	\$900.00	1,000.00	\$1,000.00	900.00	\$900.00	750.00	\$750.00
402-02	AGGREGATE FOR COVER MATERIAL (PC)	TON	5	52.00	\$260.00	125.00	\$625.00	50.00	\$250.00	30.00	\$150.00
403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	1	900.00	\$450.00	1,250.00	\$625.00	900.00	\$450.00	1,000.00	\$500.00
407-20.05	SAW CUTTING ASPHALT PAVEMENT	L.F.	5,100	1.50	\$7,650.00	4.17	\$21,267.00	3.25	\$16,575.00	4.00	\$20,400.00
411-01.10	ACS MIX(PG64-22) GRADING D	TON	111	280.00	\$31,080.00	195.00	\$21,645.00	265.00	\$29,415.00	130.00	\$14,430.00
604-01.01	CLASS A CONCRETE (ROADWAY)	C.Y.	3	1,600.00	\$4,800.00	1,000.00	\$3,000.00	1,000.00	\$3,000.00	1,000.00	\$3,000.00
604-01.02	STEEL BAR REINFORCEMENT (ROADWAY)	LB.	230	3.00	\$690.00	4.50	\$1,035.00	2.50	\$575.00	2.25	\$517.50
604-01.04	1-1/2" STEEL PIPE HANDRAIL	L.F.	36	190.00	\$6,840.00	150.00	\$5,400.00	200.00	\$7,200.00	95.00	\$3,420.00
607-03.02	18" CONCRETE PIPE CULVERT (CLASS III)	L.F.	264	95.00	\$25,080.00	88.93	\$23,477.52	90.00	\$23,760.00	100.00	\$26,400.00
607-37.01	15" CORRUGATED METAL PIPE CULVERT	L.F.	20	80.00	\$1,600.00	125.00	\$2,500.00	90.00	\$1,800.00	75.00	\$1,500.00
611-07.51	15IN ENDWALL (CROSS DRAIN) 3:1	EACH	4	1,600.00	\$6,400.00	2,000.00	\$8,000.00	2,500.00	\$10,000.00	2,000.00	\$8,000.00
611-07.54	18IN ENDWALL (CROSS DRAIN) 3:1	EACH	1	1,700.00	\$1,700.00	1,925.00	\$1,925.00	3,000.00	\$3,000.00	2,600.00	\$2,600.00
611-07.55	18IN ENDWALL (CROSS DRAIN) 4:1	EACH	1	1,900.00	\$1,900.00	2,250.00	\$2,250.00	3,000.00	\$3,000.00	2,800.00	\$2,800.00
611-09.01	ADJUSTMENT OF EXISTING CATCHBASIN	EACH	2	1,100.00	\$2,200.00	1,150.00	\$2,300.00	750.00	\$1,500.00	1,500.00	\$3,000.00
611-09.03	CAPPING EXISTING CATCHBASIN	EACH	1	1,500.00	\$1,500.00	1,135.00	\$1,135.00	500.00	\$500.00	1,500.00	\$1,500.00
611-14.01	CATCH BASINS, TYPE 14, > 0' - 4' DEPTH	EACH	2	5,300.00	\$10,600.00	7,500.00	\$15,000.00	5,000.00	\$10,000.00	4,500.00	\$9,000.00
611-42.01	CATCH BASINS, TYPE 42, 0' - 4' DEPTH	EACH	2	3,300.00	\$6,600.00	2,700.00	\$5,400.00	3,750.00	\$7,500.00	3,500.00	\$7,000.00
611-42.02	CATCH BASINS, TYPE 42, > 4' - 8' DEPTH	EACH	4	5,600.00	\$22,400.00	5,300.00	\$21,200.00	5,500.00	\$22,000.00	5,000.00	\$20,000.00
701-01.01	CONCRETE SIDEWALK (4 ")	S.F.	26,122	6.00	\$156,732.00	5.85	\$152,813.70	9.10	\$237,710.20	7.50	\$195,915.00
701-02	CONCRETE DRIVEWAY	S.F.	534	10.00	\$5,340.00	12.50	\$6,675.00	13.20	\$7,048.80	12.00	\$6,408.00
701-02.01	CONCRETE CURB RAMP (RETROFIT)	S.F.	404	14.00	\$5,656.00	32.50	\$13,130.00	17.60	\$7,110.40	30.00	\$12,120.00
701-02.03	CONCRETE CURB RAMP	S.F.	2,093	12.00	\$25,116.00	23.00	\$48,139.00	15.40	\$32,232.20	20.00	\$41,860.00
701-02.06	DETECTABLE WARNING SURFACE (EXISTING RAMPS)	S.F.	80	35.00	\$2,800.00	40.00	\$3,200.00	35.00	\$2,800.00	15.00	\$1,200.00
701-03	CONCRETE MEDIAN PAVEMENT	C.Y.	8	600.00	\$4,800.00	650.00	\$5,200.00	600.00	\$4,800.00	700.00	\$5,600.00
702-01	CONCRETE CURB	C.Y.	11	700.00	\$7,700.00	450.00	\$4,950.00	730.00	\$8,030.00	750.00	\$8,250.00
702-03	CONCRETE COMBINED CURB & GUTTER	C.Y.	48	575.00	\$27,600.00	375.00	\$18,000.00	566.00	\$27,168.00	750.00	\$36,000.00
710-02	AGGREGATE UNDERDRAINS (WITH PIPE)	L.F.	4,225	11.00	\$46,475.00	6.00	\$25,350.00	35.50	\$149,987.50	25.00	\$105,625.00
710-05	LATERAL UNDERDRAIN	L.F.	186	30.00	\$5,580.00	5.00	\$930.00	20.00	\$3,720.00	7.00	\$1,302.00
710-06.12	LATERAL UNDERDRAIN ENDWALL (3:1)	EACH	11	1,600.00	\$17,600.00	750.00	\$8,250.00	500.00	\$5,500.00	800.00	\$8,800.00
712-01	TRAFFIC CONTROL	LS	1	95,000.00	\$95,000.00	25,000.00	\$25,000.00	36,000.00	\$36,000.00	40,000.00	\$40,000.00
712-04.01	FLEXIBLE DRUMS (CHANNELIZING)	EACH	126	36.00	\$4,536.00	36.56	\$4,606.56	35.00	\$4,410.00	45.00	\$5,670.00
712-05.03	WARNING LIGHTS (TYPE C)	EACH	60	26.00	\$1,560.00	26.11	\$1,566.60	37.00	\$2,220.00	25.00	\$1,500.00
712-06	SIGNS (CONSTRUCTION)	S.F.	310	10.00	\$3,100.00	9.40	\$2,914.00	8.00	\$2,480.00	10.00	\$3,100.00
712-07.03	TEMPORARY BARRICADES (TYPE III)	L.F.	24	19.00	\$456.00	18.80	\$451.20	14.00	\$336.00	18.00	\$432.00
712-08.03	ARROW BOARD (TYPE C)	EACH	2	1,900.00	\$3,800.00	750.00	\$1,500.00	1,000.00	\$2,000.00	2,000.00	\$4,000.00
712-09.08	REMOVABLE PAVEMENT MARKING (6" LINE)	L.F.	11,029	1.00	\$11,029.00	4.18	\$46,101.22	4.00	\$44,116.00	3.00	\$33,087.00
713-11.01	"U" SECTION STEEL POSTS	LB.	517	6.25	\$3,231.25	2.75	\$1,421.75	4.50	\$2,326.50	4.00	\$2,068.00
713-11.02	PERFORATED/KNOCKOUT SQUARE TUBE POST	LB.	114	8.50	\$969.00	7.50	\$855.00	4.00	\$456.00	5.00	\$570.00
713-13.02	FLAT SHEET ALUMINUM SIGNS (0.080" THICK)	S.F.	137	17.00	\$2,322.20	15.00	\$2,049.00	15.00	\$2,049.00	15.00	\$2,049.00
713-13.03	FLAT SHEET ALUMINUM SIGNS (0.100" THICK)	S.F.	8	18.00	\$135.00	15.00	\$112.50	16.00	\$120.00	17.00	\$127.50
713-16.01	CHANGEABLE MESSAGE SIGN UNIT	EACH	2	8,000.00	\$16,000.00	7,833.39	\$15,666.78	6,000.00	\$12,000.00	7,000.00	\$14,000.00
716-02.04	PLASTIC PAVEMENT MARKING(CHANNELIZATION STRIPING)	S.Y.	145	26.00	\$3,770.00	31.33	\$4,542.85	30.00	\$4,350.00	35.00	\$5,075.00
716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	L.F.	342	15.00	\$5,130.00	20.89	\$7,144.38	20.00	\$6,840.00	18.00	\$6,156.00
716-02.06	PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	EACH	7	160.00	\$1,120.00	261.11	\$1,827.77	250.00	\$1,750.00	220.00	\$1,540.00
716-02.09	PLASTIC PAVEMENT MARKING (LONGITUDINAL CROSS-WALK)	L.F.	1,206	15.00	\$18,090.00	29.24	\$35,263.44	28.00	\$33,768.00	35.00	\$42,210.00
716-02.12	PLASTIC PAVEMENT MARKING (8IN LINE)	L.M.	0	5,500.00	\$275.00	22,058.80	\$1,102.94	21,120.00	\$1,056.00	9,000.00	\$450.00
716-04.05	PLASTIC PAVEMENT MARKING (STRAIGHT ARROW)	EACH	5	160.00	\$800.00	261.11	\$1,305.55	250.00	\$1,250.00	220.00	\$1,100.00
716-08.30	HYDROBLAST REMOVAL OF PAVEMENT MARKING (LINE)	L.M.	0	14,000.00	\$2,100.00	26,470.53	\$3,970.58	25,344.00	\$3,801.60	3,500.00	\$525.00
716-12.01											

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Contract for Engineering Services - Mercury Blvd Sidewalk Project

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Contract for the engineering services to provide administration of the construction of the Mercury Blvd Sidewalk project.

Staff Recommendation

Approval of the professional services contract for the Mercury Boulevard Sidewalk project with Neel Schaffer, Inc.

Background Information

Staff requested a proposal from Neel Schaffer, Inc. to perform construction administration services for the Mercury Blvd Sidewalk project. The purpose of this contract is to assist with administering the contract in accordance with TDOT standards throughout the construction phase.

Council Priorities Served

Safe and Livable Neighborhoods

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The estimate for professional services for the Mercury Blvd Sidewalk project is \$131,272 which is within the project's budgeted amount through Federal and City funds which were included in the 2018 CIP.

Attachments

Professional Services Contract from Neel Schaffer, Inc.

March 18, 2021

Mr. Chris Griffith, P.E.
City Engineer
City of Murfreesboro
111 W. Vine Street
Murfreesboro, TN 37133

**REFERENCE: Construction Engineering Assistance Services
Mercury Boulevard Sidewalk Project – Phase I
PIN 125173-00; TAP-1(377); 75LPLM-F3-067**

Dear Chris:

We are happy to submit this Letter Agreement between Neel-Schaffer, Inc. and the city of Murfreesboro for construction phase services of the Mercury Boulevard Phase I Sidewalk Project. We appreciate the opportunity to provide part-time construction engineering support and engineer-of-record services as specified in the scope of work.

Neel-Schaffer's services will include inspection support and construction engineering services that complement the full-time city inspection and administration duties. The scope of services that outlines our services and tasks is attached as Exhibit A.

We propose to provide these services under cost plus fixed fee and expenses fee terms as discussed. A fee estimate schedule has been prepared and is presented as Exhibit B. We will submit invoices to your office monthly based on hours and expenses accrued. Services proposed in this Letter Agreement shall be provided in accordance with Exhibit C, "General Terms and Conditions," which is attached to and made a part of this Letter Agreement

This Letter Agreement will also allow Neel-Schaffer, Inc. to provide other related services to the city of Murfreesboro in accordance with Exhibits B and C. Before proceeding with any additional requests beyond the originally identified basic services as shown in Exhibit A, we will write a letter to you referencing this Letter Agreement and specifying the scope of services and the estimated fee. Upon your acceptance, we will proceed with the additional services.

This Letter consisting of two pages; Exhibit A consisting of two pages; Exhibit B consisting of four pages; and Exhibit C consisting of four pages represent the entire agreement between Neel-Schaffer, Inc. and the city of Murfreesboro for the referenced project. This Letter Agreement may only be modified or amended by a duly executed written document. If the terms and conditions of this Letter Agreement are acceptable, please execute the original and return a copy to us. Please call if you have any questions.

Mr. Chris Griffith, P.E
March 18, 2021
Page 2

We appreciate the opportunity to provide these services to you and look forward to working with you.

Sincerely,

NEEL-SCHAFFER, INC.



Gregory D. Judy, P.E., PTOE
Engineer Manager/Vice President

Attachments

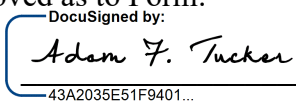
ACCEPTED:

City of Murfreesboro

BY: _____
Mayor

Date: _____

Approved as to Form:

BY: 
43A2035E51F9401... City Attorney

Date: 4/1/2021



Exhibit A

Scope of Work for Engineer-of-Record and CEI Support Services for the Mercury Blvd Sidewalk Improvement Project – Phase 1 PIN 125173.00; TAP-1(377); 75LPLM-F3-067

Project Description

The project provides for the construction and implementation of Phase 1 of the Mercury Blvd Sidewalk Improvement project, a state funded TAP grant project. Proposed construction activities include, but are not limited to, sidewalk installation, drainage infrastructure, minor signalization modifications and related pedestrian mobility improvements. The project limits consist of Mercury Blvd. from SE Broad Street to Middle Tennessee Blvd. The project will be administered as a TDOT locally managed contract.

Project Understanding

Neel-Schaffer, Inc. (NSI) will provide engineer-of-record (EOR) and inspection support services. The following outlines our understanding of the project scope and tasks of involvement.:

- ROW and/or easements required for project construction are or will be in place by the time of the issuance of the Contractor's Notice to Proceed for construction.
- The contracted period for construction will be twelve (12) months.
- Proposed services, as shown in scope, will be provided on part-time basis and in support of city inspection and management staff. City of Murfreesboro will complete required full-time construction inspection and administrative duties.
- Construction Engineering & Inspection (CEI) tasks will follow requirements of the Tennessee Department of Transportation.

Construction Administration

- Pre-Construction Meeting:
N-S will assist and participate in the project's Pre-Construction meeting:
 - Coordination support for pre-construction meeting
 - Assistance with preparation of agenda
 - Assistance with recording and documenting of meeting minutes
- Construction Progress Meetings (one per month):
An NSI representative/inspector will attend and participate in scheduled monthly progress meetings. Preparation of meeting minutes is excluded from tasks but we will provide review support as requested.
- Respond to Requests for Information (RFIs):
NSI will assist the City in responding to RFIs submitted by the Contractor. This will include interpretation of information shown in construction plans and opinions of guidance. Responses provided by NSI will be shared and coordinated with City staff.



- **Review of Material Submittals:**
NSI will review material submittals and shop drawings, which the Contractor is required to submit, but only for conformance with the design concept of the project as a functioning whole as indicated in the Contract Documents and compliance with the information provided in the Contract Documents. The Contractor is required to submit shop drawings, certifications and all other product and material information for all items and in the format required by TDOT guidelines. Any items submitted improperly or incomplete will be rejected without further review; the submitter will be requested to re-submit item information in the appropriate format before it is reviewed for technical suitability. Approvals, clarifications, rejections, or requests for additional information will be issued and submitted to the City for distribution to the Contractor. NSI will document results of material submittal reviews and will communicate questions and points-of-clarifications to City staff for discussion and final determinations.
- **Part-Time Field Observation Assistance (up to twice per week)**
An NSI representative/inspector will be available as requested by the City to provide field observation assistance during active construction. The NSI inspector will join city inspector staff in the field to review contractor activities and participate in discussions. The scope provides for up to two site visits per week and assumes an overall ten-month duration for the observation assistance. City inspectors will have primary inspection authority and responsibility.
- **Contractor Pay Request Assistance:**
NSI will assist the City with review of pay requests submitted by the Contractor. The City will have primary responsibility for documenting field quantities and tasks completed.
- **Substantial Completion Services:**
Following notice from Contractor that the project is substantially complete, NSI and City representatives, accompanied by Contractor, will conduct a site visit to determine if the work is substantially complete and compile a respective punch list for further attention by the Contractor.

Services not included in this Scope of Work

- Material testing, lab testing and inspection (third-party inspector)
- Surveying and construction staking
- Public Involvement
- Permit/Application fees
- Utility Inspections
- Geotechnical Investigation
- Design services during construction
- Daily construction inspections
- Labor compliance
- Change order preparation and processing
- TDOT-required project documentation other than that specifically stated above



MANDAY ESTIMATE



DESCRIPTION: Part-Time CEI and EOR Services - Mercury
Blvd Sidewalk Improvement Project - Phase

Consultant: Neel-Schaffer, Inc

Date Prepared: 2/18/2021

Project No.: TAP-1(377); 75LPLM-F3-067

PIN: 125173.00

Part-Time CEI & EOR Services							
		Mandays					
TASK		Project Manager	Senior Engineer	Engineer	Project Inspector	Admin.	Total Per Task
1	Pre-Construction Meeting Services	1	0.5	2.5	0.5	0	4.5
2	Progress Meetings Assistance (assume 1 /month for 10 months)	6	3	0	6	0	15
3	Respond to Requests for Information (RFIs	2	3	6	2	0	13
4	Review of Material Submittals	1.5	3	3	0	0	7.5
5	Contractor Pay Request Assistance	2	2	0	9	0	13
6	Substantial Completion Services	1	1	0	3	0	5
7	Part-Time Site Visits and Field Observation Assistance (assume 2 visits per week for 10 months)	1	4	0	84	0	89
8							
Subtotal Items 1-7		14.5	16.5	11.5	104.5	0	147



DESCRIPTION: Part-Time CEI and EOR Services - Mercury
Blvd Sidewalk Improvement Project - Phase

Consultant: Neel-Schaffer, Inc

Date Prepared: 2/18/2021

Project No.: TAP-1(377); 75LPLM-F3-067

PIN: 125173.00

Mandays					
Senior Engineer	Roadway Engineer	Engineer	Senior Tech	Admin.	Total Per Task
14.5	16.5	11.5	104.5	0	147
14.5	16.5	11.5	104.5	0	147
10%	11%	8%	71%	0%	100%

	MANDAY RATE	MANDAYS	DIRECT LABOR COST	
Project Manager	\$560.00	14.5	\$8,120.00	
Senior Engineer	\$490.00	16.5	\$8,085.00	
Engineer	\$280.00	11.5	\$3,220.00	
Project Inspector	\$250.00	104.5	\$26,125.00	
Admin.	\$175.00	0	\$0.00	
				Average Manday Cost
		147	\$45,550.00	\$309.86

DESIGN DIRECT EXPENSES



DESCRIPTION: Part-Time CEI and EOR Services - Mercury Blvd Sidewalk Improvement Project - Phase 1						
Consultant: Neel-Schaffer, Inc						
Date Prepared: 2/18/21						
Project No.: TAP-1(377); 75LPLM-F3-067						
PIN: 125173.00						
Reproduction Costs:					Item Subtotal	Item Total Cost
	Item Description	Number / Unit	Unit Price			
	Photo-copies		\$ 0.20	\$ -		
	Full size bond		\$ 2.00	\$ -		
	Half size bond	200	\$ 1.00	\$ 200.00		
	Full size vellum		\$ 2.00	\$ -		
	Half size vellum		\$ 1.00	\$ -		
	Full size mylar		\$ 2.00	\$ -	\$ 200.00	
Travel:						
	Number of Trips	No. of Miles/No. of People				
Per Diem (75%)				\$ -		
Per Diem			\$ 30.00 Per Day			
Transportation	80.00 Round Trips	X 40.00 Miles X	\$ 0.47 Per Mile	= \$ 1,504.00		
Lodging	0.00 Nights	X 0.00 People X	\$ 70.00 Per Person	\$ -	\$ 1,504.00	
* Rate must agree amounts in effect with State of Tennessee travel regulations. First and last day of travel must be at the 75% Per Diem Rate.						
Other Expenses:						
	Item Description	Number / Unit	Unit Price			
		0	\$ -	\$ -		
		0	\$ -	\$ -		
		0	\$ -	\$ -		
		0	\$ -	\$ -		
		0	\$ -	\$ -		
		0	\$ -	\$ -		
		0	\$ -	\$ -	\$ -	
TOTAL DIRECT EXPENSES					\$ 1,704.00	



DESCRIPTION: Part-Time CEI and EOR Services - Mercury Blvd Sidewalk Improvement Project - Phase 1

Consultant: Neel-Schaffer, Inc

Date Prepared: 2/18/2021

Project No.: TAP-1(377); 75LPLM-F3-067

PIN: 125173.00

FEE SUMMARY

1	Roadway Labor Cost		\$45,550.00
2	Overhead	151.72%	\$69,108.46
3	Subtotal (3 + 4)		\$114,658.46
4	Net Fee (Total Direct labor+Overhead) X (13.0%) (Nearest \$10)		\$14,910.00
5	Subtotal (3 + 4)		\$129,568.46
6	Direct Costs		\$1,704.00
7	TOTAL (5 + 6)		\$131,272.46

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

1. **Relationship between Consultant and Client.** Neel Schaffer, Inc. ("Consultant") shall serve as the Client's professional consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. Consultant shall not be considered to be the agent or fiduciary of the Client.
2. **Responsibility of Consultant.** Consultant will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions (the "Standard of Care"). No other representation, warranty or guarantee, express or implied, is included or intended in this Agreement or in any report, opinion, document, or otherwise.
3. **Responsibility of the Client.** Client shall provide all information and criteria as to its requirements for the Project, including budgetary limitations. Client shall arrange for Consultant to enter upon public and private property and obtain all necessary approvals required from all governmental authorities having jurisdiction over the Project. Client shall give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services.

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that Consultant may take measures to minimize the consequences of such a defect. Should legal liability for the defects exist, failure by the Client to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.
4. **Construction Phase Services.** If Consultant's scope of services includes the observation and monitoring of work performed by Client's separate contractors, Consultant shall provide personnel to observe and monitor the work in accordance with the Standard of Care in order to ascertain that it is being performed, in general, in accordance with the plans and specifications. Consultant shall not supervise, direct, or have control over the contractor's work. Consultant shall not have authority over or responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the contractor. Consultant does not guarantee the performance of the construction contract by the contractor and does not assume responsibility for the contractor's failure to furnish and perform its work in accordance with the plans and specifications.
5. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority on its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
6. **Ownership of Documents.** All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant generated documents for projects other than the project for which the documents were prepared by Consultant, or for future modifications to the Project, without Consultant's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Consultant will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, and subconsultants.
7. **Opinion of Costs.** When required as a part of its scope of services, Consultant will furnish opinions or estimates of construction cost on the basis of Consultant's experience and qualifications, but Consultant does not guarantee the accuracy of such estimates. The parties recognize that Consultant has no control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices.
8. **Changes or Delays.** In the event new developments or circumstances beyond the control of Consultant require a change in the scope of services or schedule, Consultant shall be entitled to an equitable adjustment to the fee and/or schedule. Such events include, but are not limited to, unreasonable delays caused by Client's failure to provide specified direction or information, delays caused by Client's other contractors or consultants, or if Consultant's failure to perform is due to any act of God, labor shortage, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

9. **Suspension of Services.** Client may, at any time, by written notice, suspend further services by Consultant. Upon receipt of such notice, Consultant shall take all reasonable steps to mitigate costs allocable to the suspended services. Client, however, shall pay all reasonable and necessary costs associated with such suspension including the cost of assembling documents, personnel and equipment, rescheduling or reassignment costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension. Consultant will not be obligated to provide the same personnel in the event the period of any suspension exceeds 30 days.
10. **Termination.** This Agreement may be terminated by either party upon 30 days' written to the other party. Upon such termination, Client shall pay Consultant for all services performed up to the date of termination. If Client is the terminating party, Client shall pay Consultant all reasonable cost and expenses incurred by Consultant in effecting the termination, including but not limited to non-cancellable commitments and demobilization costs, if any.
11. **Indemnification.** Consultant shall indemnify and hold harmless Client from and against those damages and costs (including reasonable attorneys' fees) that Client incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Consultant.
- To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant from and against those damages and costs (including reasonable attorneys' fees) that Consultant incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Client.
12. **Legal Proceedings.** In the event Consultant or its employees are required by Client to provide testimony, answer interrogatories, produce documents or otherwise provide information in relation to any litigation, arbitration, proceeding or other inquiry arising out of Consultant's services, where Consultant is not a party to such proceeding, Client will compensate Consultant for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony or information. This provision shall not apply in the event Client engages Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
13. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns;
- provided however, that neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.
14. **Insurance.** Consultant agrees to maintain the following insurance coverage with the following limits of insurance during the performance of Consultant's work hereunder:
- (a) Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
 - (b) Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;
 - (c) Worker's Compensation insurance with limits as required by statute and Employer's Liability insurance with limits of \$1,000,000 per employee for bodily injury by accident/\$1,000,000 per employee for bodily injury by disease/\$1,000,000 policy limit for disease; and
 - (d) Professional Liability insurance covering Consultant's negligent acts, errors, or omissions in the performance of professional services with available limits of \$1,000,000 per claim and annual aggregate.
- Consultant shall provide evidence of procuring the above insurance coverages by delivering a certificate of insurance to Client prior to the start of Consultant's work and annually upon renewal of coverage. Consultant shall cause Client to be named as an additional insured on Consultant's commercial general liability policy, which shall be primary and noncontributory.
15. **Information Provided by the Client.** Consultant shall be entitled to rely upon, without liability, the accuracy and completeness of any and all information provided by Client, without the obligation of independent verification.
16. **Consequential Damages.** Neither Client nor Consultant shall be liable to the other or shall make any claim for any special, incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, loss of business or diminution of property value and shall apply regardless of legal theory such damages are alleged including negligence, strict liability, breach of contract and breach of warranty.
17. **Payment.** Unless agreed to otherwise, Consultant shall submit monthly invoices to the Client. Payment in full

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

shall be due upon receipt of the invoice. Payment of any invoices by the Client shall be taken to mean that the Client is satisfied with the Consultant's services to the date of the payment and is not aware of any deficiencies in those services. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. If the Client fails to make payments; then Consultant, after giving seven (7) days written notice to the Client, may suspend services until the Client has paid in full all amounts due for services, expenses, and other related charges without recourse to the Client for loss or damage caused by such suspension. The Client waives any and all claims against the Consultant for any such suspension. Payment for Consultant's services is not contingent on any factor, except the Consultant's ability to provide services in a manner consistent with that Standard of Care. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless agreed to in writing by both parties. If the Client contests an invoice, the Client may withhold only that portion so contested and shall pay the undisputed portion, after the Client has notified Consultant in writing within 30 days of receiving the invoice and shall identify the specific cause of the disagreement and the amount in dispute.

18. **Force Majeure.** Neither Client nor Consultant shall be liable for any fault or delay caused by any contingency beyond their control, including but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Compliance with Laws.** To the extent they apply to its employees or its services, Consultant shall exercise due professional care to comply with all applicable laws, including ordinances of any political subdivisions or governing agencies.
20. **Invalid Terms.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding as if the unenforceable provisions were never included in the Agreement.
21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the services are performed.
22. **Dispute Resolution.** All disputes, controversies or claims, of whatever kind or character, between the Parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement shall be litigated in a court of competent jurisdiction.
23. **Additional Services.** Consultant shall be entitled to an equitable adjustment of its fee for services resulting from significant changes in the general scope, extent or

character of the Project or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or other documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Consultant's control.

24. **Amendment.** This Agreement may only be amended in writing and where such amendment is executed by a duly authorized representatives of each party.
25. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Consultant hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
26. **Survival of Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.
27. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.
28. **Identity of Project Owner.** Within ten (10) days of the entry of this Agreement, Client, if Client is not the Project Owner, shall provide to Consultant the Project Owner's full legal name; Project Owner's physical address; Project Owner's mailing address; and the name, physical address and mailing address of the Client's point of contact with the Owner for the Project.
29. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and Consultant, the terms and conditions contained in this Agreement shall supersede and have precedence over any other conflicting terms and conditions contained in any other written or oral agreement.
30. **Course of Dealing.** Client and Consultant agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

other services, projects, agreements or dealings between the them, unless Client or Consultant gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them.

31. **Professional services in Florida.** In the event any professional services are provided within the state of Florida, it is expressly agreed by the parties that an individual design professional who is an agent or employee of consultant may not be held personally or individually liable for any damages resulting from negligence arising out of consultant's performance of this agreement, as provided in Florida statutes section 558.0035, as amended.

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COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Construction Testing for the Mercury Blvd Sidewalk Project

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Contract for the construction materials testing for the Mercury Blvd Sidewalk project.

Staff Recommendation

Approve the professional services contract for the Mercury Blvd Sidewalk project with SSR Inc., subject to approval by the City Attorney.

Background Information

Staff requested a proposal from SSR, Inc. to perform material testing services for the Mercury Blvd Sidewalk project. The purpose of this contract is to provide the owner with verification that the materials being used during the construction meet the project specifications.

Council Priorities Served

Safe and Livable Neighborhoods

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The estimate for professional services for the Mercury Blvd Sidewalk project is \$52,825 which is within the project's budget through Federal and City funds which were included in the 2018 CIP.

Attachments

Proposal for Construction and Materials Engineering and Testing (SSR, Inc).

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

The City of Murfreesboro, Tennessee ("Owner")

and

Smith, Seckman, Reid, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Mercury Blvd Testing and Contract Administration(“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

Construction Engineering and Inspection (CEI) Materials Testing, Construction Administration (See Exhibit “A”)

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: As outlined in Exhibit B Man-day Estimate

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other

related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.

- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; and (3) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
 - 2. Engineer's Man-day estimate with Hourly Rates are attached.
 - 3. The total compensation for services and reimbursable expenses is estimated to be \$52,824.81.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

Attachments: Exhibit A, Detailed Scope of Services and Exhibit B, Man-day Estimate

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: _____

ENGINEER: _____

By: _____

By: David Donoho

Title: _____

Title: Principal

Date Signed: _____

Date Signed: 2/12/2021

Engineer License or Firm's Certificate

Number: 1030

State of: Tennessee

Address for giving notices:

Address for giving notices:

Smith, Seckman, Reid

2995 Sidco Drive

Nashville, TN 37204



EXHIBIT A – ENGINEERING SERVICES

February 11, 2021

Mr. Chris Griffith, City Engineer, PE
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Re: CEI Material Testing for Mercury Blvd

Dear Mr. Griffith:

Smith Seckman Reid, Inc. ("SSR" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to The City of Murfreesboro ("the Owner" or the "City") for providing Construction Management and Construction Engineering and Inspection ("CEI") Material Testing services. As used herein, the terms TDOT and Department mean the State of Tennessee Department of Transportation. Following are our project understanding, scope of services, schedule, and fee.

Project Understanding

The services are for CEI Material Testing and Construction Administration of Records for the sidewalk construction of Mercury Blvd. Construction is anticipated to take 6 to 8 months. SSR will conduct all acceptance testing required on the project. SSR will provide testing services as provided in the man-day estimate.

Scope of Services

SSR will provide the services specifically set forth below.

Task 1 – Construction Engineering Inspection

SSR will provide Construction Engineering and Inspection (CEI) services for the Client in accordance with Chapter 8 –*Pre-Construction and Construction Procedures*, in the Tennessee Department of Transportation ("TDOT") "Local Government Guideline for the Management of Federal and State Funded Transportation Projects." SSR will conduct all acceptance testing required on the project. SSR will provide the appropriate field and office staff as described above to assist the Client in compliance with the guidelines for Locally Managed Projects as outlined in the subtasks below.

A. Construction Administration

SSR will provide contract administration services for construction records and coordinate with the assigned City Supervisor. SSR will prepare for, cooperate with, and assist auditors that may be assigned to review project records, payments, reports, etc.

B. Quality Assurance, Testing for Acceptance

SSR will provide certified and trained personnel for field, plant testing and inspection as defined in the Contract, Plans or Specifications and document testing on standard

forms normally used by TDOT. Field testing consists of TDOT/ACI tests for concrete including concrete plant, nuclear density testing of subgrade and earthwork, base stone, asphalt, structural backfill, and pipe backfill as defined in the Standard Specifications and the TDOT sampling and testing schedule. SSR will provide source or plant testing according to TDOT Standard Specification 106.05 to include but not limited to asphalt plant inspection. SSR will provide aggregate analysis and moisture testing for roadway embankment and base stone materials as defined in the Standard Specifications and the Departments sampling and testing schedule. SSR will provide miscellaneous checking of application rates and dimensions and bearings to assure conformance to Plans and Specifications. In case of notification of defective concrete as defined in the Specifications, the Consultant will submit the initial information on TDOT standard forms and receive the final disposition of the material after review. Certifications of material submitted by the contractor will be reviewed by SSR for conformity to the Specifications. A Final Materials and Tests Certification will be included in the Final Records submitted to the Client.

C. Progress Payments

SSR will collect and assemble quantities for Monthly Progress Payments to the prime Contractor from actual project field records, as directed by Special Provisions in the contract, from Supplemental Agreements/Construction Changes, or from Force Accounts. The quantities for payment will be referenced to field records prior to submission for payment. Pay quantities will be submitted to the Client for review and payment. Payments for stockpiled material may be made as defined in the TDOT Standard Specifications and approved by the Project Supervisor.

D. Inspection of Work

SSR will provide materials testing services as defined above to determine if the work is in conformance to Plans and Specifications for items that are being incorporated into the project. The City will observe, measure and record all quantities for payment. The City will record field measurements in project records for review by the Client. The records will be recorded electronically and/or on field inspection forms to be submitted to the Client. SSR will prepare to justify pay quantities in the case of questions by the contractor or the City. The City will maintain an accurate daily diary, signed by the inspector, consisting of:

- A record of the contractors on the project
- Their personnel (number and classification)
- Equipment (number and type or size)
- Location and work performed by each contractor or subcontractor
- Orders given the contractor
- Events of note on the project
- Accidents on the project and any details surrounding the accident such as police report number, fatalities, causes, time, etc. Obtain a copy of the police report for the project records whenever possible.
- Weather, amount of precipitation, temperature at morning, noon, and evening, cloudy, clear, etc.
- Days charged,
- with explanation if not charged
- Equipment arriving or leaving the project, idle equipment

All SSR field technicians will be certified in the applicable TDOT certification workshops listed below:

- Asphalt Roadway Paving Inspector
- Asphalt Concrete Certified Plant Technician
- Class 1 Concrete Technician
- Soils and Aggregate Technician
- Nuclear Gauge Training
- OSHA 10 Safety Training Construction
- TDEC EPSC Level 1

E. Final Records

SSR will submit a compilation of project records to the Client after project completion. SSR will make corrections when/if notified and resubmit the records and a final estimate for the project at the appropriate time. SSR will submit all final documents (paper and electronic) with the final records.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed for mutually agreed upon fees.

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

Fee and Billing

SSR will provide the above services at a cost plus, fixed fee not to exceed \$52,841.81 for the construction phase services. The fee includes all direct and indirect costs associated with the construction phases.

SSR will invoice the City once per month for the services provided for that month. Payment is expected within 30 days of the invoice.

It is further understood that the CEI Materials Testing and Contract Administrative services for this project are for the specified hours and timeframe outlined in the Man-day Estimate. In the event that the Contractor does not finish the project in the allotted time frame, SSR will negotiate a supplement to this contract to cover services rendered beyond the construction original contract end date.

We look forward to continuing our working relationship with the City of Murfreesboro. If you have any questions please feel free to contact me.

Sincerely,



David Donoho
Senior Principal, SSR
615-514-6129, ddonoho@ssr-inc.com

SSR LABOR SUMMARY CEI TESTING MERCURY BLVD

TASKS	HOURS PER PERSONNEL CLASS					
	Project Mgr	Constr. Mgr	Admin	Inspector		
Preconstruction Meeting	8	8		8		
Road and Drainage Densities (6 tests)				24		
Mineral Aggregate Base Densities (4 tests) and Gradation (2 tests)				24		
Class A Concrete testing (1 test)				4		
Concrete Pipe Backfill Density (3 tests)				12		
Concrete Sidewalk, Driveway, Curb & Gutter testing (3 tests weekly for 6 months)				288		
Weekly Records Entry				96		
Monthly Estimates		6	48	12		
Project Management/Invoicing	4	8	8			
*(Inspector will be on site for 4 hours each testing trip)						
HOURS PER CLASSIFICATION	12	22	56	468		
MANDAYS	1.5	2.75	7	58.5		
TOTAL HOURS	558					
TOTAL DAYS	69.75					

COST SUMMARY

DIRECT (LABOR)	RATE		HOURS			LABOR
Project Mgr	\$ 90.00		12		=	\$ 1,080.00
Constr. Mgr	\$ 45.75		22		=	\$ 1,006.50
Admin	\$ 24.25		56		=	\$ 1,358.00
Inspector	\$ 27.75		468		=	\$ 12,987.00
					=	\$ -
DIRECT (LABOR) =						\$ 16,431.50

OVERHEAD	\$ 16,431.50	X	180%	
OVERHEAD =				\$ 29,634.21
FEE (12%)			12%	
FEE =				\$ 5,527.89

DIRECT EXPENSES	Units	X	Rate	
Mileage (72 trips @ 30 miles)	2160	X	0.570	\$ 1,231.20
		X		\$ -
		X		\$ -
		X		\$ -
		X		\$ -
		X		\$ -
		X		\$ -
		X		\$ -
		X		\$ -
DIRECT EXPENSES =				\$ 1,231.20

WORK ORDER ESTIMATE = \$ 52,824.81

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Rucker Lane Phase 1 Project – Award of Construction Contract

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Bid results for Phase 1 of the Rucker Lane improvement project.

Staff Recommendation

Approve the award of the project to the low bidder, Charles Deweese Construction, LLC.

Background Information

This project will widen the existing Rucker Lane to a three-lane section with curb and gutter as well as sidewalk on each side. The project limits extend from Veterans Parkway to approximately 600 feet south of Muirwood Blvd. Phase 2 of the project will be bid at a later date and will extend from the end of construction of Phase 1 to Franklin Highway.

Staff advertised the contract and six bids were received on March 9th, 2021. A low bid in the amount of \$2,299,947 was submitted by Charles Deweese Construction. The Engineer's estimate for the project was \$3,206,872.

Council Priorities Served

Safe and Livable Neighborhoods

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The construction costs are within budget and funded in the 2018 CIP.

Attachments

1. Letter of Recommendation to Award Contract from Wiser.
2. Bid Tabulation for Rucker Lane Phase 1 Project.



March 17, 2021

Mr. Chris Griffith
City Engineer, City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130

**RE: Rucker Lane Roadway Widening Phase 1, Murfreesboro, TN
Recommendation to Award**

Dear Mr. Griffith:

Bids were opened for the Rucker Lane roadway Widening Phase 1 project on March 9, 2021. Below you will find a summary of the attached bid tabulation.

Contractor	Total Bid Price
Charles Deweese Construction Inc.	\$2,299,947.05
Rogers Group Inc.	\$2,404,000.00
Rawso, LLC	\$2,597,443.61
Dement Construction Company	\$3,638,107.59
Hawkins and Price, LLC	\$3,951,944.50
Sessions Paving Company	\$4,771,740.40
Engineer's Estimate	\$3,207,372.40

Table 1: Bid Tabulation Summary for the Rucker Lane Widening Phase 1 project

After reviewing Charles Deweese Construction Inc. opened bid and associated documentation, WISER recommends that the City of Murfreesboro award the Rucker Lane project to Charles Deweese Construction.

Please feel free to call me if you have any questions or require additional information.

Sincerely,

Jeremy A. Langford
Wiser Consultants

Engineer's Estimate
Rucker Lane Widening Phase I
3/11/2021

ENGINEER'S ESTIMATE						RAWSO, LLC		ROGERS GROUP, INC		CHARLES DEWEESE CONSTRUCTION, INC		HAWKINS AND PRICE, LLC		SESSIONS PAVING COMPANY		DEMENT CONSTRUCTION COMPANY	
Item No.	Description	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
105-01	CONSTRUCTION STAKES, LINES AND GRADES	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 58,000.00	\$ 58,000.00	\$ 35,000.00	\$ 35,000.00	\$ 12,500.00	\$ 12,500.00	\$ 70,000.00	\$ 70,000.00	\$ 64,000.00	\$ 64,000.00	\$ 43,000.00	\$ 43,000.00
201-01	CLEARING AND GRUBBING	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 78,000.00	\$ 78,000.00	\$ 25,000.00	\$ 25,000.00	\$ 4,000.00	\$ 4,000.00	\$ 24,000.00	\$ 24,000.00	\$ 37,000.00	\$ 37,000.00	\$ 320,000.00	\$ 320,000.00
202-03.01	REMOVAL OF ASPHALT PAVEMENT	S.Y.	1448	\$ 23.25	\$ 33,666.00	\$ 7.30	\$ 10,570.40	\$ 9.00	\$ 13,032.00	\$ 4.50	\$ 6,516.00	\$ 7.00	\$ 10,136.00	\$ 10.60	\$ 15,348.80	\$ 5.00	\$ 7,240.00
203-01	ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED)	C.Y.	10951	\$ 23.30	\$ 255,158.30	\$ 15.00	\$ 164,265.00	\$ 10.40	\$ 113,890.40	\$ 2.55	\$ 27,925.05	\$ 30.50	\$ 334,005.50	\$ 29.00	\$ 317,579.00	\$ 15.00	\$ 164,265.00
203-03	BORROW EXCAVATION (UNCLASSIFIED)	C.Y.	30040	\$ 20.00	\$ 600,800.00	\$ 14.58	\$ 437,983.20	\$ 13.50	\$ 405,540.00	\$ 21.50	\$ 645,860.00	\$ 38.50	\$ 1,156,540.00	\$ 64.00	\$ 1,922,560.00	\$ 21.00	\$ 630,840.00
203-04	PLACING AND SPREADING TOPSOIL	C.Y.	2400	\$ 17.00	\$ 40,800.00	\$ 9.85	\$ 23,640.00	\$ 7.25	\$ 17,400.00	\$ 3.50	\$ 8,400.00	\$ 15.50	\$ 37,200.00	\$ 21.00	\$ 50,400.00	\$ 10.00	\$ 24,000.00
203-05	UNDERCUTTING	C.Y.	2800	\$ 15.50	\$ 43,400.00	\$ 12.94	\$ 36,232.00	\$ 14.75	\$ 41,300.00	\$ 14.00	\$ 39,200.00	\$ 31.00	\$ 86,800.00	\$ 29.00	\$ 81,200.00	\$ 15.00	\$ 42,000.00
203-06	WATER	M.G.	197	\$ 8.60	\$ 1,694.20	\$ 5.00	\$ 985.00	\$ 7.50	\$ 1,477.50	\$ 1.00	\$ 197.00	\$ 78.00	\$ 15,366.00	\$ 10.00	\$ 1,970.00	\$ 10.00	\$ 1,970.00
209-05	SEDIMENT REMOVAL	C.Y.	266	\$ 13.25	\$ 3,524.50	\$ 9.00	\$ 2,394.00	\$ 10.00	\$ 2,660.00	\$ 1.00	\$ 266.00	\$ 35.00	\$ 9,310.00	\$ 10.00	\$ 2,660.00	\$ 15.00	\$ 3,990.00
209-08.03	TEMPORARY SILT FENCE (WITHOUT BACKING)	L.F.	10500	\$ 1.75	\$ 18,375.00	\$ 1.81	\$ 19,005.00	\$ 1.75	\$ 18,375.00	\$ 1.82	\$ 19,110.00	\$ 2.50	\$ 26,250.00	\$ 2.00	\$ 21,000.00	\$ 1.64	\$ 17,220.00
209-08.08	ENHANCED ROCK CHECK DAM	EACH	8	\$ 450.00	\$ 3,600.00	\$ 517.50	\$ 4,140.00	\$ 375.00	\$ 3,000.00	\$ 519.62	\$ 4,156.96	\$ 1,650.00	\$ 13,200.00	\$ 550.00	\$ 4,400.00	\$ 375.00	\$ 3,000.00
209-09.43	CURB INLET PROTECTION (TYPE 4)	EACH	42	\$ 175.00	\$ 7,350.00	\$ 129.38	\$ 5,433.96	\$ 125.00	\$ 5,250.00	\$ 129.91	\$ 5,456.22	\$ 220.00	\$ 9,240.00	\$ 140.00	\$ 5,880.00	\$ 115.00	\$ 4,830.00
209-40.44	CATCH BASIN FILTER ASSEMBLY (TYPE 4)	EACH	40	\$ 500.00	\$ 20,000.00	\$ 414.00	\$ 16,560.00	\$ 400.00	\$ 16,000.00	\$ 415.70	\$ 16,628.00	\$ 550.00	\$ 22,000.00	\$ 440.00	\$ 17,600.00	\$ 350.00	\$ 14,000.00
303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	10689	\$ 23.05	\$ 246,381.45	\$ 19.96	\$ 213,352.44	\$ 16.00	\$ 171,024.00	\$ 20.25	\$ 216,452.25	\$ 26.00	\$ 277,914.00	\$ 33.00	\$ 352,737.00	\$ 25.00	\$ 267,225.00
303-10.01	MINERAL AGGREGATE (SIZE 57)	TON	27	\$ 55.00	\$ 1,485.00	\$ 37.19	\$ 1,004.13	\$ 36.00	\$ 972.00	\$ 35.00	\$ 945.00	\$ 34.00	\$ 918.00	\$ 38.00	\$ 1,026.00	\$ 45.00	\$ 1,215.00
307-02.01	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING A	TON	3072	\$ 80.00	\$ 245,760.00	\$ 58.74	\$ 180,449.28	\$ 68.00	\$ 208,896.00	\$ 58.00	\$ 178,176.00	\$ 66.00	\$ 202,752.00	\$ 83.00	\$ 254,976.00	\$ 65.07	\$ 199,895.04
307-02.08	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING B-M2	TON	2031	\$ 81.15	\$ 164,815.65	\$ 62.88	\$ 127,709.28	\$ 77.00	\$ 156,387.00	\$ 66.00	\$ 134,046.00	\$ 70.00	\$ 142,170.00	\$ 85.60	\$ 173,853.60	\$ 69.98	\$ 142,129.38
402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	27	\$ 815.00	\$ 22,005.00	\$ 776.25	\$ 20,958.75	\$ 650.00	\$ 17,550.00	\$ 650.00	\$ 17,550.00	\$ 1,050.00	\$ 28,350.00	\$ 800.00	\$ 21,600.00	\$ 1,000.00	\$ 27,000.00
402-02	AGGREGATE FOR COVER MATERIAL (PC)	TON	92	\$ 59.00	\$ 5,428.00	\$ 31.05	\$ 2,856.60	\$ 52.00	\$ 4,784.00	\$ 35.00	\$ 3,220.00	\$ 42.00	\$ 3,864.00	\$ 38.00	\$ 3,496.00	\$ 40.00	\$ 3,680.00
403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	11	\$ 703.50	\$ 7,738.50	\$ 828.00	\$ 9,108.00	\$ 650.00	\$ 7,150.00	\$ 525.00	\$ 5,775.00	\$ 675.00	\$ 7,425.00	\$ 800.00	\$ 8,800.00	\$ 650.00	\$ 7,150.00
411-02.10	ACS MIX(PG70-22) GRADING D	TON	1457	\$ 108.00	\$ 157,356.00	\$ 82.80	\$ 120,639.60	\$ 100.00	\$ 145,700.00	\$ 92.20	\$ 134,335.40	\$ 93.00	\$ 135,501.00	\$ 110.00	\$ 160,270.00	\$ 92.95	\$ 135,428.15
415-01.02	COLD PLANING BITUMINOUS PAVEMENT	S.Y.	250	\$ 34.00	\$ 8,500.00	\$ 1.81	\$ 452.50	\$ 25.00	\$ 6,250.00	\$ 5.00	\$ 1,250.00	\$ 28.00	\$ 7,000.00	\$ 39.00	\$ 9,750.00	\$ 26.50	\$ 6,625.00
607-03.02	18" CONCRETE PIPE CULVERT (CLASS III)	L.F.	3004	\$ 54.00	\$ 162,216.00	\$ 62.55	\$ 187,900.20	\$ 50.00	\$ 150,200.00	\$ 57.00	\$ 171,228.00	\$ 108.00	\$ 324,432.00	\$ 88.50	\$ 265,854.00	\$ 114.00	\$ 342,456.00
607-05.02	24" CONCRETE PIPE CULVERT (CLASS III)	L.F.	72	\$ 100.00	\$ 7,200.00	\$ 77.24	\$ 5,561.28	\$ 72.00	\$ 5,184.00	\$ 75.00	\$ 5,400.00	\$ 152.00	\$ 10,944.00	\$ 143.00	\$ 10,296.00	\$ 160.00	\$ 11,520.00
607-16.04	38"X 24" HORIZONTAL OVAL CONCRETE PIPE CULVERT	L.F.	56	\$ 130.00	\$ 7,280.00	\$ 109.94	\$ 6,156.64	\$ 81.00	\$ 4,536.00	\$ 125.00	\$ 7,000.00	\$ 250.00	\$ 14,000.00	\$ 196.00	\$ 10,976.00	\$ 310.00	\$ 17,360.00
607-39.02	18" PIPE CULVERT (SIDE DRAIN)	L.F.	36	\$ 55.00	\$ 1,980.00	\$ 62.70	\$ 2,257.20	\$ 50.00	\$ 1,800.00	\$ 90.00	\$ 3,240.00	\$ 110.00	\$ 3,960.00	\$ 85.00	\$ 3,060.00	\$ 55.00	\$ 1,980.00
611-07.01	CLASS A CONCRETE (PIPE ENDWALLS)	C.Y.	6	\$ 1,300.00	\$ 7,800.00	\$ 1,473.08	\$ 8,838.48	\$ 969.00	\$ 5,814.00	\$ 450.00	\$ 2,700.00	\$ 1,500.00	\$ 9,000.00	\$ 1,060.00	\$ 6,360.00	\$ 1,200.00	\$ 7,200.00
611-07.02	STEEL BAR REINFORCEMENT (PIPE ENDWALLS)	LB.	354	\$ 2.00	\$ 708.00	\$ 5.99	\$ 2,120.46	\$ 1.95	\$ 690.30	\$ 1.95	\$ 690.30	\$ 9.00	\$ 3,186.00	\$ 2.65	\$ 938.10	\$ 1.00	\$ 354.00
611-07.54	18IN ENDWALL (CROSS DRAIN) 3:1	EACH	2	\$ 2,000.00	\$ 4,000.00	\$ 1,689.14	\$ 3,378.28	\$ 1,750.00	\$ 3,500.00	\$ 2,200.00	\$ 4,400.00	\$ 2,600.00	\$ 5,200.00	\$ 2,650.00	\$ 5,300.00	\$ 2,500.00	\$ 5,000.00
611-07.57	24IN ENDWALL (CROSS DRAIN) 3:1	EACH	2	\$ 2,750.00	\$ 5,500.00	\$ 2,298.43	\$ 4,596.86	\$ 2,500.00	\$ 5,000.00	\$ 3,100.00	\$ 6,200.00	\$ 3,710.00	\$ 7,420.00	\$ 3,710.00	\$ 7,420.00	\$ 3,000.00	\$ 6,000.00
611-09.02	REWORK CATCHBASIN	EACH	1	\$ 1,275.00	\$ 1,275.00	\$ 2,338.08	\$ 2,338.08	\$ 1,500.00	\$ 1,500.00	\$ 1,200.00	\$ 1,200.00	\$ 4,200.00	\$ 4,200.00	\$ 800.00	\$ 800.00	\$ 5,000.00	\$ 5,000.00
611-12.01	CATCH BASINS, TYPE 12, > 0' - 4' DEPTH	EACH	6	\$ 3,725.00	\$ 22,350.00	\$ 2,533.19	\$ 15,199.14	\$ 3,300.00	\$ 19,800.00	\$ 1,595.00	\$ 9,570.00	\$ 5,400.00	\$ 32,400.00	\$ 4,500.00	\$ 27,000.00	\$ 5,000.00	\$ 30,000.00
611-12.02	CATCH BASINS, TYPE 12, > 4' - 8' DEPTH	EACH	7	\$ 5,000.00	\$ 35,000.00	\$ 2,948.25	\$ 20,637.75	\$ 3,900.00	\$ 27,300.00	\$ 2,282.00	\$ 15,974.00	\$ 5,500.00	\$ 38,500.00	\$ 5,035.00	\$ 35,245.00	\$ 5,500.00	\$ 38,500.00
611-14.01	CATCH BASIN, TYPE 14, 0'-4' DEPTH	EACH	16	\$ 6,000.00	\$ 96,000.00	\$ 4,890.11	\$ 78,241.76	\$ 5,600.00	\$ 89,600.00	\$ 4,075.00	\$ 65,200.00	\$ 7,400.00	\$ 118,400.00	\$ 8,480.00	\$ 135,680.00	\$ 7,500.00	\$ 120,000.00
611-14.02	CATCH BASINS, TYPE 14, > 4' - 8' DEPTH	EACH	11	\$ 6,600.00	\$ 72,600.00	\$ 5,527.90	\$ 60,806.90	\$ 6,600.00	\$ 72,600.00	\$ 4,230.00	\$ 46,530.00	\$ 7,800.00	\$ 85,800.00	\$ 9,010.00	\$ 99,110.00	\$ 7,500.00	\$ 82,500.00
702-03	CONCRETE COMBINED CURB & GUTTER	C.Y.	583	\$ 400.00	\$ 233,200.00	\$ 246.64	\$ 143,791.12	\$ 238.30	\$ 138,928.90	\$ 247.65	\$ 144,379.95	\$ 280.00	\$ 163,240.00	\$ 273.00	\$ 159,159.00	\$ 300.00	\$ 174,900.00
709-05.06	MACHINED RIP-RAP (CLASS A-1)	TON	138	\$ 47.50	\$ 6,555.00	\$ 35.75	\$ 4,933.50	\$ 29.00	\$ 4,002.00	\$ 35.00	\$ 4,830.00	\$ 40.00	\$ 5,520.00	\$ 58.30	\$ 8,045.40	\$ 45.00	\$ 6,210.00
712-01	TRAFFIC CONTROL	LS	1	\$ 15,000.00	\$ 15,000.00	\$ 17,070.00	\$ 17,070.00	\$ 22,386.15	\$ 22,386.15	\$ 5,500.00	\$ 5,500.00	\$ 12,500.00	\$ 12,500.00	\$ 20,000.00	\$ 20,000.00	\$ 22,000.00	\$ 22,000.00
712-02.02	INTERCONNECTED PORTABLE BARRIER RAIL	LF	100	\$ 49.00	\$ 4,900.00	\$ 36.23	\$ 3,623.00	\$ 35.00	\$ 3,500.00	\$ 35.00	\$ 3,500.00	\$ 62.00	\$ 6,200.00	\$ 42.40	\$ 4,240.00	\$ 50.00	\$ 5,000.00
712-04.01	FLEXIBLE DRUMS (CHANNELIZING)	EACH	50	\$ 19.25	\$ 962.50	\$ 31.05	\$ 1,552.50	\$ 30.00	\$ 1,500.00	\$ 22.50	\$ 1,125.00	\$ 38.00	\$ 1,900.00	\$ 32.00	\$ 1,600.00	\$ 30.00	\$ 1,500.00
712-05.03	WARNING LIGHTS (TYPE C)	EACH	12	\$ 30.00	\$ 360.00	\$ 36.23	\$ 434.76	\$ 35.00	\$ 420.00	\$ 10.50	\$ 126.00	\$ 44.00	\$ 528.00	\$ 37.00	\$ 444.00	\$ 35.00	\$ 420.00
712-06	SIGNS (CONSTRUCTION)	S.F.	246	\$ 8.30	\$ 2,041.80	\$ 7.25	\$ 1,783.50	\$ 7.00	\$ 1,722.00	\$ 6.50	\$ 1,599.00	\$ 10.00	\$ 2,460.00	\$ 8.00	\$ 1,968.00	\$ 7.00	\$ 1,722.00
712-07.03	TEMPORARY BARRICADES (TYPE III)	L.F.	50	\$ 19.50	\$ 975.00	\$ 13.46	\$ 673.00	\$ 13.00	\$ 650.00	\$ 17.00	\$ 85.00	\$ 17.00	\$ 850.00	\$ 14.00	\$ 700.00	\$ 13.00	\$ 650.00
713-16.01	CHANGEABLE MESSAGE SIGN UNIT	EACH	2	\$ 6,000.00	\$ 12,000.00	\$ 18,000.00	\$ 36,000.00	\$ 16,500.00	\$ 33,000.00	\$ 3,750.00	\$ 7,500.00	\$ 25,000.00	\$ 50,000.00	\$ 21,500.00	\$ 43,000.00	\$ 19,495.00	\$ 38,990.00
713-16.20	SIGNS (R1-1 STOP SIGN)	EACH	2	\$ 300.00	\$ 600.00	\$ 310.50	\$ 621.00	\$ 300.00	\$ 600.00	\$ 200.00	\$ 400.00	\$ 375.00	\$ 750.00	\$ 320.00	\$ 640.00	\$ 300.00	\$ 600.00
713-16.21	SIGNS (D3-1 STREET NAME)	EACH	2	\$ 200.00	\$ 400.00	\$ 103.50	\$ 207.00	\$ 100.00	\$ 200.00	\$ 200.00	\$ 400.00	\$ 125.00	\$ 250.00	\$ 110.00	\$ 220.00	\$ 100.00	\$ 200.00
713-16.22	SIGNS (R2-1 SPEED LIMIT 40 MPH)	EACH	2	\$ 165.00	\$ 330.00	\$ 294.98	\$ 589.96	\$ 285.00	\$ 570.00	\$ 200.00	\$ 400.00	\$ 355.00	\$ 710.00	\$ 315.00	\$ 630.00	\$ 285.00	\$ 570.00
713-16.23	SIGNS (W3-1 STOP AHEAD SYMBOL)	EACH	1	\$ 200.00	\$ 200.00	\$ 310.50	\$ 310.50	\$ 300.00	\$ 300.00	\$ 200.00	\$ 200.00	\$ 372.00	\$ 372.00	\$ 330.00	\$ 330.00	\$ 300.00	\$ 300.00
716-02.04	PLASTIC PAVEMENT MARKING(CHANNELIZATION STRIPING)	S.Y.	15	\$ 34.00	\$ 510.00	\$ 20.70	\$ 310.50	\$ 21.50	\$ 322.50	\$ 20.78	\$ 311.70	\$ 21.50	\$ 322.50	\$ 20.00	\$ 300.00	\$ 20.50	\$ 307.50
716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	L.F.	50	\$ 18.00	\$ 900.00	\$ 20.70	\$ 1,035.00	\$ 21.50	\$ 1,075.00	\$ 20.78	\$ 1,039.00	\$ 21.50	\$ 1,075.00	\$ 20.00	\$ 1,000.00	\$ 20.50	\$ 1,025.00
716-02.06	PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	EACH	3	\$ 175.00	\$ 525.00	\$ 258.75	\$ 776.25	\$ 267.00	\$ 801.00	\$ 259.81	\$ 779.43	\$ 268.00	\$ 804.00	\$ 250.00	\$ 750.00	\$ 255.00	\$ 765.00
716-05.01	PAINTED PAVEMENT MARKING (4" LINE)	L.M.	2.75	\$ 1,350.00	\$ 3,712.50	\$ 828.00	\$ 2,277.00	\$ 855.00	\$ 2,351.25	\$ 831.39	\$ 2,286.32	\$ 850.00	\$ 2,337.50	\$ 800.00	\$ 2,200.00	\$ 80	

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Contract for Engineering Services - Rucker Lane Phase 1 Project

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Contract for the engineering services to provide administration of the construction of the Rucker Lane Phase 1 Project.

Staff Recommendation

Approval of the professional services contract for the Rucker Lane Phase 1 project with Energy Land & Infrastructure, LLC subject to approval by City Attorney.

Background Information

Staff requested a proposal from Energy Land & Infrastructure, LLC. to perform construction administration services for the Rucker Lane Phase 1 project. The purpose of this contract is to assist the owner with administrative duties associated with the construction of the project. The estimate for professional services for the Rucker Lane Phase 1 project is \$106,860.

Council Priorities Served

Safe and Livable Neighborhoods

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The construction costs including administrative services are within budget and funded in the 2018 CIP.

Attachments

Professional Services Agreement – Rucker Lane CEI.



ENERGY LAND & INFRASTRUCTURE

March 22, 2021

Chris Griffith
Executive Director of Public Works
City of Murfreesboro
111 W. Vine Street
Murfreesboro TN, 37130

Re: Professional Services Agreement – Rucker Lane CEI

Dear Mr. Griffith,

Energy Land & Infrastructure, LLC (ELI-LLC) is pleased to offer the following Professional Services Agreement for professional services to provide Construction Engineering Inspection (CEI) support services to City of Murfreesboro staff related to the Rucker Lane Phase 1 Improvement Project in the City of Murfreesboro (Murfreesboro), TN.

ELI-LLC proposes to conduct these professional services at an hourly rate not to exceed **\$106,860.00**.

We appreciate the opportunity to provide this proposed Agreement to you. If you agree to its terms, please sign and return a copy of the attached "Standard Form of Agreement Between Owner and Engineer for Professional Services".

Warmest regards,

ENERGY LAND & INFRASTRUCTURE, LLC

Jay W. Bradley, PE

Attachments

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

WHEN “STUDY AND REPORT PHASE” ARE DELETED AND “RESIDENT PROJECT REPRESENTATION” IS PROVIDED BY OWNER

THIS IS AN AGREEMENT made as of _____, between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and Energy Land and Infrastructure, LLC., (ENGINEER).

OWNER intends to secure professional services to provide supplemental Construction Engineering Inspection (CEI) support services to City of Murfreesboro staff related to the Rucker Lane Phase 1 Improvement Project for the City of Murfreesboro, TN (hereinafter called the Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional Engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall provide the OWNER professional Engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional Engineering representative for the Project, providing professional Engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental hereto.

~~1.2 Study and Report Phase~~

~~After written authorization to proceed, ENGINEER shall:~~

~~1.2.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data;~~

~~1.2.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.3, and assist OWNER in obtaining such data and services.~~

~~1.2.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.~~

~~1.2.4 Provide analyses of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.~~

~~1.2.5 Provide a general economic analysis of OWNER's requirements applicable to various alternatives.~~

~~1.2.6 Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost; allowance for engineering costs and contingencies; and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights of way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by~~

~~others for OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. The total of all such costs, allowances, etc., are hereinafter called "Total Project Costs."~~

~~1.2.7 Furnish five copies of the Study and Report documents and review them in person with OWNER.~~

~~1.2A Environmental Assessment~~

~~1.2A.1 Modified Transaction Screen~~

~~A Modified Transaction Screen shall be conducted to determine if there are any current or historically recognized environmental conditions that indicate that hazardous substances or petroleum products that could impact the proposed Project. Cost of the Modified Transaction Screen shall be based on funding sources and findings of the Report.~~

~~1.2A.2 Phase I Archeological Survey~~

~~A Phase I Archeological Survey shall be conducted to identify any cultural resources that may affect the proposed Project. Cost of the Phase I Archeological Survey shall be based on funding sources and findings of the Report.~~

~~1.2A.3 Ecological Survey~~

~~An Ecological Survey shall be conducted to identify any plant or animal life that may affect the proposed Project. Cost of the Ecological Survey shall be based on funding sources and findings of the Report.~~

~~1.2A.4 Wetland Delineation Study~~

~~A Wetland Delineation study shall be conducted to identify any potential wetlands that may affect the proposed Project. Cost of the Wetland Delineation shall be based on funding sources and findings of the Report.~~

~~1.2A.5 Geotechnical Survey~~

~~A Geotechnical Survey shall be conducted to identify land conditions that may affect the proposed Project. Cost of the Geotechnical Survey shall be based on funding sources and findings of the Report.~~

~~1.3 Preliminary Design Phase~~

~~After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:~~

~~1.3.1 In consultation with OWNER and on the basis of the accepted Study and Report documents,~~

~~determine the general scope, extent, and character of the Project.~~

~~1.3.2 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.~~

~~1.3.3 Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.~~

~~1.3.4 Based on the information contained in the Preliminary Design Documents, submit a revised opinion of probable Total Project Costs.~~

~~1.3.5 Furnish five copies of the above Preliminary Design Documents and present and review them in person with OWNER.~~

~~The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

~~1.4 Final Design Phase~~

~~After written authorization to proceed with the Final Design Phase, ENGINEER shall:~~

~~1.4.1 On the basis of the accepted Preliminary Design Documents and revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent, and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications Institute).~~

~~1.4.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for general permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities. If permitting proceeds into an individual versus a general format, ENGINEER's services are available as part of the Agreement should the OWNER request such services, in accordance with paragraph 5.1.2.1.~~

~~1.4.3 Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused~~

by changes in general scope, extent, or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

~~1.4.4 Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineer's Joint Contract Documents Committee or as specified by OWNER), and assist in the preparation of other related documents.~~

~~1.4.5 Furnish five copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.~~

~~The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

~~1.5 Bidding or Negotiating Phase~~

~~After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:~~

~~1.5.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend, chair and keep minutes for mandatory or voluntary pre bid conferences, attend, chair and keep minutes for third party utility pre bid coordination meetings, assist OWNER in preparation of construction milestones, and receive and process deposits for Bidding Documents.~~

~~1.5.2 Issue addenda as appropriate to interpret, clarify, or expand the Bidding Documents.~~

~~1.5.3 Consult with and advise OWNER as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.~~

~~1.5.4 Consult with OWNER concerning and determine the acceptability of substitute materials~~

~~and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.~~

~~1.5.5 Attend the bid opening, prepare bid tabulation sheets, and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.~~

~~The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

~~1.6 Construction Phase~~

~~During the Construction Phase:~~

~~1.6.1 General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions of the Construction Contract, C-700 (20013 ed.) of the Engineer's Joint Contract Documents Committees said the Standard General Conditions document is amended by Owner. The extent and limitations of the duties, responsibilities and authority of ENGINEER are provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. OWNER will issue instructions to Contractor(s) through ENGINEER or inform ENGINEER of instructions issued to Contractor(s) and ENGINEER will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions, as modified in wiring~~

~~1.6.2 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:~~

~~1.6.2.1 Engineer shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents, including adherence to construction schedule and milestones~~

and ENGINEER shall keep OWNER informed of the progress of the work.

1.6.2.2. ENGINEER will be OWNER's agent under OWNER's supervision

1.6.2.3 The purpose of ENGINEER's visits to and representation by the OWNER's Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct, or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s) failure to furnish and perform their work in accordance with the Contract Documents.

1.6.3 Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s) work while it is in progress if ENGINEER believes that such work will not produce a complete Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.6.4 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.6.5 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples, and other data which Contractor(s) are required to submit, but only for conformance with the design concept of

the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

1.6.6 Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.

~~1.6.7 Inspections and Tests. As OWNER's representative, ENGINEER shall have authority, upon prior approval by OWNER, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents (but only to determine generally that their content complies with the requirements of and the results certified indicate compliance with, the Contract Documents).~~

1.6.8 Disputes between OWNER and Contractor. ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.6.9 Applications for Payment. Based on ENGINEER's onsite observations as an experienced and qualified design professional, and on review of applications for payment and the accompanying data and schedules:

1.6.9.1 ENGINEER shall coordinate and confirm the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated and complies with the construction milestones, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work,

ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.6.9.2 By recommending any payment, ENGINEER will not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes, or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that the title to any of the work, materials, or equipment has passed to OWNER free and clear of any lien, claims, security interest or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

1.6.9.3 If ENGINEER deems that CONTRACTOR has not progressed with the work to the point of compliance with established construction milestones, ENGINEER shall not recommend payment by OWNER, until such time as the appropriate milestone is met. In the event that construction milestones are not met repeatedly, the ENGINEER shall recommend to OWNER in writing the recommendation to notify CONTRACTOR's surety and apprise them of the delinquent progression of work. Upon OWNER's concurrence of recommendation, ENGINEER shall then notify the CONTRACTOR's surety in writing.

1.6.10 Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals the

results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

1.6.11 Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.6.9.2.

1.6.12 Limitations of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s) work; however, nothing contained in paragraphs 1.6.1 through 1.6.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

~~1.7 Operational Phase~~

~~During the Operational Phase, ENGINEER shall, when requested by OWNER:~~

~~1.7.1 Provide assistance in the closing of any financial or related transactions for the Project.~~

~~1.7.2 Provide assistance in connection with the refining and adjusting of any equipment or system.~~

~~1.7.3 Assist OWNER in training OWNER's staff to operate and maintain the Project.~~

~~1.7.4 Assist OWNER in developing systems and procedures for control of the operation and maintenance of and recordkeeping for the Project.~~

~~1.7.5 Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked up prints, drawings, and other data furnished by the Contractor(s) to ENGINEER and which ENGINEER considers significant.~~

~~1.7.6 In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.~~

~~The duties and responsibilities of ENGINEER during the Operational Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

SECTION 2 ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters;" these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under

Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.4 Providing renderings or models for OWNER's use.

2.1.5 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, ~~mechanical and electrical~~ engineering ~~and customary architectural~~ design incidental thereto); and providing data or services of the type described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services

in lieu of furnishing the same in accordance with paragraph 3.4.

~~2.1.8 If ENGINEER's compensation is on the basis of a lump sum or percentage of Construction Cost or cost plus a fixed fee method of payment, services resulting from the award of more separate prime contracts for construction, materials, or equipment for the Project than are contemplated by paragraph 5.1.1.2. If ENGINEER's compensation is on the basis of a percentage of Construction Cost and ENGINEER has been required to prepare Contract Documents on the assumption that more than one prime contract will be awarded for construction, materials and equipment, but only one prime contract is awarded for construction, materials and equipment for the Project, services attributable to the preparation of contract documentation that was rendered unusable and any revisions or additions to contract documentation used that was necessitated by the award of only one prime contract.~~

2.1.9 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services called for in paragraph 6.2.2.5.

2.1.11 Providing any type of property surveys or related Engineering services needed for the transfer of interests in real property and field surveys for design purposes and Engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12 Preparation of operating, maintenance, and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs ~~1.2.3~~ and 1.4.2).

2.1.14 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2 Required Additional Services

(See Sections 8.3 and 8.5)

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive (except to the extent otherwise provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matter"). These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation of Basic Services is not commensurate with the additional services rendered.

2.2.2 Services in making revision to Drawings and Specification occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3 Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.

2.2.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 OWNER'S RESPONSIBILITY

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER.

3.1 City Engineer shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have primary authority to transmit instruction, receive information, and interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

3.2 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") the following:

3.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2 appropriate professional interpretations of all the foregoing;

3.4.3 environmental assessment and impact statements;

~~3.4.4 property, boundary, easement, right of way, topographic, and utility surveys;~~

~~3.4.5 property descriptions;~~

3.4.6 zoning, deed, and other land use restrictions; and

3.4.7 other special data or consultations not covered in Section 2; all of which ENGINEER may use and rely upon in performing services under this Agreement.

3.5 Provide engineering surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.

3.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER; obtain advice of an attorney, insurance counselor, and other consultants as OWNER deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8 Facilitate approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9 Provide such accounting, independent cost estimating, and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code, or order applicable to their furnishing and performing the work.

3.10 If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities, and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER ~~and the Resident Project Representative (and any assistants)~~ will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11 If more than one prime contract is to be awarded for construction, materials, equipment, and services for the entire Project, designate a person or organization to have authority and responsibility for

coordinating the activities among the various prime contractors.

3.12 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive, and other costs of the type referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections, and final payment inspections.

3.14 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15 Furnish or direct ENGINEER to provide Additional Services as stipulated in paragraph 2.1 of this Agreement, or other services as required.

3.16 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial operation of the Project, including extra work and required extensions thereto. If in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ENGINEER, all rates, measure, and amount of compensation provided herein shall be subject to equitable adjustments.

4.2 [Reserved]

~~4.3 Upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

~~4.4 After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent, or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

~~4.5 ENGINEER's services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the Project as defined in Exhibit A Section 4.~~

~~4.6 After acceptance by OWNER of the ENGINEER's Drawings, Specifications, and other Final Design Phase documentation, including the most recent opinion of probable Total Project Costs, and upon OWNER's advertisement of the Project to the Public, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s) (except as may otherwise be required to complete the services called for in paragraph 6.2.2.5).~~

4.7 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of

separate prime contracts if the Project involves more than one prime contract.

4.8 The Operational Phase will commence during the Construction Phase and will terminate one year after the date of Substantial Completion of the last prime contract for construction, materials, and equipment on which substantial completion is achieved.

4.9 If OWNER has requested significant modifications or changes in the general scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.10 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.11 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials, or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.12 In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contract is to proceed concurrently and is to be included in Exhibit A, "Further

Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4. through 4.10, inclusive, will be modified accordingly.

SECTION 5 PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expense of ENGINEER

~~5.1.1 For Basic Planning and Study Report Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:~~

~~5.1.1A For Basic Design Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:~~

5.1.1.1 As outlined in the Basic Services of Section 1, the following studies shall be conducted:
T.B.D.

5.1.1.1A One Prime Contract. If only one prime contract is awarded for construction, materials, and equipment for the Project, the ENGINEER shall perform their services on an hourly basis for an amount not to exceed **\$106,860.00**. This amount does not include utility designs, which be under a separate contract. ~~equal to 7.5 percent of the Construction Cost for all Basic Services for the roadway, 10.0 percent of the Construction Cost for all Basic Services for the bridges and box culverts, 6 percent of the Construction Cost for all Basic Services for all utilities outside of the roadway and bridge corridor, and 4.5 percent of the Construction Cost for all Basic Services for all utilities inside the roadway and bridge corridor. (except services of ENGINEER's Resident Project Representative and assistants furnished under paragraph 1.6.2.1 and Operational Phase services furnished under paragraph 1.7); but, if the prime contract contains cost plus or incentive savings provisions for the Contractor's basic compensation, an amount equal to _% of the Construction Cost for such services.~~

~~5.1.1.2 Several Prime Contracts. If more than one but less than three separate prime contracts are awarded for construction, materials, and equipment for the Project, an additional amount of 6% is to be~~

~~added to the aforementioned not to exceed amount of the Construction Cost for all Basic Services described in Section 5.1.1.1A, (except services of ENGINEER's Resident Project Representative and assistants furnished under paragraph 1.6.2.1 and Operation Phase services furnished under paragraph 1.7); but, if any prime contract contains cost plus or incentive savings provisions for Contractor's basic compensation, _____ % of the Construction Cost for such services.~~

~~5.1.1.3 Resident Project Services. For services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1., on the basis of Salary Costs times a factor of _____ for services rendered by principals and employees assigned to resident Project representation.~~

~~5.1.1.4 Operational Phase Services. For Operation Phase services furnished under paragraph 1.7, an amount equal to ENGINEER's Salary Costs times a factor of _____ for services rendered by principals and employees engaged directly on the Project.~~

5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1 General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13) on the basis of ENGINEER's hourly rate schedule ~~Salary Costs times a factor of 2.75.~~

5.1.2.2 Professional Associates and Consultants. For Services and Reimbursable Expenses of independent professional associates and consultant employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefor times a factor of 1.15. (See Section 8.4.)

5.1.2.3 Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration, or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of \$1,500.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4 As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4; and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1. ~~When Construction Cost is used as a basis for payment, it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:~~

~~5.1.4.1 For completed construction work, the total cost of all work performed as designed or specified by ENGINEER.~~

~~5.1.4.2 For work designed or specified but not constructed, the lowest *bona fide* bid received from a qualified bidder for such work; or, if the work is not bid, the lowest *bona fide* negotiated proposal for such work.~~

~~5.1.4.3 For work designed or specified but not constructed and for which no such bid or proposal is received, the most recent estimate of Construction Cost; or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.~~

~~Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates, including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from Construction Costs on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).~~

5.2 Time of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon hours worked on the Project at the hourly rates in Section 8.4. ~~ENGINEER's estimate of the proportion of the total services actually completed at the time of billing.~~ OWNER shall pay ENGINEER upon its statement with 30 days, provided the statement are in proper order and all supporting documentation has been provided to OWNER.

~~5.2.2 Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount,~~

~~if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:~~

Phase	Percentage
Study and Report	NA
Preliminary Design	35%
Final Design	40%
Bidding or Negotiating	5%
Construction	20%
Operational	NA
	100%

5.3 Other Provisions Concerning Payments

5.3.1 [Reserved].

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the progress of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ~~ENGINEER's Salary Costs times a factor of 2.75~~ Section 8.4 for services rendered by ENGINEER's principals and employees engaged directly on the Project during that phase to date of termination. In the event of any such termination, ENGINEER will also be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services, and for all unpaid Additional Services and unpaid Reimbursable Expenses, ~~plus all termination expenses. Termination expenses mean additional Reimbursable Expenses directly attributable to termination which, if termination is at OWNER's convenience, shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination as follows: 20 percent if termination occurs after commencement of the preliminary Design Phase but prior to commencement of the Final Design Phase; or 10 percent if termination occurs after commencement of the Final Design Phase.~~

5.3.3 Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.3.4 Whenever a factor is applied to Salary Costs in determining compensation payable to ENGINEER, that factor will be adjusted periodically and equitably

to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

5.4 Definitions

5.4. Salary Costs used as a basis for payment mean the fees specified in Section 8.4

5.4.2 Reimbursable Expenses mean the actual, reasonable expenses, if authorized in advance by OWNER, incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1.

SECTION 6 CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER; but it will not include ENGINEER's compensation or expenses, the cost of land, rights-of-way, or compensation for or damages to properties unless this Agreement so specifies; nor will it include OWNER's legal, accounting, insurance counseling, or auditing services, or interest and/or financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs defined in paragraph 1.2.5. See Section 8.3.)

6.2 Opinions of Cost

6.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Costs

provided for herein are to be made on the basis of ENGINEER's experience and qualifications, and shall represent ENGINEER's best judgment as an experienced and qualified professional ENGINEER, familiar with the construction industry. ENGINEER cannot and does not guarantee that proposals, bids, or actual Total Project Costs or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to Total Project Costs or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

6.2.2 If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project Costs or Construction Costs in excess of the then-established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2 Any Construction Cost limit so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.2.2.3 ENGINEER will determine, with advise and consent of OWNER types of materials, equipment, and component systems are to be included in the Drawings and Specifications, and to make reasonable adjustments in the general scope, extent, and character of the Project to bring it within the cost limit.

6.2.2.4 If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER; and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2. If the lowest responsible proposal or bid exceeds the established Construction Cost limit OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent, or

character to the extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of the condition numbered "3", ENGINEER shall modify the Contract Documents necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER its fees and Reimbursable Expenses for such services. The providing of such service will be the limit of ENGINEER's responsibility in this regard; and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not be liable for damages attributable to the rejected bid.

SECTION 7 GENERAL CONSIDERATION

7.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. OWNER may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five days written notice, which notice will direct the sequence and manner in which the termination will be implemented. Upon termination for convenience, OWNER will pay ENGINEER all fees and Reimbursable Expenses incurred to date of termination.

7.2 Reuse of Documents

All documents, including Drawings and Specifications, prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project; and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project.. Any reuse without written verification or adaption by ENGINEER for

the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants; and OWNER shall by only to the extent allowed by law, indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3 Insurance

7.3.1 ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any and all employees, or of any person other than such employees, and from claims or damages because of injury to or destruction of property, including loss of use resulting therefrom. ENGINEER shall carry, and shall provide proof of coverage, a minimum of \$1,000,000 in errors and omissions insurance.

7.4 Controlling Law

This Agreement is to be governed by the laws of the State of Tennessee.

7.5 Successors and Assigns

7.5.2 Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interest in (including without limitation monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and

ENGINEER and not for the benefit of any other party.

7.6 Dispute Resolution

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit C, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit C or other provisions of this Agreement or under law.

SECTION 8 EXHIBITS AND SPECIAL PROVISIONS

8.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement

8.1.1 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," consisting of **three** pages.

8.1.2 Exhibit B, "Duties, Responsibilities, and Limitation of Authority of Project Manager," consisting of **six** pages.

8.1.3 Exhibit C, "Dispute Resolution," consisting of **four** pages.

~~8.1.4 Exhibit D, "Special Provisions," consisting of pages.~~

8.2 This Agreement (consisting of pages 1 through 16 inclusive, and the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, modified, or canceled only by a duly executed written instrument.

8.3 In the event an error is made in the plans, the ENGINEER will correct the error in the plans, and the ENGINEER's services rendered in connection with correcting the error shall be considered as part of the Basic Services. However, if the cost to the OWNER for correcting the error includes tearing out or redoing any portion of the Project, the cost associated with the tearing out or redoing shall not be considered a part of the overall Project Cost for the

purposes of calculating the ENGINEER's fee for Basic Services.

8.4 Notwithstanding any provision to the contrary, during the term of the Agreement the maximum billing rates shall be as follows:

Principal Engineer	\$195.00/hour
Senior Project Manager	\$170.00/hour
Project Manager	\$150.00/hour
Senior Engineer	\$145.00/hour
Project Engineer	\$125.00/hour
Senior Designer	\$115.00/hour
Engineering EIT	\$100.00/hour
Design CADD Technician	\$100.00/hour
Drafting Technician	\$75.00/hour
Registered Surveyor	\$120.00/hour
Survey Technician	\$80.00/hour
2-Man Survey Crew	\$120.00/hour
3-Man Survey Crew	\$145.00/hour
Technical/Clerical Support	\$60.00/hour

8.5 ENGINEER will obtain prior written approval before performing such work considered "Additional Services" and charging for same.

8.6 Notwithstanding any provision to the contrary, OWNER will not be invoiced for travel within Davidson, Williamson, and Rutherford Counties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.


OWNER:

ENGINEER:

CITY OF MURFREESBORO

ENERGY LAND AND INFRASTRUCTURE, LLC.

By: _____

By:  _____

Title: _____

Title:

Address for giving notice:
Engineering Department
City of Murfreesboro
P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

Address for giving notice:
745 South Church, Suite 805
Murfreesboro, Tennessee 37130
Phone

APPROVED AS TO FORM:

Attorney for the City of Murfreesboro, Tennessee

EXHIBIT A

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

1. This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, between the City of Murfreesboro, Tennessee, (OWNER) and ELI, Inc. (ENGINEER), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemental as indicated below, and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are as indicated below.
2. ~~The Study and Report Phase services are not included in the Basic Services and have not been included in the Basic Services fee, but are available as part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.~~
3. ~~The Basic Services relating to **surveying** and included in the Basic Services fee shall include a topographic survey with reference points, control traverses, bench marks, location of existing right of way and property lines, visible or marked utility locations and control for construction staking. Upon completion of the survey, the ENGINEER will immediately begin the Preliminary Design Phase. Other services are available as a part of the Agreement should the OWNER request such services in writing, in accordance with paragraphs 5.1.2.1.~~
4. ~~As part of the **Preliminary Design Phase**, ENGINEER shall furnish the OWNER with a set of 1"=50' scale drawings depicting the topographic information and property line information for the subject limits. These drawings will show the proposed horizontal alignment, preliminary profile, right of way, property lines, and necessary cross drains. Contacts will be made with representatives of affected utility owners to determine the general locations of utility lines in the affected area.~~

The Project will be designed in one phase. Phase 1 (Roadway and Bridge Improvements) is defined as at the northeast corner of North Thompson Lane and Robert Rose Drive in Murfreesboro, TN.

~~Phase 1: The Preliminary Design Phase Services will be completed, and ENGINEER's documentation and opinion of costs submitted within 180 calendar days following written authorization from OWNER to ENGINEER to proceed with this phase of services. The OWNER's written authorization to proceed with the next phase of services will indicate the OWNER's acceptance of the services provided in the phase, or in absence of written authorization to proceed, services will be considered acceptable after 14 days from submittal, unless written notice of unacceptability is issued by the OWNER within the 14 day period. During this 14 day period, the OWNER will provide ENGINEER a marked up print showing the preferred changes in respect to grades, alignments, and typical sections. Changes to the alignment made at OWNER's request after OWNER's approval of Preliminary Design will be billed as extra services according to the maximum billing rates found in Section 8.4. It is anticipated that one contract will be let for this Phase.~~

5. ~~During the **Final Design Phase**, ENGINEER shall prepare construction documents. The ENGINEER will deliver to the OWNER a complete set of original drawings or acceptable reproducible intermediate drawings on 24"x36" media to be properly coordinated, approved, and accepted by the OWNER. These drawings will show the proposed horizontal alignment, proposed profile, right of way, property lines, and necessary storm drainage design for the roadway. The drawings will also include the proposed improvements to the existing box culvert and related storm drainage system within the project area.~~

~~Phase 1: The Final Design Phase Services will be completed, and ENGINEER's opinion of costs submitted within 120 calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services. Services will be considered acceptable after OWNER signs approval block on cover sheet of construction drawings.~~

~~Develop legal descriptions, sketches, and any field staking related to the ROW acquisition.~~

~~Develop NOI and SWPPP and submit to State for approval.~~

~~Coordinate with Murfreesboro Post for advertisement of project construction including advertainment cost.~~

6. ~~Section 1.5, **Bidding or Negotiation Phase**, is modified as follows:~~

~~The ENGINEER will assist the OWNER in the required advertisement for bids, with the cost of such advertising to be borne by the OWNER as a part of administrative expense. The ENGINEER will also attend the bid opening, tabulate the bids and assist the OWNER in evaluating the bids, and assist in the award of contracts and execution of contract documents. Unless otherwise required and stipulated in writing, the ENGINEER will be responsible for receiving requests for plans, collecting plans deposits, mailing bid documents, accepting returned plans, and returning applicable refunds.~~

7. Section 1.6, Construction is modified as follows:

Construction Phase Services are included in the Basic Services but do not include the services of a Resident Project Representative. It shall be the responsibility of the ENGINEER to attend, chair and keep minutes of preconstruction conference(s), and provide copies of minutes to all attendees, make site visits, attend, chair and keep minutes of construction progress meetings (on a frequency approved by OWNER), review shop drawings, make interpretations and clarifications, assist the OWNER in payment to the CONTRACTOR, and to assist the OWNER in preparation of closeout documents. Other services are available as a part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.

8. ~~Section 1.7, Operational Phase, is modified as follows:~~

~~Operational Phase Services are included in the Basic Services but are limited to services provided in paragraph 1.7.6. Other services are available as part of the Agreement should the OWNER request such services in writing in accordance with paragraph 5.1.2.1.~~

APPENDIX 1 TO EXHIBIT A

The following tasks are excluded from the basic engineering services, but may be provided as additional services if requested by the City:

- A. Tree survey or landscape design.
- B. Traffic study.
- C. Signal Design.
- D. Offsite Road or Offsite Infrastructure Improvements.
- E. Utility Relocation, Extensions or Evaluations. Design of relocations could be provided as additional services.
- F. Flood Study (FEMA) or Drainage Study.
- G. Electrical Design for supply or lighting, or lighting design (Except for coordination as outlined above)
- H. Environmental Permitting, detailed assessment, or Mitigation.
- I. Public Meetings or Hearings. No public meetings or hearings are expected. Project meetings with City staff are included.
- J. Construction Layout / Staking. Survey control for the Contractor or requested survey during construction may be provided as additional services.
- K. Construction Administration / Inspection

EXHIBIT B BETWEEN OWNER AND ENGINEER

Duties, Responsibilities, and Limitations of Authority of Project Manager

Paragraphs 1.6.2.1 and 1.6.2.2 and Exhibit A Paragraph 7 of the Agreement are amended and supplemented to include the following agreement of the parties:

B6.01 *Project Manager*

- A. ENGINEER shall furnish a Project Manager (“PM”) to assist ENGINEER in coordinating and reporting on the progress and quality of the Work to the Owner. The PM shall be the OWNER’s advisor inasmuch as the PM shall be the primary point of contact between OWNER and CONTRACTOR for the entire duration of the referenced construction operations. The PM is intended to supplement and support the OWNER’s existing staff. The PM as defined in this Exhibit B.
- B. Through such additional specialized services during the construction period, the PM shall endeavor to provide the following:
 - Coordinate the programming, planning, design, and construction operations of the CONTRACTOR with the project schedule created by the contractor which is in accordance with the project milestones developed by the ENGINEER.
 - Maximize continued pro-active planning during construction to reduce problems during execution.
 - Provide coordination between the OWNER, ENGINEER, CONTRACTOR and third party utilities to ensure that facilities of these utility owners are managed per the project schedule.
 - Maintain cost and time parameters with regards to budgeted construction activities as defined within the Plans, Contract Documents, and project schedule.
 - Facilitate discussion between OWNER, ENGINEER and CONTRACTOR with regards to possible savings observed during construction activities as well as pro-actively initiate discussion between the referenced parties with regards to changes in scope during construction that may warrant adjustment of the Contract Price.
 - Continue to act as liaison between all permitting agencies and the OWNER, ENGINEER and CONTRACTOR, including but not limited to TN Department of Transportation, TN Department of Environment and Conservation and the U.S. Army Corps of Engineers.
 - Provide periodic reporting and progress meetings as needed to ensure that OWNER is aware of all progress associated with the construction activities.
 - Coordinate completion of warranty reviews, release of liens, and post construction evaluations with the OWNER and CONTRACTOR.

Project Manager, shall not supervise, direct, or have control over the Contractor’s Work nor shall Project Manager have authority over or responsibility for the means, methods, techniques,

sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

C. The duties and responsibilities of the Project Manager are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1. *General:* Project Manager ("PM") is OWNER's advisor at the Site, will act as directed by the OWNER, and will confer with OWNER regarding PM's actions. PM's dealings in matters pertaining to the Contractor's work in progress shall in general be with OWNER and Contractor. PM's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist in obtaining from OWNER additional details or information, when required proper execution of the Work.
 - c. ~~Coordinate with the local utility providers when the following tests are required:~~
 - i. ~~Low Pressure Air Testing of Sanitary Sewer~~
 - ii. ~~Infiltration/Exfiltration Testing~~
 - iii. ~~Manhole Vacuum Testing~~
5. *Interpretation of Contract Documents:* Report to OWNER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which PM believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

8. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

9. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

10. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Project Manager shall not:

1. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
2. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
3. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
4. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
5. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
6. Authorize OWNER to occupy the Project in whole or in part.

Scope of Services for Providing Record Survey

Paragraph 1.7.5 & 2.1.11 of the Agreement is hereby amended and supplemented to include the following agreement of the parties:

B6.03 Record Surveying Services

~~_____ A. ENGINEER shall provide the following surveying services to establish Record drawings for Robert Rose Drive Improvement. The surveying services under this Exhibit B will provide services to the following degree, inasmuch as the estimated time for providing these services as defined within Appendix 1 of this Exhibit is not exceeded:~~

- ~~a. Horizontal and Vertical control loops providing accurate horizontal and vertical control data for construction as requested.~~
- ~~b. Record Drawings of Roadway for Utilities providing an accurate representation of actual placement of utilities after construction operations.~~

~~_____ B. The duties and responsibilities of the surveyors are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents. The Record survey shall consist of the following attributes:~~

- ~~a. Potable Water Main—horizontal location and elevation of top of nut on bonnet of valves. All pipe locations (horizontal and vertical) will be based on input from project walk through with project superintendent.~~
- ~~b. Sanitary Sewer—horizontal location of manholes and inverts of pipe; location of any—sanitary sewer service cleanouts.~~
- ~~c. Storm Sewer—horizontal location of manholes, inlets and junctions and inverts of—pipe.~~
- ~~d. Underground Electrical/Telephone/Cable—horizontal location of conduit bank will be based on input from project walk through with project superintendent.~~
- ~~e. Overhead Electric/Telephone/Cable—horizontal location of pole line.~~
- ~~f. Natural Gas Mains—All pipe locations (horizontal and vertical) will be based on input from project walk through with project superintendent.~~

~~C. The Record survey **shall not consist** of the following attributes unless directed by Owner to capture said attributes:~~

- ~~_____ a. Sub grade elevations within the cross section of the proposed roadway.~~
- ~~_____ b. Curb line horizontal or vertical locations.~~
- ~~_____ c. Final topographic elevations of roadway after serving its intended use.~~

APPENDIX 1 TO EXHIBIT B

CIVIL ENGINEERING AND LAND SURVEYING HOURLY RATE SCHEDULE

Principal Engineer	\$195.00/hour
Senior Project Manager	\$170.00/hour
Project Manager	\$150.00/hour
Senior Engineer	\$145.00/hour
Project Engineer	\$120.00/hour
Senior Designer	\$115.00/hour
Engineering EIT	\$100.00/hour
Design CADD Technician	\$100.00/hour
Drafting Technician	\$75.00/hour
Registered Surveyor	\$120.00/hour
Survey Technician	\$80.00/hour
2-Man Survey Crew	\$120.00/hour
3-Man Survey Crew	\$145.00/hour
Technical/Clerical Support	\$60.00/hour

EXHIBIT C

DISPUTE RESOLUTION

DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 ENGINEER and the OWNER will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the GMP or Project Schedule, ENGINEER must first follow the provisions of any Claim procedure established by the ENGINEER Agreement before seeking relief under these Procedures.

2. Arbitration

- 2.1 Except as provided in Section 5 hereof, any Dispute that has not been resolved by negotiation will be decided by binding arbitration conducted in accordance with the Construction Industry Rules of the AAA; provided however, the matter will not be submitted to the AAA for administration.
 - a. The matter will be heard by an arbitrator who has 10 or more years of experience handling construction litigation matters in Rutherford, Davidson, or Williamson counties (the "Arbitrator").
 - b. The parties will agree upon the Arbitrator within five days of the Notice.
 - c. If the parties are unable to agree, each party will exchange within 10 days of the Notice a list of five attorneys qualified as set forth in Section 2.1(a). The OWNER will compare lists and a name that first appears on the OWNER's list that also appears on the ENGINEER's list will serve as the Arbitrator. If not name appears on both lists, the two attorneys first appearing on each list will select a third qualified attorney to serve as the Arbitrator.

- 2.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 2.3 In connection with such arbitration, each Party is entitled to conduct not more than five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 2.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 2.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
 - a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.
- 3. **Continuing Work** Unless otherwise agreed to in writing, ENGINEER must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the OWNER will continue to make payment to ENGINEER in accordance with the ENGINEER Agreement.
- 4. **Exceptions**
 - 4.1 Neither the OWNER nor ENGINEER are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the OWNER and ENGINEER.
 - 4.2 The OWNER or ENGINEER may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is

enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the OWNER for permitting, the excise of governmental police powers for the benefit of public health, safety, and welfare, or other actions taken in the OWNER's regulatory capacity.

4.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Construction Testing for the Rucker Lane Phase 1 Project

Department: Engineering

Presented by: Chris Griffith, City Engineer

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Contract for construction materials testing for the Rucker Lane Phase 1 Project.

Staff Recommendation

Approval of the professional services contract for the Rucker Lane Phase 1 project with TTL Inc.

Background Information

Staff requested a proposal from TTL, Inc. to perform material testing services for the Rucker Lane Phase 1 project. The purpose of this contract is to provide the owner with verification that the materials being used during the construction meet the project specifications. The estimate for materials testing for the Rucker Lane Phase 1 project is \$9,990.

Council Priorities Served

Safe and Livable Neighborhoods

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The construction costs including materials testing are within budget and funded in the 2018 CIP.

Attachments

Proposal for Construction Materials Engineering and Testing (TTL, Inc.).



April 01, 2021

Mr. Chris Griffith, P.E.
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37133

RE: PROPOSAL FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING
Rucker Lane Widening and Improvements
Murfreesboro, Tennessee
TTL Proposal No. P00200800530.00 – REV 1

Dear Mr. Griffith:

Thank you for the opportunity to provide materials engineering and testing services for the City of Murfreesboro's Rucker Lane Widening and Improvements project. Our project team will include Mark Herrmann, P.E., Daven Rogers, and one or multiple of our TDOT trained materials testing technicians who have provided similar services for several similar projects for the City of Murfreesboro.

PROJECT INFORMATION

Project information was obtained from a link to a set of drawings in PDF format made available through the Building Connected website. The link included a set of Final Construction Roadway drawings which were prepared by Wiser Consultants which were stamped Approved for Construction by the City of Murfreesboro Engineering Department on February 11, 2020. We were also provided with a Final Bid Book which was prepared by Wiser Consultants.

The project consists of re-aligning and widening Rucker Lane, from Highway 96 to Veterans Parkway. The finished roadway product will consist of approximately 2.48 linear miles of three lane roadway. The project will consist of grading, storm drain installation, concrete curb and gutter and sidewalk installations, base stone placements, multi-layer asphalt paving, utility relocations and new utility installations, and other various related roadway construction activities.

PROPOSED SCOPE OF SERVICES

We were not provided specific information about the scope of services requested for this project. For the purposes of this proposal, we have assumed we will be requested to provide the services listed below:

- Observe and test roadway embankment fill placement and compaction activities.

- Measure compaction efforts with a proofroll and/or a nuclear density gauge, if applicable.
- Perform laboratory standard Proctor compaction testing for soil materials used as fill and crushed limestone mineral aggregate base materials.
- Monitor and test roadway basestone and asphalt placements in general accordance with the project requirements.
- Test and make test samples of plastic concrete placed at the project. The testing will be performed in accordance with Tennessee Department of Transportation (TDOT) specifications. Tests will include slump, air content, unit weight, and temperature. We will cast five test cylinders (4 in. x 8 in.) for every 100 cubic yards of concrete placed for Class A concrete or every 25 cubic yards or less weekly for Non-Critical Structures and placements.
- Cure the concrete samples in our laboratory and test the specimens for compressive strength.
- Perform laboratory gradations for the mineral aggregate base materials, granular backfill materials, and asphalt mixtures.
- Perform laboratory density testing on field-cored asphalt specimens.
- Observe concrete pipe culvert and drainage structure installation, backfill activities, and measure compaction efforts with a nuclear density gauge, if applicable.
- Prepare reports summarizing our observations and test results for each day work is performed.

We will issue field and testing reports for each site visit. Our project manager will review the field reports and test results before these documents are issued as final documents and will also be available for consultation at your request. The actual scope of services may vary from the proposed scope of services based on the project schedule, budget constraints, and other issues that we do not control. Please keep in mind that our testing is a sampling of the construction materials and does not guarantee the quality of the entire work product. Our representatives will notify you and the contractor of any portions of the work we observe which do not meet the project specifications. We do not have the authority to stop the contractor's work.

We will need to be provided copies of the full construction documents (plans, specifications, and submittals related to inspections), at the beginning of the project. As project conditions change or are modified by Requests for Information (RFIs), we will need to be copied on the RFIs and responses. We are not responsible for the safety of persons other than TTL personnel. Job-site safety is the sole responsibility of the general contractor.

SCHEDULING

A TTL representative will be on-site on a part-time (periodic) basis and/or full-time (continuous) basis depending on the activity and the level of service requested. Our on-site representative(s) or Project

Manager will be available to communicate with the General Contractor's Project Manager or designated representative to discuss construction schedules. Scheduling of our activities will be the sole responsibility of the contractor.

COMPENSATION

Based on our understanding of the site-specific needs and an estimated 20 site visits for various materials testing services, we recommend a budget for our services as outlined above and on the appended sheets to be approximately **\$9,990**. Our estimate is based on the assumed work schedule which is shown on the detailed cost estimate included with this proposal. We will provide our services on a time and materials basis in accordance with the appended fee schedule. Our fees will depend on the quality of the work and rate of progress achieved by the contractor, weather conditions, and other factors beyond our control. Our estimate does not include project delays and/or re-inspections. We were not provided with the project specifications or a construction schedule for the project. We request that these be provided prior to the project start so we may revise our scope and estimate, if necessary.


AUTHORIZATION

To formally authorize us, we request that you sign where indicated below and return a copy of this proposal to us. Our services will be performed in accordance with the attached Terms and Conditions, which were previously approved by the City Attorney for the City of Murfreesboro.

CLOSING

We appreciate this opportunity to be of service to you on this project. If you have questions or require additional information, please contact our office at (615) 331-7770.

Sincerely,
TTL, Inc.



Daven G. Rogers
Construction Services Project Manager



Mark A. Herrmann, P.E.
Principal Engineer

Attachments: Schedule of Fees
Budget Estimate
Client Project Services Agreement

Authorized By:

Client (Signature and Date)

DocuSigned by:

Adam F. Tucker

***Approved to as form
City Attorney***



Schedule of Fees (Labor)

Project Technician IV	\$57.00 / hr
Senior Project Technician II.....	\$80.00 / hr
NDT Steel/AWS Certified Welding & ASNT Level I Inspector.....	\$95.00 / hr
Project Manager IV.....	\$150.00 / hr
Senior Project Professional II	\$192.00 / hr
Principal I.....	\$260.00 / hr
Project Administrator II	\$62.00 / hr

Technician rates to be multiplied by 1.3 for time in excess of 8 hours per day, and all hours on Saturdays, Sundays, and Holidays.

Travel (Portal to Portal).....	\$0.70 / mile
Direct Expenses	Cost + 15%

Client: City of Murfreesboro
Project Name: Rucker Lane Widening and Improvements
Address: Rucker Lane Widening and Improvements
City, State: Murfreesboro, TN
TTL Proposal No.: P00200800530.00 - REV 1

TTL
 5010 Linbar Drive,
 Suite 153
 Nashville, TN 37211
 615.331.7770
www.TTLUSA.com

SERVICE	PROJECTED SCHEDULE			UNIT COST	SUBTOTAL	SECTION SUBTOTAL
EARTHWORK	No. Days	hrs/day	Total	Rate	Subtotal	
Subgrade Review / Proofrolling	5	4	20	\$57.00	\$1,140.00	
Monitoring Cut/Fill Activities & Density Testing			0	\$57.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Special Inspector (Bearing Eval / Fill Monitoring / etc)			0	\$80.00	\$0.00	
Project Manager / Engineer Review	5	0.5	2.5	\$150.00	\$375.00	
PM Support Services	5	0.25	1.25	\$62.00	\$77.50	
						\$1,593
RIGID / FLEXIBLE PAVEMENTS	No. Days	hrs/day	Total	Rate	Subtotal	
Subgrade Review / Proofrolling			0	\$57.00	\$0.00	
Monitoring Cut/Fill Activities & Density Testing			0	\$57.00	\$0.00	
Monitoring Basestone Placement	5	8	40	\$57.00	\$2,280.00	
Monitoring & Testing Pavement Placement	5	8	40	\$57.00	\$2,280.00	
Concrete Pavement Placement			0	\$57.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Test Specimen Pick-Up			0	\$57.00	\$0.00	
Project Manager / Engineer Review	10	0.5	5	\$150.00	\$750.00	
PM Support Services	10	0.25	2.5	\$62.00	\$155.00	
						\$5,465
FOUNDATIONS	No. Days	hrs/day	Total	Rate	Subtotal	
Shallow Foundations (Spread / Continuous Footings)			0	\$57.00	\$0.00	
Deep Foundations (Drilled Piers / Micropiles / etc.)			0	\$80.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Test Specimen Pick-Up			0	\$57.00	\$0.00	
Special Inspector (Bearing Eval / Reinforcement Insp. / etc)			0	\$80.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
CONCRETE	No. Days	hrs/day	Total	Rate	Subtotal	
Columns / Retaining Walls / Shear Walls			0	\$57.00	\$0.00	
Slab-On-Grade / Slab-On-Deck / Beams			0	\$57.00	\$0.00	
Post-Tension / Tilt-Up / Precast / etc.			0	\$57.00	\$0.00	
Misc. Placements (Sidewalks / Stairwells / Curbs)	5	4	20	\$57.00	\$1,140.00	
Technician Overtime			0	\$74.10	\$0.00	
Special Inspector (Post Tension / Reinforcement Insp. / etc)			0	\$80.00	\$0.00	
Test Specimen Pick-Up	5	1	5	\$57.00	\$285.00	
Project Manager / Engineer Review	5	0.5	2.5	\$150.00	\$375.00	
PM Support Services	5	0.25	1.25	\$62.00	\$77.50	
						\$1,878
STRUCTURAL STEEL	No. Days	hrs/day	Total	Rate	Subtotal	
Anchor Bolts / Bolted Connections			0	\$100.00	\$0.00	
Welded Connections			0	\$100.00	\$0.00	
Metal Decking			0	\$100.00	\$0.00	
Certified Welding Inspector Overtime			0	\$130.00	\$0.00	
Certified Structural Steel Inspector Overtime			0	\$130.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
COLD-FORMED METAL FRAMING	No. Days	hrs/day	Total	Rate	Subtotal	
Special Inspector (Framing Observations / etc)			0	\$80.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
POST-INSTALLED ANCHOR SYSTEM	No. Days	hrs/day	Total	Rate	Subtotal	
Special Inspector (Drill Observations / Anchor Installation / etc)			0	\$80.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0

MASONRY / MORTAR	No. Days	hrs/day	Total	Rate	Subtotal	
Masonry Monitoring / Masonry Sampling			0	\$57.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Special Inspector (Reinforcement Insp. / Cleanliness / etc)			0	\$80.00	\$0.00	
Test Specimen Pick-Up			0	\$57.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
WOOD FRAMING	No. Days	hrs/day	Total	Rate	Subtotal	
Nailing / Bolting / Anchoring Observation			0	\$57.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Special Inspector (Hold Downs / Shear Eval. / etc)			0	\$80.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
HIGH-STRENGTH GROUT	No. Days	hrs/day	Total	Rate	Subtotal	
Grout Monitoring / Grout Sampling			0	\$57.00	\$0.00	
Technician Overtime			0	\$74.10	\$0.00	
Test Specimen Pick-Up			0	\$57.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
FIREPROOFING	Number	Units	Total	Rate	Subtotal	
Thickness Measurements (Special Inspector)			0	\$80.00	\$0.00	
Density Testing (Special Inspector)			0	\$80.00	\$0.00	
Adhesion / Cohesion Testing (Special Inspector)			0	\$80.00	\$0.00	
Project Manager / Engineer Review			0	\$150.00	\$0.00	
PM Support Services			0	\$62.00	\$0.00	
						\$0
MATERIALS / LAB TESTING / ADDITIONAL SERVICES	Number	Units	Total	Rate	Subtotal	
Floor Flatness / Floor Levelness Testing			0	\$0.05	\$0.00	
Floor Flatness / Floor Levelness Testing (Special Inspector)			0	\$80.00	\$0.00	
Proctor Density Testing			0	\$130.00	\$0.00	
Proctor Density Testing w/ Atterberg Limits	2	1	2	\$220.00	\$440.00	
Vapor Emission Testing (Kit Only)			0	\$45.00	\$0.00	
Concrete Specimens (Roadway)	5	5	25	\$15.00	\$375.00	
Concrete Specimens (Structure)			0	\$15.00	\$0.00	
Masonry Grout / Mortar Specimens			0	\$15.00	\$0.00	
CMU Block Absorption / Compression Specimens (Set of 6)			0	\$300.00	\$0.00	
High-Strength Grout Cube Specimens			0	\$15.00	\$0.00	
Progress Meeting / PM Site Visit / Kick-Off Meetings			0	\$150.00	\$0.00	
Special Inspection Letter & Engineer Review			0	\$192.00	\$0.00	
Nucelar Density Gauge (Daily Equipment Charge)			0	\$50.00	\$0.00	
Engineer Review of Concrete Cylinder Breaks	5	0.25	1.25	\$192.00	\$240.00	
						\$1,055
DIRECT COSTS	Trips	Miles	Total	Rate	Subtotal	
Trip Charge	25		0		\$0.00	
						\$0
PROJECT ESTIMATE / BUDGET					\$9,990	

Note: This is a good faith estimate based on our understanding of the project. The actual schedule may vary and billing will be based on the unit rates shown on the attached fee schedule for actual hours worked.

CLIENT PROJECT SERVICES AGREEMENT

Project: Rucker Lane Widening and Improvements

TTL Proposal Number: P00200800530.00 – REV 1

Page 1 of 2

This AGREEMENT is between City of Murfreesboro ("Client") and TTL, Inc. ("Consultant") for Services to be provided by Consultant for Client on the project ("Project"), as described in the Project Information section of Consultant's Proposal dated April 01, 2021 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or exhibit is incorporated into this Agreement).

1. Scope of Services. The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Upon approval of Client, portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence, unless specifically addressed in Consultant's proposal or Exhibit B. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.

2. Acceptance/Termination. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

3. Change Orders. Client may request changes to the Scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. All change orders must be in writing and signed by an authorized city official.

4. Compensation and Terms of Payment. Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or exhibit is incorporated into this Agreement). Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address on Page 2, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of .5% per month, but not exceeding the maximum rate allowed by law, for all unpaid and undisputed amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney's fees. Consultant may suspend or terminate Services for lack of timely payment without liability to Client in connection with such suspension or termination.

5. Third Party Reliance. This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries made or intended. Reliance upon the Services and any work product is limited to Client, and is not permitted as to third parties. For a limited time period, not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client; however, Client understands that such reports will be strictly for informational purposes only and not for reliance and that reliance by any third party will not be granted until those third parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee. Client also acknowledges that such third party disclosures for reliance could create an issue of conflict of interest for Consultant and Client hereby waives any and all claims of conflict of interest as Consultant, Consultant's employees or sub-consultants or subcontractors as to any disclosure to a third party for informational or reliance purposes.

6. Intentionally left blank.

7. Indemnity/Statute of Limitations. Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for third party claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project. The indemnification of Consultant by Client is subject to the provisions of the Tennessee Governmental Tort Liability Act. Client reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Client's sovereign immunity in whole or in part.

8. Warranty. Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT EXPRESSLY AND FULLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Insurance. Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occurrence / \$2,000,000 aggregate); (iii) automobile liability insurance (\$1,000,000 Bodily Injury and Property Damage combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / aggregate). Certificates of insurance will be provided upon request.

10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

11. Choice of Law, Venue. This Agreement shall be governed by and construed according to Tennessee law and venue for any resolution of any dispute shall be in Rutherford County, Tennessee.

12. Subsurface Explorations. Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services and Client assumes responsibility for site restoration.

13. Testing and Observations. Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or Client's contractor's adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from Client's contractor's responsibility for defects discovered in Client's contractor's work, or create a warranty or guarantee from Consultant of any nature. Consultant will not supervise or direct the work performed by Client's contractor or Client's contractor's subcontractors at any tier and is not responsible for their means and methods.

14. Sample Disposition, Affected Materials, and Indemnity. Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, biohazard, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Scope of Services submitted by Consultant, and that Client is responsible for directing such disposition. In the event that test samples obtained

CLIENT PROJECT SERVICES AGREEMENT
Project: Rucker Lane Widening and Improvements
TTL Proposal Number: P00200800530.00 – REV 1
Page 2 of 2

during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and all reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. When Consultant neither creates nor contributes to the creation or existence of any Affected Materials conditions at the site, Client waives any claim against Consultant and agrees to indemnify and save Consultant, Consultant's related companies, Consultant's subconsultants or subcontractors, and the agents, representatives, officers, directors, members, managers and shareholders of all of the foregoing harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any person or entity from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.

15. Documents. Work product, such as reports, logs, data, notes, photographs, or calculations, prepared by Consultant shall be Client's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the property of Consultant and a permanent license for use with respect to Consultant work product is hereby provided. Files shall be maintained in general accordance with Consultant's document retention policies and practices. Upon Client's request, Consultant's work product may be provided via electronic media. By such request, Client agrees that the written copy retained by Consultant in its files shall be the official base document. Consultant makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to Consultant's attention by Client. Any modifications of such electronic copy by Client or others shall be at Client's risk and without liability to Consultant. Such magnetic copy is subject to all other conditions of this Agreement. Documents, reports, tests, information and communications from Consultant to Client or Client's designees are to be used only relating to the specific project/site to which they relate and may not be re-used for other projects or sites without express written consent from Consultant; any unauthorized re-use is at Client's or the recipient's sole and exclusive risk and is without liability as to Consultant, its related companies, its subconsultants or subcontractors, or the officers, directors, employees, agents, representatives, members, managers or shareholders of all of the foregoing. Consultant may rely upon information provided to Consultant by or on behalf of Client without any duty to independently verify the accuracy or completeness or currency of same, and Consultant shall have no liability to Client arising from any deficiency of such information.

16. Utilities. Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to (or claims arising out of damage to) subterranean structures or utilities that are not called to Consultant's attention or are not correctly marked, including being marked by a utility location service, or are incorrectly shown on the plans furnished to Consultant by Client.

17. Site Access and Safety. Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, subconsultants, and subcontractors, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors and subcontractors, or other parties present at the site not invited by Consultant.

18. Unforeseen Circumstances. It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing Consultant's services. If this occurs, Consultant will promptly notify and consult with Client, but will act responsibly based on Consultant's sole judgment where risk to Consultant's personnel, the public, or where professional duties to disclose hazards or conditions are involved. Possible actions could include: (A.) Complete the original Scope of Services in accordance with the procedures originally intended in Consultant's Proposal, if practicable in Consultant's judgment; (B.) Agree with Client to modify the Scope of Services and the estimate of charges to include assessment of the unforeseen conditions or occurrences, with such revision agreed to in writing; (C.) Terminate the services effective on the date specified by Consultant in writing; (D.) Disclose information to regulators or government authorities when required by statute or professional canons of ethics.

19. Survival. All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and Consultant shall survive the completion of the services and the termination of this Agreement.

20. Severability. In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect to the extent that the intent of the parties in forming this Agreement are fulfilled such that the parties receive the full benefit of the bargain.

CLIENT

Firm name: _____	
Authorized by: _____	Date: _____
Print name: _____	Title: _____
Address: _____	Telephone no.: _____
City and state: _____ Zip: _____	Fax no.: _____
E-mail address: _____	Cell no.: _____

CONSULTANT

Firm name: TTL, Inc.	
Firm address for notifications: 5010 Linbar Drive, Ste. 153, Nashville, TN 37211	
TTL approval by: _____	Date: _____
Print name: Mark Herrmann	Title: Principal Engineer

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Approval to Renew Microsoft Office 365 Services

Department: Information Technology

Presented by: Chris Lilly

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Purchase yearly MS Office 365 subscriptions

Staff Recommendation

Approve of the renew the enterprise subscription of Microsoft Office 365 and Email Archiving Services

Background Information

Microsoft Office 365 is an online subscription service that provides, among other things, email, shared calendars, the ability to create and edit documents online, instant messaging, web conferencing, and internal team (i.e., "intranet") sites all accessible anywhere from nearly any device. City employees have used Microsoft Office 365 software and email services since 2013 as their best choice for meeting the City's IT productivity software and communication needs.

Council Priorities Served

Excellent Services with a Focus on Customer Service

Fiscal Impacts

The annual cost to continue this software subscription, \$285,705, is budgeted within the Department's FY21 operating budget.

Attachments

1. Microsoft Office 365 Yearly Subscription Renewal by CDWG
2. Council Authorization to Issue PO

QUOTE CONFIRMATION



DEAR MATT BYRNES,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
LZTJ509	3/23/2021	LZTJ509	1612291	\$285,704.52

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
MS EA CCAL BRIDGE O365 MTHLY SUB P/U Mfg. Part#: AAA-12414-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	50	3931585	\$19.27	\$963.50
MS EA OFFICE 365 PLAN E3 SUB P/USER Mfg. Part#: AAA-10842-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	3571549	\$210.62	\$5,265.50
MS EA O365 EXCH ATP P/U Mfg. Part#: KF5-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	4308589	\$17.95	\$448.75
MS EA CCAL BRIDGE O365 MTHLY SUB P/U Mfg. Part#: AAA-12414-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	3931585	\$19.27	\$481.75
MS EA OFFICE 365 PLAN E3 SUB P/USER Mfg. Part#: AAA-10842-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	3571549	\$210.62	\$5,265.50
MS EA O365 EXCH ATP P/U Mfg. Part#: KF5-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	4308589	\$17.95	\$448.75
MS EA OFFICE 365 PLAN E3 SUB P/USER Mfg. Part#: AAA-10842-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	3571549	\$210.62	\$5,265.50
MS EA O365 EXCH ATP P/U Mfg. Part#: KF5-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)	25	4308589	\$17.95	\$448.75
MS EA OFFICE 365 PLAN E3 SUB P/USER Mfg. Part#: AAA-10842-12-SLG	25	3571549	\$210.62	\$5,265.50

QUOTE DETAILS (CONT.)				
Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA O365 EXCH ATP P/U</u>	25	4308589	\$17.95	\$448.75
Mfg. Part#: KF5-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA OFFICE 365 PLAN E3 ALNG SUB</u>	817	3601647	\$179.03	\$146,267.51
Mfg. Part#: AAA-10758-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA OFFICE 365 PLAN E3 SUB P/USER</u>	335	3571549	\$210.62	\$70,557.70
Mfg. Part#: AAA-10842-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA CCAL BRIDGE O365 MTHLY SUB P/U</u>	1152	3931585	\$19.27	\$22,199.04
Mfg. Part#: AAA-12414-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA O365 EXCH ATP P/U</u>	1152	4308589	\$17.95	\$20,678.40
Mfg. Part#: KF5-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA VISIO PRO FOR O365 SUB P/U</u>	6	3398837	\$134.27	\$805.62
Mfg. Part#: N9U-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				
<u>MS EA POWER BI PRO SUBS P/USER</u>	10	4129853	\$89.40	\$894.00
Mfg. Part#: NK4-00002-12-SLG Electronic distribution - NO MEDIA Contract: Tennessee NVP Software (ADSP016-130652)				

PURCHASER BILLING INFO		SUBTOTAL	\$285,704.52
Billing Address: CITY OF MURFREESBORO 111 W VINE ST PO BOX 1139 MURFREESBORO, TN 37130-3573 Phone: (615) 893-5210 Payment Terms: Net 30 Days-Govt State/Local		SHIPPING	\$0.00
		SALES TAX	\$0.00
		GRAND TOTAL	\$285,704.52
		DELIVER TO Shipping Address: CITY OF MURFREESBORO 111 W VINE ST MURFREESBORO, TN 37130-3573 Phone: (615) 893-5210 Shipping Method: ELECTRONIC DISTRIBUTION	
		Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	

Need Assistance? CDW•G SALES CONTACT INFORMATION			
	Griffin Curcio	(877) 635-6656	grifcur@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at <http://www.cdwg.com/content/terms-conditions/product-sales.aspx>

For more information, contact a CDW account manager

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**Authorization to Issue City of Murfreesboro Purchase Order to
CDW Government Inc.
Pursuant to
NASPO ValuePoint Cooperative Purchasing Program
Computer Equipment, Peripherals and Services
Master Price Agreement Number ADSP016-130652
As Amended by the State of Tennessee Contract Number 63087**

The undersigned hereby certify that its regular meeting on _____, the Murfreesboro City Council approved the purchase of computer equipment, peripherals and services pursuant to the NASPO ValuePoint Purchasing Cooperative Program Contract Number ADSP016-130652 Computer Equipment, Peripherals and Services Contract 2015-2021 with CDW Government Inc. ("Master Agreement"), as amended by the State of Tennessee Participating Addendum Master Contract Number 63087 ("Tennessee Addendum"), and further authorized the City Manager and Purchasing Director to issue a Purchase Order Number in the amount up to **\$285,704.52** to CDW Government Inc. to initiate such purchase, such purchase order(s) 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: 04/08/2021

Item Title: Parkland Conversion and Purchase of 73 Acres

Department: Parks and Recreation

Presented by: Angela Jackson, Executive Director of Community Services

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Parkland conversion to allow future sale of 5.956 acres of surplus property at McKnight Park and the purchase of approximately 73 contiguous acres to Barfield Park.

Staff Recommendation

Approve parkland conversion, Option Agreement, and authorize Mayor and Staff to close purchase upon receipt of Waiver of Retroactive Costs from the National Park Service.

Background Information

An application for parkland conversion has recently been submitted to the Tennessee Department of Environment and Conservation (TDEC) for their review and recommendation to the National Park Service. The conversion will remove restrictions associated with 5.956 acres of surplus property at McKnight Park to allow for sale and/or other City uses associated with the airport. The parkland must be replaced with property of equal or greater acreage and value, on property contiguous to an existing park.

TDEC has advised that the approval process can take up to a full year after application submission; however, a Waiver of Retroactivity may be appropriate. Generally, Federal regulations would prohibit application of the McKnight proceeds to acquisition of a property that was purchased prior to final approval of the Application for conversion. There is an exception, however, and the waiver may be obtained if the time needed to process the Application "would result in a loss of a significant opportunity." The Loyd estate will grant the City an Option that expires June 30, 2021, to purchase the property but has advised the City that it will not extend the Option. Staff has researched extensively and is not aware of any other eligible property contiguous to an existing park that is a suitable candidate for acquisition. The conversion of 6 surplus acres to 73 acres presented by the Loyd property make it a "significant opportunity" and a suitable candidate for a Waiver of Retroactivity.

After the conversion application is approved, the property will cojoin Barfield Crescent Park as an extension of open natural parkland for public use by preserving natural areas, providing outdoor recreation and environmental educational experiences. It will

serve as a hub for Murfreesboro Parks and Recreation Department's Natural Resources Division and provide for expansion of Outdoor Murfreesboro programming.

Council Priorities Served

Responsible budgeting

The property conversion allows for the reimbursement of the purchase from the sale of surplus property. The existing buildings on the new property will serve as a resource for Murfreesboro Parks and Recreation's Outdoor and Natural Resources Divisions. Additionally, the Loyd property has significant opportunity for wetland mitigation credits when wetlands are encountered on other City projects.

Improve economic development

Removing park restrictions from the surplus property at McKnight Park allows for future airport amenities.

Expand infrastructure

Adding 73 ac. of open space bordered by the West Fork of the Stones River will be a significant enhancement to Barfield Crescent Park.

Fiscal Impact

Funding for the Barfield Crescent Park expansion is allocated in the currently approved CIP.

Attachments

1. Additional Background Information
2. Map of McKnight Property
3. Map of Loyd Property
4. Option Agreement

Attachment 1

Parkland Conversion and Purchase of 73 Acres

Additional Background Information

McKnight Park was purchased by the City of Murfreesboro in 1970 with partial funding through a federal grant, and since that time the City has accepted multiple grants for park development. Associated restrictions limit use only to public recreation. In 2014, the City of Murfreesboro began the Federal process for conversion of the 5.956-acre portion of McKnight Park [Attachment 1] that was identified as surplus property. This parcel is located between the airport expansion and commercial development that now includes Wal-Mart, Chick-Fil-A, and the Wine Cellar. The plan and surplus designation were approved by the Murfreesboro Parks and Recreation Commission, the Murfreesboro Planning Commission, and the Murfreesboro City Council, with public hearings held at the Planning Commission and the City Council meetings.

The Federal policy for "small conversions" was updated in 2017, which allows for the sale of this surplus property with the replacement of a property of equal or greater acreage and value, and requiring the replacement property to be contiguous with the current site, or another existing park or recreation area, and otherwise meet the eligibility requirements for an acquisition grant. In the case of McKnight Park, there is no suitable property contiguous to the current site; however, through a comprehensive study of the park system, a suitable and compliant site has been identified contiguous to Barfield Crescent Park: the Loyd property [Attachment 2]. It is noted that properties intended for future park development in the Blackman area do not meet eligibility criteria, nor would any property that does not share a border with an existing park.

On October 10, 2018, Council directed staff to pursue conversion application to the Tennessee Department of Environment and Conservation (TDEC) and the National Park Service (NPS) to allow for the sale of the McKnight parcel and the acquisition of the property contiguous to Barfield Crescent Park. The City hired Griggs and Maloney, Inc., to assist in environmental services in completing the conversion application and process. Properties were appraised, environmental screenings and assessments were completed, and an extensive application has been prepared and submitted. TDEC has advised that the approval process can take up to a full year; however, a Waiver of Retroactivity may be appropriate. Generally, Federal regulations would prohibit application of the McKnight proceeds to acquisition of a property that was purchased prior to final approval of the Application for conversion. There is an exception, however, and the waiver may be obtained if the time needed to process the Application "would result in a loss of a significant opportunity." The Loyd estate will grant the City an Option that expires June 30, 2021, to purchase the property but has advised the City that it will not extend the Option. Staff has researched extensively and is not aware of any other eligible property contiguous to an existing park that is a suitable candidate for acquisition. The conversion of 6 surplus acres to 73 acres presented by the Loyd property make it a "significant opportunity" and a suitable candidate for a Waiver of Retroactivity.

When the property is purchased, it cannot be designated as a “park” until after the conversion application has final approval. After the conversion application is approved, the property will cojoin Barfield Crescent Park as an extension of open natural parkland for public use by preserving natural areas, providing outdoor recreation and environmental educational experiences. It will serve as a hub for Murfreesboro Parks and Recreation Department’s Natural Resources Division and provide for expansion of Outdoor Murfreesboro programming.

The surplus property at McKnight was divided into two tracts: the narrow strip adjacent to Chick-fil-A that connects to Memorial Boulevard and the 5.647-acre tract to the east. The larger tract is suitable for future airport expansion, and the City may choose to keep the east tract and subsequently dedicate funds equal to the appraised value of the surplus property into the purchase of the replacement property. As required in a conversion, proceeds of converted park property are reinvested into the purchase of the replacement property.

Attachment 2

EXHIBIT A: Conversion Site



© 2020 Griggs & Maloney, Inc.
GRIGGS & MALONEY
INCORPORATED
Engineering & Environmental Consulting

P.O. BOX 2968, MURFREESBORO, TN 37133-2968
(615) 895-8221 • FAX (615) 895-0632

FILE NAME: L: \Enviro\Active\226-162\Drawings Draft 89 Doc\Fig 1b Aerial of 5.956 Acre Stading

100 0 100 200 300
SCALE IN FEET

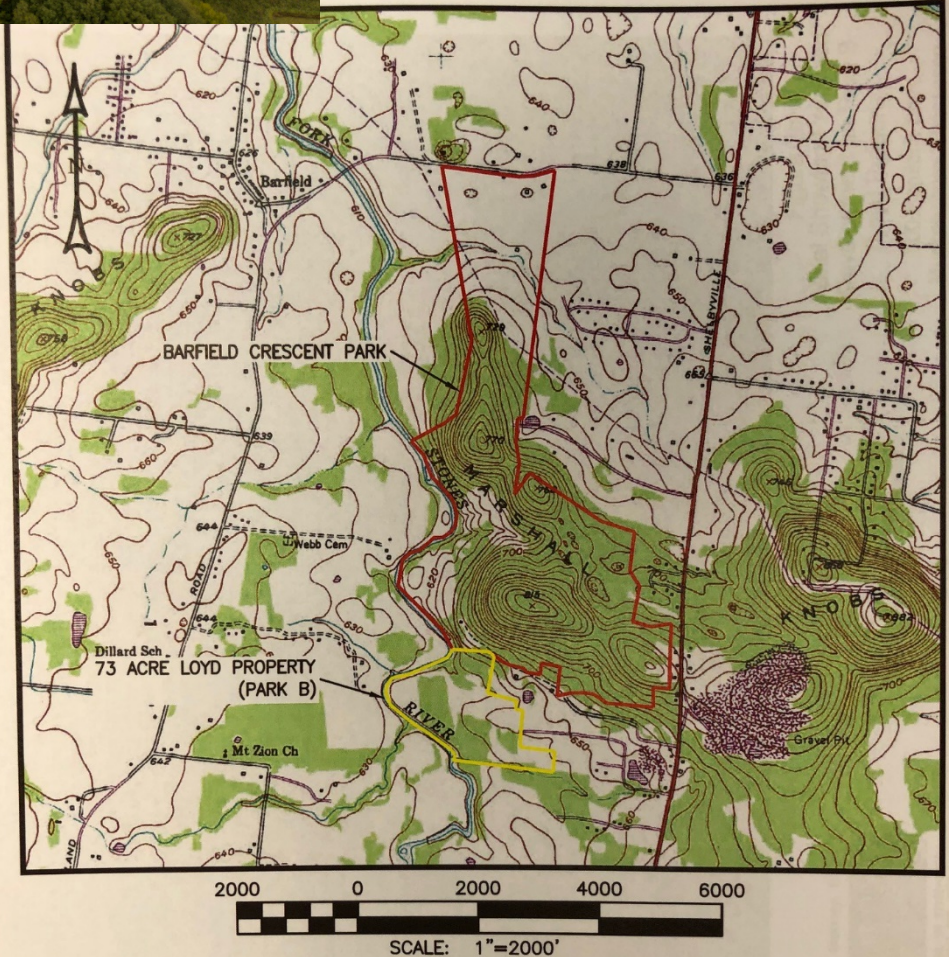
Figure 1b
Aerial showing the
5.956 Acre Conversion Sites
(Parcels A and B)

McKnight Park (Park A)
5.956 Acre Surplus Property
Murfreesboro, Tennessee

Project No. 226-162

September 2020

Attachment 3
EXHIBIT B: Potential Replacement Property



Taken from: U.S.G.S.
7.5 Minute Series (Topographic)
Murfreesboro Quadrangle

**GRIGGS & MALONEY
INCORPORATED**
Engineering & Environmental Consulting

P.O. BOX 2968, MURFREESBORO, TN 37133-2968
(615) 895-8221 • FAX (615) 895-0632

FILE NAME: L:\Enviro\Active\226-162\Drawings Draft 6F Doc\226-162 Fig 2a Barfield Crescent Park and Loyd Property Topographic Map.dwg

Figure 2a
Topographic Map

Showing 73-Acre Loyd Property (Park B)
and Barfield Crescent Park Boundaries
Murfreesboro, Tennessee

Project No. 226-162
January 2019

Attachment 4

OPTION AGREEMENT
FOR CONVEYANCE OF REAL ESTATE

This option agreement ("Option") is entered into, as of the date of the last party to sign (the "Effective Date"), by and between the CITY OF MURFREESBORO, a municipal corporation in Rutherford County in the State of Tennessee, ("City"), and the Estate of Charles Ralph Loyd, Charles Gresham Loyd, Executor ("Seller").

I. WHEREAS, the following facts exist:

- A. Seller is the owner of 73+/- acres located in Rutherford County, Tennessee, Tax Map 136, parcel 69, and more particularly described on **Exhibit A** hereto (the "Property").
- B. City desires to obtain an Option to acquire fee simple title to the Property on the terms and conditions contained herein, upon the satisfaction of certain conditions as more particularly described herein.
- D. Seller agrees to grant City an Option to acquire fee simple title to the Property on the terms and conditions contained herein, upon the satisfaction of those certain conditions as more particularly described herein.
- E. Seller understands that the City is submitting an application (the "Application") for the purpose of obtaining the approval of the Tennessee Department of Environment and Conservation and the United States Department of the Interior to a "6(f)" conversion, pursuant to which the restrictions on a portion of the property known as "McKnight Park" resulting from federal and / or state financial assistance would be converted from that portion of the McKnight Park property to the Property, and that the City has applied for a Waiver that, if granted, will allow the City to acquire the Property prior to the approval of such Application.

II. NOW, THEREFORE, for \$10.00 in hand paid, and other good and valuable mutual considerations, the receipt and sufficiency of all of which is hereby irrevocably acknowledged and confirmed, Seller hereby grants to City an Option to purchase the Property as follows:

- 1. This Option is in all things subject to approval by the Murfreesboro City Council.
- 2. The City may obtain a Title Commitment from a title company of City's choosing, along with copies of all documents that appear as exceptions to or

encumbrances ("Exceptions") to or upon the title. If the City objects to any Exception contained within the Title Commitment, and if Seller cannot or elects not to cure same by Closing, the City may, at its sole option, notify Seller of termination and this Option shall terminate. In such case, the parties shall have no further liability or obligation to each other with respect to the Property.

3. The City may obtain a Survey of the Property. If the City objects to any condition disclosed by the Survey, and if Seller cannot or elects not to cure same by Closing, the City may, at its sole option, notify Seller of termination and this Option shall terminate. In such case, the parties shall have no further liability or obligation to each other with respect to the Property.

4. In the event that the City discovers other conditions or circumstances which are unacceptable to the City, the City shall promptly notify Seller in writing. If the City gives notice of an unacceptable condition or circumstance, and if Seller cannot or elects not to cure same, the City may, at its sole option, notify Seller of termination and this Option shall terminate. In such case, the parties shall have no further liability or obligation to each other with respect to the Property.

5. From the Effective Date hereof to the Option Notice or the Closing, whichever first occurs, Seller shall not do, suffer or permit, or agree to do any of the following:

- (a) enter into any transaction in respect to or affecting the Property; or
- (b) sell, encumber or grant any interest in or interest benefiting the Property or any part thereof in any form or manner whatsoever, or otherwise perform or permit any act which will diminish or otherwise affect City's interest under this Option or in or to the Property or which will prevent Seller's or City's full performance of its obligations hereunder.

6. Seller agrees that if the City's Application is not fully and finally approved, the City may notify Seller of such failure of approval, and promptly upon receipt of such Notice this Option shall terminate. In such case, the parties shall have no further liability or obligation to each other with respect to the Property.

7. Promptly upon receipt by the City of notice of full and final approval of its Application, the City will notify Seller in writing that it is exercising its Option to purchase

the Property (the "Option Notice"). Upon delivery of the Option Notice, the following terms and conditions shall immediately and without further action or requirements become in full force and effect as a contract ("Contract") to purchase and sell real estate. Delivery of the Option Notice shall be made and deemed effective as provided in Section III.7.

8. If not previously exercised by delivery of the Option Notice, this Option shall automatically terminate at midnight on June 30, 2021, unless an extension is agreed upon in writing by both City and Seller.

III. TERMS AND CONDITIONS of Contract:

1. The purchase price for the Property shall be \$1,750,000, payable in good funds by the City at the Closing.

2. The Closing shall take place at the office of Rick G. Mansfield, Attorney, Murfreesboro, TN, on or before twenty (20) days after delivery of the Option Notice to Seller by the City, but in no event later than June 30, 2021 (the "Closing"), unless an extension is agreed upon in writing by the parties. At the Closing:

a. Seller shall deliver a General Warranty Deed to the Property in form and substance acceptable to the City along with possession of the Property, subject to the provisions of Sec. 9 below.

b. Seller shall pay the cost of preparing and obtaining any releases or other such documents necessary for Seller to be able to provide good title to the Property.

c. City may, at its option and at its cost, obtain a policy of Title Insurance from a title company of City's choosing assuring good, sufficient and marketable title to the Property subject only such Exceptions as have been accepted in writing by the City.

d. Taxes for the year of sale shall be prorated to the Closing Date. Seller shall be solely responsible for any "roll back" taxes due with respect to the Property by reason of the sale.

e. The City shall deliver good funds representing the balance of the purchase price as same may be adjusted by any closing items.

f. The City shall pay the cost of preparing and recording the General Warranty Deed, including the cost of any tax stamps and transfer taxes.

g. Each party shall pay its own respective legal fees and closing costs

h. Each party will deliver such other documents or certificates as may be necessary to effectuate the transaction.

i. Incidental Closing fees and charges will be allocated to the Seller and City in accord with the usual commercial real estate closing practices in Rutherford County, Tennessee.

3. The Closing is contingent upon the following:

- a. The City in its sole discretion being satisfied that Seller can convey title to the Property at the Closing that is satisfactory to the City;
- b. The City, in its sole discretion, being satisfied with the facts reflected by the Title Commitment and the Survey; and
- c. All representations of Seller being true and accurate at the time of the Closing.

4. The City shall be solely responsible for the cost of all surveying, engineering and design work, and all related, platting, zoning or re-zoning necessary or desirable by the City for its purposes.

5. Seller represents that, to the best of his actual knowledge, information, and belief, without any duty of inquiry, there have been no hazardous substances, including without limitation, any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, alkalis, acids, chemicals or wastes, stored, discharged or leaked, generated or allowed to escape from the property; nor are there underground storage tanks located on the property; nor are asbestos or asbestos containing building materials present on the property; nor are polychlorinated biphenyls located on or in the property; and there are no investigations, administrative orders, consent orders and agreements, litigation or settlements with respect to the Property. These representations are independent and shall survive Closing and delivery of the deed.

6. Excepting only the environmental warranties in Sec. 5 and the warranties contained in the Deed to the Property, THE PROPERTY, INCLUDING ALL BUILDINGS OR OTHER IMPROVEMENTS, ARE CONVEYED AS IS, AND WITHOUT WARRANTY OF ANY KIND OR CHARACTER. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

7. Any notice permitted or required by this Contract shall be in writing and shall be deemed to have been received upon the date of actual delivery if delivered in person or by reputable overnight delivery service; on the date of receipt as shown by a facsimile confirmation if delivered by facsimile; or upon the date of delivery if delivered by U.S. Certified Mail.

(a) Notices to the City shall be delivered to:

Gary Whitaker, Assistant City Manager
111 West Vine Street, Murfreesboro TN 37130
Email: gwhitaker@murfreesborotn.gov

with a copy to:

David A. Ives, Deputy City Attorney
111 West Vine Street, Murfreesboro, TN 37130
Email: dives@murfreesborotn.gov

(b) Notices to Seller shall be delivered to:

Charles G. Loyd
PO Box 2045
Murfreesboro TN 37133
Email: Charles@charlesloyd.com.

8. The City and Seller each represent and warrant to the other that no real estate agent or broker has been retained in connection with this transaction and that no such agent, broker or other person has or shall have any claim for a commission or other compensation with respect to the closing of this transaction.

9. The City understands that the Property is occupied and agrees that the current occupant may continue to reside at and occupy the Property for a period of six months after Closing, without compensation to the City of any kind or character.

10. The City and Seller agree that the risk of damage or loss to all buildings on the Property shall remain with Seller until the Closing, and Seller agrees to maintain current levels of property and casualty insurance on all buildings. In the event of substantial loss or damage to any building or buildings on the Property due to fire, hail, windstorm, tornado or other such event, Seller and City shall agree as to the application or distribution of any and all insurance proceeds.

11. This Contract shall be governed by the laws of the State of Tennessee. Venue for any dispute shall be in the Circuit or Chancery Courts of Rutherford County, Tennessee.

12. In the event of default by either party, the non-defaulting party shall have all rights and remedies permitted or allowed under the law and in equity. The prevailing party in any action to enforce the terms of this Contract shall be entitled to reasonable attorney fees and court costs.

13. This Contract represents the entire agreement of the parties with respect to the subject matter hereof. There shall be no amendments except in writing signed by both parties.

IN WITNESS WHEREOF, City and Seller have set forth their hands and seals below.

CITY OF MURFREESBORO:

By _____
Craig Tindall, City Manager

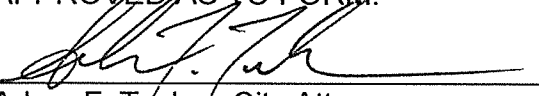
Date: _____

SELLER:


Charles Gresham Loyd, Executor

Date: 3-22-21

APPROVED AS TO FORM:


Adam F. Tucker, City Attorney

Date: 3/23/2021

APPROVED BY PLANNING COMMISSION: _____

APPROVED BY CITY COUNCIL: _____

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Discovery School Track
Department: City Schools
Presented by: Trey Duke, Director of Schools

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Discovery School is seeking approval to install an asphalt track.

Staff Recommendation

Recommend approval of Discovery School track installation.

Background Information

Discovery School raised over \$41,000 from fundraising efforts to build a track at the school.

On March 23, 2021, the School Board approved the installation of the track.

Council Priorities Served

Expand infrastructure

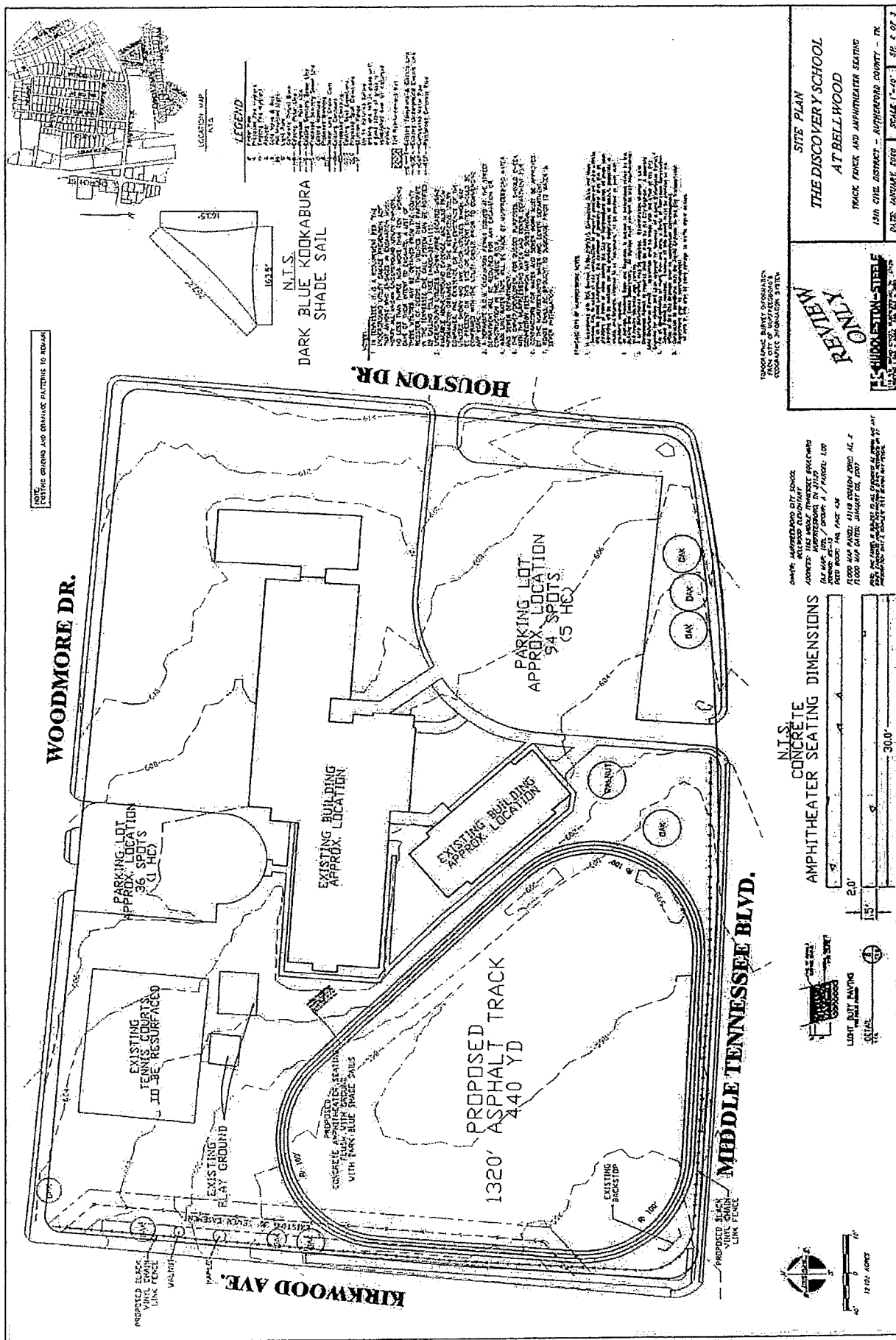
Install track at Discovery School

Fiscal Impact

The track will be paid for by Discovery School fundraising money.

Attachments

1. Exhibit site plan of the proposed Discovery School asphalt track



COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Cherry Lane Phase 3 Contract Amendment with TDOT

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Amendment No. 3 to the Cherry Lane Phase 3 agreement between the City and TDOT.

Staff Recommendation

Approve Amendment No. 3 to the current TDOT agreement for Cherry Lane Phase 3.

Background Information

The current agreement with TDOT for the Cherry Lane Phase 3 Project funded the design and a portion of the right of way phase. Amendment No. 3 will fund the remaining commitment for the right of way phase. This amendment will add an additional \$1,600,000 in federal dollars which will fully fund this phase to secure the required right of way.

Council Priorities Served

Responsible budgeting

Improvement of the roadway infrastructure with federal dollars allows local funds to be used for other community purposes.

Expand infrastructure

Improvement of the City's roadway network enhances the capacity of the City's roadway system.

Fiscal Impact

The City's 20% obligation is currently programmed in the FY 21 CIP Budget.

Attachments

1. Executed Agreement No. 110327 between the City and TDOT.
2. Amendment No. 3 to Agreement No. 110327 between the City and TDOT.

Agreement Number: 110327

Project Identification Number: 116200.00

Federal Project Number: STP-M-9311(21)

State Project Number: 75LPLM-F2-026

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of February, 2012 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Cherry Lane Extension - Construct new 5-lane facility from Sulphur Springs Road to NW Broad Street and Interchange at SR-840

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

- a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	AGENCY	PROJECT
Preliminary Engineering by:	AGENCY	PROJECT

Right-of-Way by:	AGENCY	PROJECT
Utility Coordination by:	AGENCY	PROJECT
Construction by:	N/A	N/A

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) The Agency agrees to complete the herein assigned phases of the Project on or before 12/31/15. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by

Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the

reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any

construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. *Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.*
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
 - 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its

application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either 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 shall not be deemed or

construed to be the employees or agents of the other party for any purpose whatsoever.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.
- b) **DBE Obligation:**
The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In

this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency

shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount 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 Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount 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 Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

MURFREESBORO

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: Tommy Bragg, Mayor 1.12.12
Mayor Date

By: [Signature] FEB 13 2012
John C. Schroer Date
Commissioner

**APPROVED AS TO
FORM AND LEGALITY**

By: Susan Emery McManis 9/6/11
Attorney Date

**APPROVED AS TO
FORM AND LEGALITY**

By: [Signature] 1/24/12
John Reinbold Date
General Counsel

EXHIBIT "A"**CONTRACT No.: I 10327****PROJECT IDENTIFICATION No.: I 16200.00****FEDERAL PROJECT No.: PENDING****STATE PROJECT No.: 75LPLM-F2-026**

PROJECT DESCRIPTION: Construct new 5-lane facility from Sulphur Springs Road to NW Broad Street and Interchange at SR-840

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: NEW ROADWAY CONSTRUCTION

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-N	M-STP	80	0	20	\$1,692,000.00
PE-D	M-STP	80	0	20	\$423,000.00
ROW	M-STP	80	0	20	\$3,400,000.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: STP: 23 U.S.C.A, Section 133, Surface Transportation Program funds allocated or subject to allocation to the Agency.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

Amendment Number: 3
Agreement Number: 110327
Project Identification Number: 116200.00
Federal Project Number: STP-M-9311(21)
State Project Number: 75LPLM-F3-027

THIS AGREEMENT AMENDMENT is made and entered into this _____ day of _____, 20____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"Cherry Lane Extension, From Sulphur Springs Road to NW Broad Street and Interchange at I-840"

1. The language of Agreement # **110327** dated **January 25, 2019** Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 3.
2. The language of Agreement # **110327** dated **January 25, 2019** Section B. 2 a) Completion Date is amended to change the first sentence of Section B. 2 a) from:

The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2021**.

to

The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2024**.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____
Shane McFarland
Mayor

Date

By: _____
Clay Bright
Commissioner

Date

**APPROVED AS TO
FORM AND LEGALITY**

By: _____
Adam Tucker
Attorney

3/31/2021
Date

**APPROVED AS TO
FORM AND LEGALITY**

By: _____
John Reinbold
General Counsel

Date

EXHIBIT "A" for Amendment 3

AGREEMENT #: 110327

PROJECT IDENTIFICATION #: 116200.00

FEDERAL PROJECT #: STP-M-9311(21)

STATE PROJECT #: 75LPLM-F3-027

PROJECT DESCRIPTION: Cherry Lane Extension, From Sulphur Springs Road to NW Broad Street and Interchange at I-840 - This project will construct new 5-lane facility needed to provide alternative access to and relieve congestion on NW Broad (US-41/70) and Thompson Lane (SR-268).

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto

TYPE OF WORK: Construction - New

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	M-STBG	80	0	20	\$642,371.24
PE-DESIGN	M-STBG	80	0	20	\$1,849,628.76
RIGHT-OF-WAY	M-STBG	80	0	20	\$5,400,000.00
CONSTRUCTION	M-STBG	80	0	20	\$3,140,000.00
CONSTRUCTION	LOCAL	0	0	100	\$40,000,000.00
CEI	M-STBG	80	0	20	\$2,600,000.00
TDOT ES	M-STBG	80	0	20	\$260,000.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

LEGISLATIVE AUTHORITY: STBG: 23 U.S.C.A, Section 133, Surface Transportation Block Grant Program funds allocated or subject to allocation to the Agency.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Cherry Lane Phase III – Professional Services Contract for Right of Way Acquisition

Department: Transportation / Engineering

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Contract for right of way acquisition services for the Cherry Lane Phase III Project.

Staff Recommendation

Approve the professional services contract with Volkert, Inc. for the Cherry Lane Phase III Project and authorize completion of appraisals, negotiation offers to purchase for the appraised value, and initiating acquisition by eminent domain if consensual transaction is not accomplished.

Background Information

The City conducted an experience and qualifications selection process and has selected by Volkert for professional service necessary for right of way acquisitions for the Cherry Lane Phase III Project. The ROW Phase of this project totals \$5,400,000 and is 80% federally funded and 20% local funded. The City portion, \$1,080,000, is incorporated in the FY 21 CIP budget. Within the total project budget is an allocation for the professional services proposed by Volkert at an estimated cost of \$372,000, of which the City portion is \$74,000.

Two relocations are needed for this project and staff will bring to Council for approval separately.

Council Priorities Served

Responsible budgeting

Improvement of the roadway infrastructure with federal dollars allows local funds to be used for other community purposes.

Improve economic development

This is a major step in opening a new corridor from I-840 into the City and will encourage commercial and industrial growth in that sector.

Expand infrastructure

Implementation of the 2040 Major Transportation Plan through the expansion of

existing roadways.

Fiscal Impact

This contract will follow the above federal and local breakdown for payment the City's local share would be \$74,000 is accommodated by the FY 21 CIP Budget.

Attachments

Professional Services Contract from Volkert, Inc.



302 Innovation Drive, Suite 100
Franklin, Tennessee 37067
615.656.1845
www.volkert.com

March 16, 2021

Jim Kerr
Transportation Director
City of Murfreesboro
111 West Vine Street
P.O. Box 1139
Murfreesboro, TN 37133-1139

**Re: Cherry Lane Phase 3 PIN No. 116200.00
Right-of-Way Acquisition Scope of Services**

Dear Jim:

Volkert, Inc. appreciates the opportunity to submit this scope of work and fee estimate for the Right-of-Way Acquisition of the Cherry Lane Phase 3 Project within the City of Murfreesboro, Tennessee.

Right-of-Way Acquisition Scope of Services

We will provide the manpower and management to help perform the right-of-way (ROW) acquisition services for the Cherry Lane Phase 3 Project from Sulphur Springs Road to Northwest Broad Street and Interchange at I-840, a Local Programs Project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for 31 tracts:

Meetings

- A public meeting may be beneficial given the depth and complexity of this project. Depending on the timing and COVID restrictions, we plan to coordinate and attend one public meeting (whether in person or virtual) hosted by the City of Murfreesboro. Volkert will be present and available for communicating with property owners as well as other ROW team members. We expect the City will be responsible for posting all advertisements and alerting property owners of the meeting.

Titles and Closings

- The City of Murfreesboro will handle the title reports and closings.

Appraisals

- We are proud to partner with Randy Button & Associates, and his well-established appraisal firm for the appraisals. We expect 16 formal appraisals and 15 formal part affected appraisals.
- Appraisals will include a Market Data Brochure.
- Appraisal reports for property owners requiring relocations, miscellaneous moves, or uneconomic remnants will be provided first, because these properties require more time to close and meet state and federal guideline requirements.
- Appraisal reports for property owners for properties with any unusual liens or chain of ownership will be completed early because of the need for additional time by our title attorney.
- Appraisal reports for property owners with multiple tracts will be provided at the same time to expedite negotiations.

Review Appraisals and Form 2's

- We will employ Boozer & Company, P.C. for review appraisals and LPA Form 2's.
- Volkert will submit one cohesive package for each tract including appraisal, review appraisal, and Form 2 to the City for review and to get all LPA Form 2's approved/executed.

Negotiations

- The City will be responsible for the staking for ROW negotiations.
- The City will provide Volkert a copy of the plan set for each tract, which contains a property map and acquisition table (most recent copy provided on 2/22/21) and individual easement exhibits and legal descriptions for each tract. These files will be updated periodically throughout the project by the City.
- The City will provide Volkert with the Title Report for each tract.
- Upon receipt of Title Reports, Volkert will send the Notice of Proposed Acquisition (Form 4) to property owners. We will send via trackable shipping and will follow up with any that are not marked as delivered.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and negotiating with property owners. We will meet with property owners no more than three (3) times and make contact via trackable shipping and phone/email as needed. Volkert will perform due diligence to contact each property owner. Should all resources be exhausted, the City will assist in finding contact info for unfound property owners.
- Volkert will negotiate ROW and easements as shown in the current plan set.
- Volkert will use standard TDOT forms, with City titles as appropriate, for all letters, forms, and negotiations with property owners.
- It is assumed, based on our review of the plans and parcels, none of these tracts will fall under NPP (Nominal Payment Parcel).

Relocation Scope of Services

We understand this project will likely include relocations. We will provide the manpower and management to help perform the relocations services for the Cherry Lane Phase 3 Project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for two tracts:

- We will prepare an Acquisition Stage Relocation Plan (ASRP) at the onset of the project.
- Our experienced relocation specialists will use standard forms and procedures for moving bids, salvage values, relocation assistance, movement payments, etc.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and working with tenants. We will find comps and obtain approval as soon as possible due to lack of available housing and the housing market. Inspections and interviews will be conducted either in person or by live video conference. If any deviation from the TDOT guidelines due to COVID is required, we will submit all documents and approvals.

Project and File Management

- Volkert will maintain frequent communication and coordination with the City's Project Manager, appraisers, attorneys, and other team members by phone and email as appropriate.
- Volkert will coordinate with a TDOT ROW Agent for their review and to obtain approval of the "Four Step" process to ensure all procedures are acceptable and conform with the Uniform Act.

- Volkert will submit monthly progress reports to the City's Project Manager. These updates will include a link to a shareable interactive tool for progress on each tract.
- Volkert will maintain electronic and hard copy files of all necessary and proper files, according to the Uniform Act. Upon completion of the project, these files will be given to the City for their use/verification purposes.

Schedule

- Volkert understands the time sensitivity of this project. From the Notice to Proceed for ROW Acquisition, we expect to complete the ROW Acquisition phase with 24 months.
 - Approximately one month for public meeting and notification distribution.
 - Appraisals - approximately five months (can be in conjunction with public meeting/notices.)
 - Review appraisals - approximately one month.
 - Form 2 execution by the City - approximately two weeks.
 - Negotiations - this typically requires 12 months; however, relocations can be complicated, so we recommend allowing 18 months in the project schedule for negotiations. Negotiations on the first tract appraisals can begin while additional appraisals are being completed.
- During negotiations, we will update the City on any foreseen problems or complications that may lead to settlement or condemnation.

Project Fee

The fee to manage the ROW acquisition services for the Cherry Lane Phase 3 Project from Sulphur Springs Road to Northwest Broad Street and Interchange at I-840 will be \$372,000. This is a not-to-exceed lump sum fee and will be invoiced on a monthly basis as work is completed. Volkert's monthly invoice will include all subcontractor's fees as one invoice. The breakdown is as follows:

- Randy Button & Associates, Inc.'s appraisal fee will be \$161,000, which includes appraisals for all 31 tracts.
- Boozer & Company, P.C.'s fee for review appraisals and Form 2's for all 31 tracts will be \$89,000.
- Volkert's fee to conduct ROW negotiations and acquisitions and manage the ROW acquisition services will be \$106,000.
- Volkert's fee for the Acquisition Stage Relocation Plan will be \$3,500.
- Volkert's fee to conduct relocation services will be \$12,500.

If unforeseen changes require the on-going negotiations process to be restarted or revised significantly, Volkert will immediately notify the City of the change. Any subsequent changes to the appraisals, reviews, or Form 2's or additional negotiations due to changes by the City and/or roadway plan that require restart of negotiations will be additional scope and fee.

Assumptions

- Tract 4 will not be included in our appraisal and negotiation scope.
- Tract 70 will be included in our appraisal and negotiation scope.
- Due to complexity and potential mortgage holds, all tracts will have an appraisal – no NPP's.
- Tract 59 and Tract 63 are contiguous with the same owner and will combined into one appraisal and offer.
- Relocations will include Tract 20 and Tract 45.

Volkert, Inc. appreciates the opportunity to submit this scope of services. If you have any questions, please feel free to contact me. We look forward to working with you on this very important and exciting project for the City of Murfreesboro.

Sincerely,



Dyan C. Damron, PE, PTP
Traffic Engineering & Planning Manager
Volkert, Inc.



Brad Thompson, AICP
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: _____

BY: _____

TITLE: _____

CONSULTANT: Volkert, Inc.

BY: Brad Thompson

TITLE: West Gulf Sr. Vice President

Approved as to Form:



43A2035E51F9401...

Adam Tucker, City Attorney

Witness:



GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this _____ day of _____, 20____ by and between City of Murfreesboro, hereinafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT;

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional engineering services as outlined in the Scope of Work.

SECTION I – SCOPE OF WORK

CONSULTANT'S Scope of Work hereunder is finite and limited to only those items explicitly stated or enumerated herein or attached hereto. Any work or services desired by OWNER that are not stated herein or attached hereto shall be considered Extra Work and shall entitle CONSULTANT to mutually agreed-upon additional compensation.

SECTION II – TERMS OF PAYMENT

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. The OWNER will pay the CONSULTANT for special services performed by Subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the Subconsultant's services.
- C. Reimbursable expenses are defined as follows:
 - Travel and subsistence cost, printing and reproduction, computer services, advertising costs, mail distribution costs, permit fees, application fees or deposits, and all other costs incidental to performing the assignment.
- D. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- E. The total fee for professional services shall not exceed \$372,000 unless authorized by OWNER.

- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: ***Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042***

SECTION III – MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER is hereby granted a royalty-free, non-exclusive, limited-use license therein, and may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project, and the limited-use license granted hereunder does not apply to any future use. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.
- C. Exclusivity of Remedies: To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors,

employees, agents and independent professional associates and Consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or Consultants, or any of them, shall be limited to and shall not exceed the amount of available insurance proceeds.

- D. Insurance & Indemnification: CONSULTANT shall procure and maintain the types and amounts of insurance as are set forth below. CONSULTANT shall cause OWNER to be an additional insured on CONSULTANT's policy of commercial general liability and automobile liability insurance. :

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
I Worker's Compensation Employer Liability	State – Statutory \$1,000,000 Per Accident \$1,000,000 Disease/Each Accident \$1,000,000 Disease/Policy Limit
II Comprehensive or Commercial General Liability	\$1,000,000 Per Person Bodily Injury \$1,000,000 Per Occurrence Bodily Injury \$1,000,000 Property Damage \$2,000,000 Policy Aggregate
III Automobile Liability	\$1,000,000 Combined Single Limit
IV Professional Liability	\$2,000,000 Each Claim \$2,000,000 Annual Aggregate

Indemnification by CONSULTANT. To the fullest extent permitted by law, and up to the limits of the Exclusivity of Remedies provision contained herein, CONSULTANT shall indemnify OWNER and OWNER's officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional Services hereunder. In any matters involving allegations of negligent performance of professional Services by CONSULTANT, CONSULTANT's defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT's actual negligent performance.

Indemnification by OWNER. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless CONSULTANT and its officers, directors, members,

partners, agents, employees, and subconsultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act, omission, or willful misconduct of OWNER or OWNER officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the OWNER with respect to this Agreement or to the Project.

E. Termination:

1. For cause,

(a) By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

(b) By CONSULTANT:

(1) upon seven days written notice if OWNER demands that CONSULTANT furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional; or

(2) upon seven days written notice if the CONSULTANT's services for the Project are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.

(3) CONSULTANT shall have no liability to OWNER on account of such termination.

(c) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph III.E.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

(a) By OWNER effective upon CONSULTANT's receipt of notice from OWNER.

3. Effective Date of Termination. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to

prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

4. Payments upon Termination

(a) In the event of any termination, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all Services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

(b) In the event of termination by OWNER for convenience, or by CONSULTANT for cause, CONSULTANT shall be entitled, in addition to invoicing for those items identified in Paragraph III.E.4(a), to invoice OWNER and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth herein.

F. Time of Completion: In accordance with the Standard of Care set out herein, all services under this Agreement will commence upon authorization to proceed from the OWNER.

G. Successors and Assigns:

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by Section III.G.2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and Consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.
3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and

CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

- H. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation before recourse to litigation. The OWNER's and CONSULTANT's representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Only after the parties have exhausted direct discussions AND mediation in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.
- I. Right of Entry: OWNER shall arrange for safe access to, and make all provisions for, CONSULTANT to enter upon public and private property as may be required for CONSULTANT to perform Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its Services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT's operations on the property in furtherance of CONSULTANT's Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT's operations is not included in CONSULTANT's compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT's operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional compensation.
- J. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised by similarly situated professional consultants practicing under similar conditions at the same time in the same or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- K. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either

Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.

- L. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.
- M. Waiver of Subrogation: Owner and CONSULTANT hereby mutually waive all rights of subrogation, as well as all claims and other rights they may have against each other for loss of and/or damage to (a) the Work and any Project therein, (b) all materials, machinery, equipment and other items used in the Project and/or to be incorporated into the Project, while the same are in transit, at Project sites, during erection and otherwise, and (c) all property owned by or in the custody of OWNER and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such instance held by the OWNER as trustee. If OWNER is not the sole owner of the Project sites and all property at and adjacent thereto, OWNER shall obtain an undertaking from the other owners thereof sufficient to provide CONSULTANT the same protection from liability for loss or damage as would be afforded to CONSULTANT under this Agreement if OWNER were the sole owner. OWNER shall cause all policies of property insurance relating to the Project to contain a provision or endorsement to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against CONSULTANT or its subconsultants, or any insureds, additional insureds, or loss payees thereunder.
- N. Jurisdiction/Venue: This Agreement shall be governed by the laws of the State of Tennessee, exclusive of its choice of law provisions, and any disputes relate to or arising out of this Agreement or its alleged breach shall be brought in the Circuit or Chancery Courts of Rutherford County.

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Rutherford Blvd Adaptive Signal Control Technology Project
Professional Service Agreement for Signal System

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Consider Agreement between the City and Southern Lighting & Traffic Systems (SLTS) for an Adaptive Signal Control Technology (ASCT) Signal System.

Staff Recommendation

Approve agreement with SLTS for ASCT Signal System hardware and software implementation.

Background Information

SLTS has been selected after a qualification evaluation to provide services to ASCT Signal System. The contract with SLTS is broken out into two phases. Phase 1 is for pre-construction activity which includes assisting the City's design consultant to verify equipment configuration, specifications, and locations of equipment prior to contract award. Phase 2 occurs during the construction phase and will consist of the implementation of the equipment and software which includes training and all associated licenses. Five years of the annual software maintenance is included in this contract and has been approved by FHWA.

This project is funded with Congestion Mitigation and Air Quality funds and signalization items are reimbursed with federal dollars at 100%.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Safe and Livable Neighborhoods

Advanced Signal Technology enhances the safety and operations of the City's roadway network.

Operational Issues

Once the project has been completed for five years, the City will be responsible for an annual maintenance cost for the software.

Fiscal Impact

Total project cost is \$232,535 funded with 100% federal dollars. Future maintenance expense will be paid from State Street Aid.

Attachments

Agreement between the City and SLTS for ASCT Services.

**CITY OF MURFREESBORO, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Murfreesboro, Tennessee, hereinafter referenced as City, and SOUTHERN LIGHTING & TRAFFIC SYSTEMS, LLC, a limited liability company of the state of Georgia, hereinafter referenced as Consultant, who mutually agree as follows:

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

Implementation of Adaptive Signal Control Technology (ASCT) System (TDOT PIN 125505.00)

1. SCOPE OF SERVICES. Consultant shall provide technical services for the Project in accordance with the Scope of Services (Services) as found in Attachment A dated March 18, 2021, Attachment B, City's Request for Qualifications issued January 22, 2019, which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount of Two Hundred Thirty-Two Five Hundred Thirty-Five and No/100 Dollars (\$232,535)

City Council Approved this Agreement on the _____ Day of _____ 201__.

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry.
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period, the records shall be available for review by City at all reasonable times. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.

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

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

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 INDEMNIFICATION. Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.
- 3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.
- 3.5.2 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.
- 3.6 LIMITATIONS OF RESPONSIBILITY. Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, Scope of Services.

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

- 4.1 Termination for Convenience. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:
- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
 - (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
 - (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

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

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

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

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

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

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

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

5.2 ENVIRONMENTAL RESPONSIBILITY.

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

ARTICLE 6. SCHEDULE.

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

6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.

6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.4 Should City request changes in the scope, extent, or character of the Project, the fee and the time of performance of Consultant's Services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 7. USE OF DOCUMENTS, DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

- 7.1.1 USE OF DATA SYSTEMS: Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.
- 7.1.2 DISCLOSURE OF DOCUMENTS/DATA. City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.
- 7.2 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.
- 7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, Scope of Services. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer

hardware differing from that as required of, and used by, Consultant at the beginning of this Project.

- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
 - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
 - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents".
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance and an endorsement specifying that the City of Murfreesboro is named as an additional insured for the purposes of this project, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

ARTICLE 9. PAYMENT.

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

9.2 Consultant shall be paid in full for all services under this Agreement, including City authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope of Services.

9.3 TRAVEL; EXPENSES

City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. City and Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.

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

10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. City reserves all rights afforded to local governments under law for all general and implied warranties. City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

10.5 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 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.

- 10.6 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.

ARTICLE 11. EXTENT OF AGREEMENT:

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

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

ARTICLE 13. SURVIVAL.

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

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2021 (the "Effective Date").

CITY OF MURFREESBORO

BY: _____
Shane McFarland, Mayor

Date: _____

SOUTHERN LIGHTING & TRAFFIC SYSTEMS, LLC

BY: _____
Consultant's Signature

Title: _____
V.P.

Date: _____
3/30/21

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

43A2035E54F9401
Adam F. Tucker, City Attorney

Southern Lighting and Traffic Systems



March 18, 2021

TO: Jim Kerr

FROM: Mark Zinn

RE: System upgrade pricing for Murfreesboro Centracrs System

Jim,

SLTS is pleased to provide you the pricing you requested for the upgrade on you Centracrs ATMS. Based upon your request, the following items are being quoted:

- SLTS Services
- Centracrs SPM Module
 - o Set up and initialization
- Centracrs eDaptive (Adaptive Control System) – 5 year subscription

With respect to the computer requirements, we believe the existing server is capable of managing the additional data and communications for the system, as long as the SQL database is managed properly. SLTS will assist in managing and training Murfreesboro staff on database management.

However, if the City would like to upgrade the servers, we recommend virtual servers, provided by the City, in order to more easily accommodate future modifications.

The cloud storage, provided by Econolite for the SPM subscription, includes unlimited data storage and backup data. All data stored by Centracrs Mobility is retrievable upon request from Econolite.

Please let me or anybody at SLTS know if you have any questions regarding this pricing.

Regards,



Mark M. Zinn
ITS Applications Specialist
Southern Lighting and Traffic Systems



Southern Lighting and Traffic Systems

Centracs Mobility / Signal Performance Measures:

Finally, with the inclusion of signal performance measures (SPM), through the cloud based Centracs Mobility application. The description for this Software as a Service (SaaS) product is outlined below.

Mobility is provided as a SaaS product, and is provided with three different levels of features. Regardless of the configuration, a one-time setup fee (Line Item #4 and 6) is required in order to get the web site established, set up and configure the cloud-based storage and servers, establish the secure connection between the ALDOT hosted Centracs SQL database and the cloud server. Additionally, an Intersection Data Modeler (included with the one-time setup fee) application has to be configured in order to create the intersection configurations for the SPM calculations.

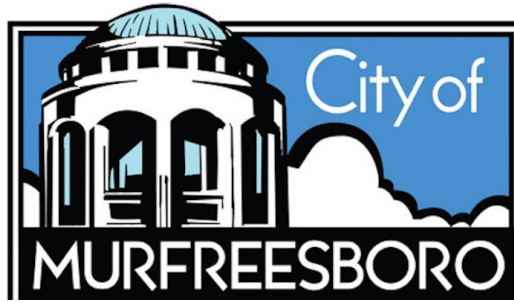
The base configuration (Level I - SPM Only) provides the standard SPM data and reporting, in addition to Econolite exclusive reports, graphing and data downloading from the web servers.

The second level SPM (Level II) includes all the base configuration (Level I) features and functions, with the addition of corridor optimization (Corridor Timing Service). This provides users with the ability to monitor corridor efficiency over a user defined period of time and receive suggested timing changes to improve corridor throughput and arrivals on green. The suggestions can be accepted or rejected based upon coordination pattern. If accepted the new timing can be downloaded directly to Centracs, and then to the intersections, with one button click. The changes can also be reverted if no improvement is observed.

Corridor eDaptive Control Subscription (Level III SPM – Centracs Mobility)

Centracs Mobility with *eDaptive (SPM Level III)*, includes all levels I and II features and functionality, but improves on the Corridor Timing Service to include Centracs eDaptive Control.

Centracs Mobility eDaptive is provided through an annual subscription, and is based on the number of intersections configured for SPM monitoring. Centracs Mobility (*eDaptive*) utilizes a corridor-based ACS (Adaptive Control System) which analyzes SPM data, gathered from the intersection controllers. This data is then ran through a link-pivot analysis to optimize the Cycle-Offset-Split (COS) values of each intersection on a cycle-by-cycle basis. New COS values are automatically sent to intersections along a corridor every 3-5 cycles.



CITY OF MURFREESBORO

SCOPE OF WORK PROPOSAL

ADAPTIVE SIGNAL CONTROL TECHNOLOGY (ASCT) VENDOR SERVICES

City of Murfreesboro, Tennessee

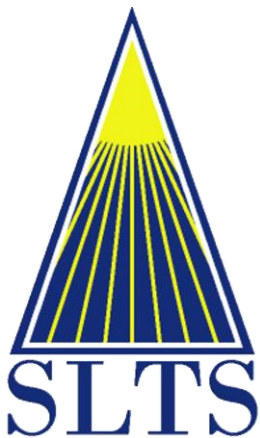
RUTHERFORD BLVD ASCT PROJECT

CM-9311(22); 75LPLM-F1-060; PIN 125505.00

CITY OF MURFREESBORO RFQ-17-2019

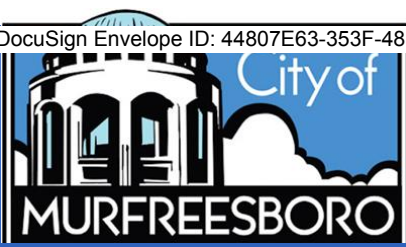
Due by:

March 18, 2021



Submitted By:

Southern Lighting and Traffic Systems

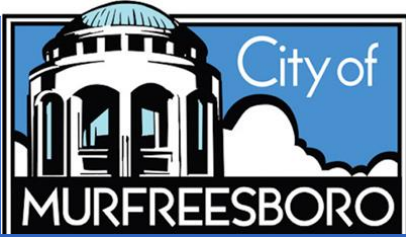


Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

Contents

1.	LETTER OF INTRODUCTION	2
2.	SCOPE OF WORK OUTLINE.....	3
3.	PROJECT FUNCTIONAL SCOPE OF WORK – BRIEF DESCRIPTION	5
4.	SCOPE OF WORK (PHASE I) – BEFORE CONTRACTOR SELECTION	7
4.1.	INITIAL EVALUATION OF CORRIDOR(S), CHALLENGES AND OPPORTUNITIES	7
4.2.	FIELD SITE SURVEY	7
4.3.	INITIAL PROJECT DETAILS: CONSTRUCTION NEEDS, EARLY SIGNAL GROUPINGS, BASIC CONFIGURATIONS.....	8
4.4.	SCHEDULE AND ATTEND A FORMAL REVIEW MEETING WITH THE CITY OF MURFREESBORO	8
4.5.	INITIAL ADAPTIVE CONTROL DESIGN AND INTEGRATION	9
4.6.	REVIEW AND IMPLEMENT CHANGES	9
4.7.	TRAINING PLAN	9
4.8.	REQUIREMENTS VERIFICATION PLAN, INCLUDING TRACEABILITY MATRIX	10
4.9.	ASSISTANCE WITH REVIEW AND DEVELOPMENT OF FINAL CONSTRUCTION PLANS AND SPECIAL PROVISIONS.....	10
5.	SCOPE OF WORK (PHASE II) – AFTER CONTRACTOR SELECTION.....	11



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

1. Letter of Introduction

Subject: Request for Qualifications: Adaptive Signal Control Technology Vendor Services

Southern Lighting and Traffic Systems (SLTS) is honored to participate with the City of Murfreesboro and provide the Adaptive Control system, technology and support on this project.

As stated in our proposal SLTS was formed to provide Econolite products and local, factory trained support to complement the Econolite brand. While Econolite has established a long-standing reputation for quality and innovation in traffic control products, SLTS is focused on the delivery of projects and the unique needs and requirements they bring including systems support and training, ITS installation, integration, and deployment of communications networks. SLTS ensures our team offers you not only industry leading products and services, but local knowledge and experience working in Tennessee.

By focusing on project delivery, our approach is unique. We demonstrate this by partnering with our customers during the entire deployment process from installation through integration and ultimately toward your successful operations and system maintenance. We provide not only industry leading products and software, but industry leading services with staff that has the experience and capability to deliver every aspect of a system from concept to operations to any single or combination of elements in between. This approach ensures that no stone is left unturned – it ensures your success.

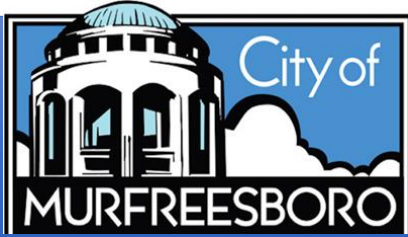
While our technical solution includes Centrac and the Cobalt controller, our project management and services solution is equally impressive. Mr. Mark Zinn is proposed as the Project Manager. With over 29 years in transportation industry and integrating projects across North America and Canada, Mark provides tremendous experience and insight to carry this project forward to a successful conclusion. As an ITS System Specialist for SLTS, he has the fiduciary responsibilities and resources necessary to make commitments and assure performance. As important, Southern Lighting & Traffic Systems will also be bringing in local staff, talents and resources the City knows and trusts.

While deployment of the ASCT will address most of the City's immediate issues, this project will provide opportunity to partner together to identify other complementary strategies including deployment of advanced functionality such as Signal Performance Measures (SPM), and CCTV and connected vehicle operations.

Sincerely,
Southern Lighting and Traffic Systems

Craig Carrow
Vice President, Owner
Southern Lighting and Traffic System
113 Industrial Park Dr
Cumming, GA 30040
ccarrow@southernltg.com
770.205.9007

Mark Zinn
ITS Applications Specialist
Southern Lighting and Traffic Systems
113 Industrial Park Dr
Cumming, GA 30040
mzinn@southernltg.com
770.205.9007



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

2. Scope of Work Outline

This project consists of two (2) Phases, by which the City will select the System Contractor and deploy the Adaptive Signal Control Technology

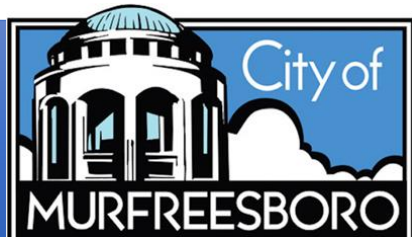
Phase I Services (*Before Contractor Selection*):

Service tasks provided during the development of the construction plan will include:

- Initial evaluation of corridor(s), challenges and opportunities
- Field Site Survey
- Initial project details: construction needs, early signal groupings, basic configurations
- Summary report from the survey, which includes:
 - Vehicle detection zones – Technology and Position, referencing Draft Construction Plans
 - Traffic signal cabinet needs and modifications, including detector inputs, wiring & communications networking. Provide possible recommendations on required Signal Cabinet Modifications
 - Challenges and recommended strategies to mitigate communications failures
 - Configuration plan to integrate Connected Vehicle and Bluetooth data infrastructure
 - Configuration to support Centrac's SPM, Mobility and Edaptive cloud-based applications
 - Assessment of TMC network communication, hardware and user workstations
 - Adaptive Signal Control Technology (ASCT) access and security protocol plan
 - Remote access for SLTS technical support
- Schedule and attend a formal review meeting with the City of Murfreesboro
- Review and Implement Changes
- Training Plan
- Requirements Verification Plan, including traceability matrix
- Assistance with review and development of Final Construction Plans and Special Provisions
- Field equipment requirements and implementation documentation

Phase II Services (*After Contractor Selection*):

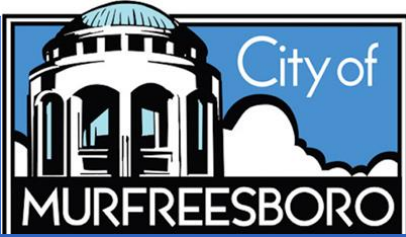
- Provide Detailed Project Plan, Configuration & Integration Plan
 - Overall network design and component requirements
 - ASCT configuration requirements and implementation
 - ASCT Detailed Project Plan
 - ASCT fine-tuning and system calibration plan
 - ASCT operations testing and verification plan
 - ASCT operations / theory training
 - Submit Training Plan in accordance with approved Systems Engineering Analysis Report (SEAR)
 - On-site Maintenance Training for City staff
 - On-site training on ASCT theory
 - On-site training on operations of ASCT system
 - Field equipment operations training
 - Field equipment installation training
 - Intersection & Region (Group) Graphics/Maps Development



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

- Centrac's Adaptive database development and management
- Cobalt intersection timing validation
- Centrac's Adaptive Turn-On and Configuration
- Maintenance/Installation Checklists
- Verification Plan Testing (Before and After Study) & Documentation
- Post Acceptance Test / Maintenance / Warranty Period



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

3. Project Functional Scope of Work – Brief Description

This section addresses the physical aspects of our solution, namely Centrac's ATMS, with the Centrac's Adaptive Module and Cobalt Controllers. Centrac's Adaptive is a Centrac's managed distributed Adaptive Control Algorithm which evaluates detector volume and occupancy data over 2 to 3 cycles and makes adjustments to Split and Offset values in the existing coordination patterns stored on the controllers. Centrac's uses a centralized Traffic Responsive Algorithm to call the existing patterns as needed to adjust the coordination Cycle times. Being a distributed technology, should a communications failure occur, the controllers revert back to their local time-of-day schedule providing back up coordination.

Included with this deployment, Southern Lighting and Traffic Systems (SLTS) will provide Econolite's Cloud-based Centrac's Mobility Software, which includes their version of SPM reporting and analysis, along with Econolite's Edaptive Control Technology, which utilizes SPM data and link pivot tables to evaluate signal coordination timing and adjusts Cycle, Offset and Split values on a cycle by cycle basis.

With this system solution, SLTS does not intend to incorporate ATSPM, or any other public source solution. The Econolite solution provides matched-component development, providing 100% data exchange between the field, the Centrac's servers and the cloud-based web sites.

Since the City of Murfreesboro currently owns a licensed Centrac's System, installation of Centrac's Adaptive is as simple as entering a license key for the Centrac's Adaptive Module and adding adaptive keys to Econolite Cobalt controllers along the adaptive route (Rutherford/Northfield corridor). The SLTS Team will deliver the Centrac's Adaptive key and integrate the Cobalt controllers and detection information into Centrac's Adaptive, while maintaining normal signal operation on the remaining intersection already under Centrac's ATMS control.

The only requirement to activate Centrac's adaptive is that all the intersection detection is deployed and operational at each intersection. As soon as all the required detection is deployed in the field, Centrac's can be configured for Centrac's Adaptive operation within a day or two.

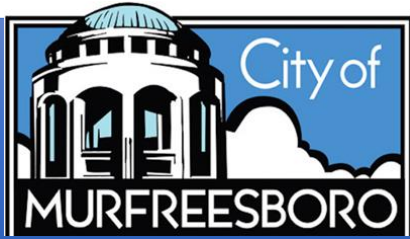
Once Centrac's Adaptive is fully functional and operating satisfactorily to the City's requirements, SLTS will begin work on integrating Econolite's Cloud-Based Edaptive technology. SLTS recommends this solution for two reasons.

1. Centrac's Adaptive offers an immediate solution that can be configured on-site. The system can be implemented within one to two days, once configuration and integration begins.
2. Since Edaptive runs on the cloud from remote servers, Centrac's Adaptive provides a backup technology in the event a connection to the internet is lost or has to be shut down.

The implementation of Centrac's Cloud services (SPM, Mobility and Edaptive) will be concurrently configured and implemented once the City confirms Centrac's Adaptive is operational and working as intended.

SLTS will also provide recommendations to the City for before and after analysis using BlueTOAD technology for travel time studies and Origination/Destination modeling. Integration of BlueTOAD technology will also allow the City to incorporate SPaT messaging for connected vehicle communications.

Southern Lighting and Traffic Systems will provide recommendations a full turn-key solution, with respect to all software deployment and integration into the City's network (Phase I), and integrate and implement all software and technology to ensure proper performance and operations, as defined in the

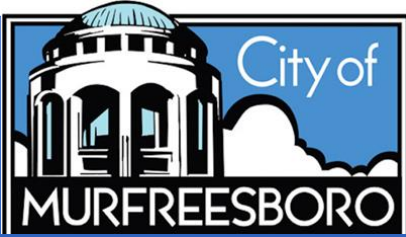


Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

Equipment / Software requirements of Phase II Scope for all intersections, computers, servers and mobile devices for the necessary personnel.

SLTS will also provide technical support for all the software for system during the warranty period, and subsequent software maintenance contracts, provide SLTS is granted remote access (through secure VPN connections) to the Centracis servers.



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

4. Scope of Work (Phase 1) – Before Contractor Selection

4.1. Initial Evaluation of Corridor(s), Challenges and Opportunities

SLTS will perform an initial evaluation of the controllers along the adaptive corridor(s), to ensure that the proper number of coordination patterns are available in order to effectively run Centrac's Adaptive control and Centrac's Edaptive control. No defined coordinated timing plans currently exist for the corridor, can SLTS provide a recommendation of the number of timing plans for your solution? With Centrac's Adaptive, a minimum of three (3) coordination patterns are required (low volume, medium volume, high volume) to accommodate varying capacity conditions. With Edaptive, a minimum of 1 coordination pattern is required, since Edaptive will adjust the cycle length based upon a volume to capacity ratio calculated from SPM data gathered from the intersections. More patterns can be created to allow for more efficient performance or more spontaneous reaction to changing traffic conditions.

The evaluation will also include determination of the required number of detector inputs needed for lane-by-lane stop bar and mid-block free-flow detection. Need & extent of replacement or upgrade of signal cabinets currently identified to be retained (in conjunction with field site survey task) Generally, detection requirements include lane-by-lane set back detection on main arterial for arrival on green data, lane by lane stop bar detection for phase utilization data and departure loops for accurate vehicle counts and occupancy. Depending upon what detection techniques are currently deployed and the extent of current detection locations and inputs, recommendations will be made upon field site survey.

The final part of this evaluation will verify that the City's software is up to the latest release for both Centrac's and Cobalt controllers.

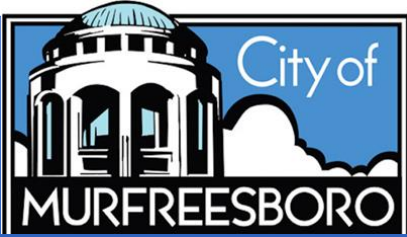
This evaluation can be conducted remotely using a connection to the Centrac's server via secure VPN connection (Tosibox VPN device already in place). The complete initial evaluation should take no longer than one day to complete. This evaluation will set up the overall requirements for the Centrac's Adaptive / Edaptive deployments and define where the existing challenges and opportunities lie within the corridor and on the current Centrac's system.

4.2. Field Site Survey

Once the requirements, challenges and opportunities are determined from the Initial Evaluation, SLTS will perform a on-premise Field Site Survey to determine what current technologies are being used for vehicle detection and where changes or additions may be required in order to maximize the performance capabilities of the new Adaptive Control technologies.

Intersection detection requirements will be surveyed for both Adaptive Control Technologies, identifying both lane-by-lane stop bar detection and lane-by-lane advanced detection. The advanced detection is generally detection in midblock locations where free-flow traffic can be analyzed without significant queueing. If a free flow detector cannot be set up at the local cabinet due to distance, sight issues or other reasons, it can be set up using departure lane detection at the upstream intersection, using peer-to-peer communications, whichever provides better free-flow traffic analysis. Recommendations will be made during the site survey for advance detector locations for best operations. compare with information currently shown in draft construction plans SLTS will use draft construction plans and site survey to determine the best detection locations for the system upgrade.

Additionally, the field equipment and communications equipment and network will be evaluated to determine if any upgrades or modifications are required in order to maintain continual communications between the central communications server and each intersection and, ultimately, each I/P enabled field



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

device. Field devices that will be evaluated include: new dedicated Fiber Optic Cable is proposed as part of the project

- ATC controllers
- MMU / CMU
- Detection Devices
- Ethernet switches and communications devices

SLTS acknowledges that a new dedicated fiber optic cable will be installed as part of the construction phase of this project, providing Ethernet connectivity to all intersections.

4.3. Initial project details: construction needs, early signal groupings, basic configurations

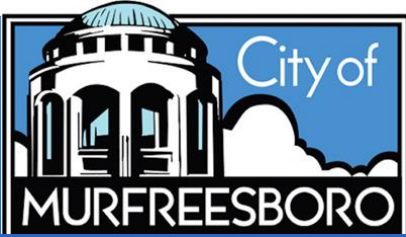
Once the on-premise site survey is conducted and the final report is delivered and reviewed, SLTS will translate the report into a summary document. The final report will created identifying any locations that require upgrades or modifications. SLTS will make recommendations for each device, whether it needs to upgraded or replaced, or in some instances if an alternative communications device may provide necessary communications interface to the equipment. Recommendations will include all aspects of the system including field equipment, central communications equipment, computer equipment and mobile devices and will define:

- Vehicle detection zones – Technology and Position
- Traffic signal cabinet modifications
- Configuration plan to integrate Connected Vehicle and Bluetooth data infrastructure Bluetooth / DSRC functionality..... *Design plans and quantities require final & specific recommendations for equipment and integration that will be provided by low-bid contractor*
 - SLTS will coordinate with the Owner and Design Consultant to assist with the final and specific recommendations for Connected Vehicle and Bluetooth data equipment and integration that will be provided by the low-bid contractor
- Configuration to support Centraacs SPM, Mobility and Edaptive cloud-based applications
- Assessment of TMC network communication, hardware and user workstations
- Adaptive Signal Control Technology (ASCT) access and security protocol plan
- Remote access for SLTS technical support

4.4. Schedule and attend a formal review meeting with the City of Murfreesboro

Upon completion of the summary document, SLTS will submit the summary for review by the City. Once the city has ample time to review, a meeting will be scheduled between the City and SLTS to discuss the report and determine which upgrades, modifications and adjustments should be included in Phase II of this project.

The results from the meeting shall be documented and pricing developed by SLTS for the required system integration requirements and field components for the system deployment.



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

4.5. Initial Adaptive Control Design and Integration

- SLTS will design a plan for implementation of the Adaptive Control system, dependent upon Ethernet connectivity to the intersections and completion of any vehicle detection upgrades. Develop and provide Implementation Plan to deliver ASCT system

A formal Implementation Plan will be delivered for approval prior to notice to proceed on post-bid activities

Basically, the integration will be implemented in four steps:

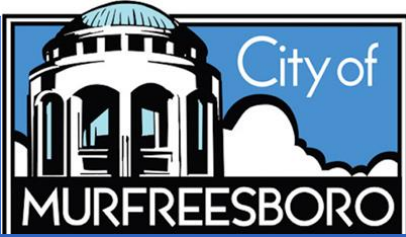
1. Configure and Enable Centrac's Traffic Responsive (TR) Control
 - a. This will allow for immediate improvement of signal operation by allowing plan changes derived from actual vehicle demand vs. time-of-day scheduling
 - b. TR requires less detection requirements than ASCT, so it can be implemented before all the detection upgrades are completed
2. Configure and Enable Centrac's Adaptive Control
 - a. Configuration of Centrac's Adaptive will be performed simultaneously with TR configuration, but not enabled until the required detection is in place and functioning.
 - b. Once vehicle detection is configured at each intersection, the details will be entered into the Centrac's Adaptive configuration. Once all intersections are completed Centrac's Adaptive will be enabled and monitor for proper operation.
3. Configure and Enable Centrac's SPM and signal optimization
 - a. Once Centrac's Adaptive is enabled and operational, SLTS will configure Centrac's SPM with intersection details (phasing, detection, speed limits, number of lanes, phase movements, etc.) for gathering SPM data from each intersection and displaying the data on the SPM web site.
 - b. The SPM web site will provide recommendations for coordination Cycle, Offset and Split timing optimization, from which the timings can be manually download and monitored for improvement.
4. Configure and Enable Centrac's Edaptive
 - a. After monitoring the signal optimization for accurate recommendations, when the City is satisfied with the results, SLTS will enable Centrac's Edaptive to automatically adjust the local Cycle, Offset and Split adjustments.
 - b. Centrac's Adaptive will be disabled, but still be configured if needed for backup operation in case of internet disruption or shutdown.

4.6. Review and Implement Changes

At all times, the City will be reviewing and monitoring the implementation process. If any changes or modifications are requested by the City, a meeting shall be scheduled between SLTS and the City to discuss and decide a course of action.

4.7. Training Plan

SLTS will create a training plan for of each step defined in section 4.6 (Initial Adaptive Control Design and Integration), SLTS will provide training for each process, to ensure that the City will be able to maintain normal daily operation of all aspect of the ASCT. No minimum or maximum number of hours shall be defined.. *Training Plan shall follow requirements of the SEAR document*



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

Additionally, additional plans will be created by SLTS to provide training for all field equipment. Training shall be provided to ensure that the City will be able to maintain normal daily operations of each device. No minimum or maximum number of hours shall be defined.

As long as the City is under warranty, or is under a subscription or Software Maintenance Agreement (SMA) SLTS will be available for additional support or training needs or instruction at no additional cost to the City. The initial training for the system and components will be conducted on-site. Additional or subsequent trainings will be on-site or remote, depending upon the extent of training required.

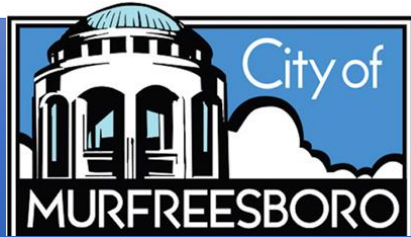
4.8. Requirements Verification Plan, including traceability matrix

A Requirements Verification Plan for all components of the system, as defined above, will be created and delivered to the City prior to the Notice to Proceed on this project. The plan will define what equipment is to be provide, services to be rendered and work to be performed. As each item is completed, the City shall sign off on the item to provide project completion traceability. *Training Plan shall follow requirements of the SEAR document*

4.9. Assistance with review and development of Final Construction Plans and Special Provisions

Upon completing documentation for all components in Phase I, a pricing and equipment and integration requirements document will be created by SLTS, and a meeting will be scheduled between the City and SLTS to discuss and review the final plans and discuss any final changes and special provisions. If any changes are required, SLTS will modify the requirements and pricing to meet the City's requests. Upon any changes being requested, SLTS will schedule additional meetings with the City until all requests are addressed and a final requirements document and pricing is approved by the City, at which time the City shall enter into a contract with SLTS to provide the agreed upon services and equipment.

SLTS will coordinate with the Owner and Design Consultant to confirm the low-bid design plans provide and conform to the requirements of the ASCT system. Plans and any needed Special Provisions should align with needs of vendor's system.



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

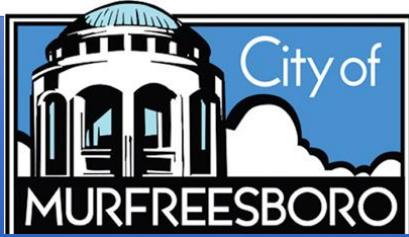
City of Murfreesboro, Tennessee

5. Scope of Work (Phase II) – After Contractor Selection

From the reports and documentation created and approved under Phase I, a detailed project configuration and integration plan will be delivered to the city, prior to any work beginning. This plan will detail all specific work to be performed from equipment requirements for any upgrades or replacement to implementation of all software and components of the system. The report will include, but not be limited to, detailed aspects for the following project requirements:

- Provide Detailed Project Plan, Configuration & Integration Plan
 - Overall network design and component requirements
 - ASCT configuration requirements and implementation
 - ASCT Detailed Project Plan
 - ASCT fine-tuning and system calibration plan
 - ASCT operations testing and verification plan
 - ASCT operations / theory training
 - Submit Training Plan in accordance with approved Systems Engineering Analysis Report (SEAR)
 - On-site Maintenance Training for City staff
 - On-site training on ASCT theory
 - On-site training on operations of ASCT system
 - Field equipment operations training
 - Field equipment installation training
 - Intersection & Region (Group) Graphics/Maps Development
 - CentraCS Adaptive database development and management
 - Cobalt intersection timing validation
 - CentraCS Adaptive Turn-On and Configuration
 - Maintenance/Installation Checklists
- Verification Plan Testing (Before and After Study) & Documentation
- Post Acceptance Test / Maintenance / Warranty Period

Upon approval of the final Phase II plans by the City, SLTS will begin the actual deployment and integration, according to the plans listed above. Additionally, a project schedule will be developed in conjunction with the plans being approved.



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

6. Time Schedule

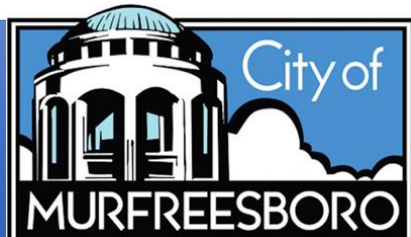
Estimating the amount of work, SLTS proposes the following time requirements for both phases of this project.

Phase I Services

- On-Site Services – Up to forty-five (45) calendar days of on-site work to complete Phase I Services.
- Remote Services – Up to sixty (60) calendar days, performed concurrently with on-site services, to complete Phase I Services. The additional time includes full documentation and report.

Phase II Services

- Phase II work for Functional Adaptive Control will provide on-site and remote services to deploy the Adaptive ASCT in the City of Murfreesboro, TN.
- On-Site Services – Up to one hundred eighty (180) person days (e.g. 6 person days per intersection) of on-site work to complete Phase II Services.
- Remote Services – Performed concurrently with on-site services



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

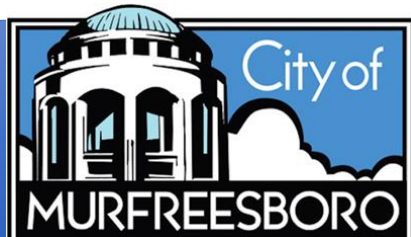
City of Murfreesboro, Tennessee

Exhibit A – Fee Schedule

The fee schedule is detailed below. Payment for each phase shall be made separately upon completion the respective tasks and approval of the services performed.

Phase I Services

TASK	PRICE
• Initial evaluation of corridor(s), challenges, and opportunities	\$2,500.00
• Field Site Survey	\$2,500.00
• Initial project details: construction needs, early signal groupings, basic configurations	\$4,000.00
• Summary report from the survey, which includes: <ul style="list-style-type: none"> ○ Vehicle detection zones – Technology and Position, referencing Draft Construction Plans ○ Traffic signal cabinet needs and modifications, including detector inputs, wiring & communications networking. Provide possible recommendations on required Signal Cabinet Modifications ○ Challenges and recommended strategies to mitigate communications failures ○ Configuration plan to integrate Connected Vehicle and Bluetooth data infrastructure ○ Configuration to support Centrac's SPM, Mobility and Adaptive cloud-based applications ○ Assessment of TMC network communication, hardware and user workstations ○ Adaptive Signal Control Technology (ASCT) access and security protocol plan ○ Remote access for SLTS technical support 	\$8,500.00
• Schedule and attend a formal review meeting with the City of Murfreesboro	\$1,800.00
• Review and Implement Changes	\$6,500.00
• Training Plan	\$3,000.00
• Requirements Verification Plan, including traceability matrix	\$5,000.00
• Assistance with review and development of Final Construction Plans and Special Provisions	\$6,500.00
• Field equipment requirements and implementation documentation	\$2,600.00
Subtotal – PHASE I Services	\$ 42,900.00



Scope of Work Proposal Advanced Signal Control Technology (ASCT) Vendor Services Project

City of Murfreesboro, Tennessee

Phase II Products and Services

TASK / PRODUCT	PRICE
<ul style="list-style-type: none"> • Provide Detailed Project Plan, Configuration & Integration Plan <ul style="list-style-type: none"> ○ Overall network design and component requirements ○ ASCT configuration requirements and implementation ○ ASCT Detailed Project Plan ○ ASCT fine-tuning and system calibration plan ○ ASCT operations testing and verification plan ○ ASCT operations / theory training <ul style="list-style-type: none"> – Submit Training Plan in accordance with approved Systems Engineering Analysis Report (SEAR) – On-site Maintenance Training for City staff – On-site training on ASCT theory – On-site training on operations of ASCT system – Field equipment operations training – Field equipment installation training ○ Intersection & Region (Group) Graphics/Maps Development ○ Centrac's Adaptive database development and management ○ Cobalt intersection timing validation ○ Centrac's Adaptive Turn-On and Configuration ○ Maintenance/Installation Checklists 	\$29,300.00
• Verification Plan Testing (Before and After Study) & Documentation	\$3,500.00
• Post Acceptance Test / Maintenance / Warranty Period	\$1,500.00
Subtotal – PHASE II Services	\$34,300.00
• Centrac's Mobility (SPM Module) – Initial Setup & Configuration	\$39,000.00
• Centrac's Mobility – Factory Support (Econolite)	\$7,900.00
• Centrac's Intersection License Block (25 Intersections)	\$25,000.00
<ul style="list-style-type: none"> • Centrac's Adaptive and Mobility Annual Subscription for 25 intersections <ul style="list-style-type: none"> ○ Year 1: \$16,687 ○ Year 2: \$16,687 ○ Year 3: \$16,687 ○ Year 4: \$16,687 ○ Year 5: \$16,687 	\$83,435.00
Subtotal – PHASE II Products and Subscriptions	\$155,335.00
Subtotal PHASE II Products and Services	\$189,635.00

Total Project Cost for phases 1 and 2\$232,535.00

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Rutherford Blvd Adaptive Signal Control Technology Project
Amendment No. 1 TDOT Contract

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Amendment No. 1 to the Rutherford Blvd. Adaptive Signal Control Technology (ASCT) agreement between the City and TDOT.

Staff Recommendation

Approve Amendment No. 1 to the agreement with TDOT regarding Adaptive Signal Control Technology.

Background Information

The City received a TDOT Congestion Mitigation and Air Quality (CMAQ) Grant in 2017 for the development and implementation of an ASCT Project for Rutherford Blvd. Since that time, the development of the construction plans and the required make-ready cost of the existing pole line, a shortfall in funding required to meet the system requirements was identified.

The City through the Metropolitan Planning Organization requested and received an additional \$800,000 in federal funds to offset the shortfall of the project. This is a CMAQ funded project and all signalization items are reimbursed with federal dollars at 100%. The sidewalk ramp improvements to meet ADA standards will be matched at 80% with federal dollars.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Safe and Livable Neighborhoods

Advanced Signal Technology enhances the safety and operations of the City's roadway network.

Operational Issues

Once the project has been completed for five years, the City will be responsible for an annual maintenance cost for the software.

Fiscal Impact

The City's 20% portion of the sidewalk improvement project is estimated at \$75,000 and will be from funds secured in the FY 21 CIP Budget.

Attachments

1. Executed Agreement No. 117065 between the City and TDOT.
2. Amendment No. 1 to Agreement No. 117065 between the City and TDOT.

Agreement Number: 170065

Project Identification Number: 125505.00

Federal Project Number: CM-9311(22)

State Project Number: 75LPLM-F3-062

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this 29th day of June, 2017 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and City of Murfreesboro (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Adaptive Signal Control Technology Project

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

- a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	AGENCY	PROJECT
Preliminary Engineering by:	AGENCY	PROJECT
Right-of-Way by:	AGENCY	AGENCY

Utility Coordination by:	AGENCY	AGENCY
Construction by:	AGENCY	PROJECT

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) This Agreement shall be effective from the period beginning on the fully executed date, and ending **four (4) years from the fully executed date**. The Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by **two (2) years from the fully executed date**. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by the aforesaid date, then the Department may terminate this Agreement. If the Agency does not complete the herein described phases of the Project within the time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is

any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS**C.1 Total Cost:**

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department

to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**

The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon

demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the “State Comprehensive Travel Regulations,” as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be

made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting

entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**

The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to

insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount 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 Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount 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 Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the

Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
- 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.


IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: 
Shane McFarland
Mayor

6/8/17
Date

By:  JUN 29 2017
John C. Schroer
Commissioner

**APPROVED AS TO
FORM AND LEGALITY**

By: 
Craig Tindell
Attorney

6-2-17
Date

**APPROVED AS TO
FORM AND LEGALITY**

By:  for John Reinbold 6-23-17
John Reinbold
General Counsel

EXHIBIT "A"

AGREEMENT #: 170065

PROJECT IDENTIFICATION #: 125505.00

FEDERAL PROJECT #: CM-9311(22)

STATE PROJECT #: 75LPLM-F3-062

PROJECT DESCRIPTION: Implement Adaptive Signal Control Technology (ASCT) system along North Rutherford Boulevard/ South Rutherford Boulevard /East Northfield Boulevard from SR-2 (SE Broad Street, US-41) to SR-10 (Memorial Boulevard, US-231) including interconnection of 14 traffic signals with fiber optic cable connecting to existing Traffic Operations Center. Install additional 9 CCTV cameras and upgrade selected signals to include pedestrian signal elements.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: Intelligent Transportation System

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	CMAQ	100	0	0	\$75,500.00
PE-DESIGN	CMAQ	100	0	0	\$298,200.00
CONSTRUCTION	CMAQ	100	0	0	\$2,570,255.00
CONSTRUCTION-CEI	CMAQ	100	0	0	\$298,230.00
TDOT ES	CMAQ	100	0	0	\$29,825.00
CONSTRUCTION	CMAQ	80	0	20	\$105,000.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to insure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

LEGISLATIVE AUTHORITY: CMAQ: 23 U.S.C.A., Section 149, Congestion Mitigation and Air Quality Improvement Program funds allocated or subject to allocation to the Agency.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

Amendment Number: 1

Agreement Number: 170065

Project Identification Number: 125505.00

Federal Project Number: CM-9311(22)

State Project Number: 75LPLM-F3-062

THIS AGREEMENT AMENDMENT is made and entered into this _____ day of _____, 20____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"Rutherford Boulevard Adaptive Signal Control Technology Project"

1. The language of Agreement # **170065** dated **June 29, 2017**, Section B.2 a) Completion Date is amended to change the first sentence of Section B.2 a) from:

The Agency agrees to complete the herein assigned phases of the Project on or before **JUNE 29, 2021**.

to

The Agency agrees to complete the herein assigned phases of the Project on or before **DECEMBER 31, 2023**.

2. Exhibit A for AGREEMENT # **170065** dated **June 29, 2017**, is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 1 .

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

Amendment Changing a Specific Paragraph & Replacing Previous Exhibit A

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____ By: _____
Shane McFarland **Date** **Clay Bright** **Date**
Mayor **Commissioner**

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

By: _____ By: _____
Adam Tucker **Date** **John Reinbold** **Date**
Attorney **General Counsel**

EXHIBIT "A" for Amendment 1

AGREEMENT #: **170065**

PROJECT IDENTIFICATION #: **125505.00**

FEDERAL PROJECT #: **CM-9311(22)**

STATE PROJECT #: **75LPLM-F3-062**

PROJECT DESCRIPTION: Rutherford Boulevard Adaptive Signal Control Technology Project - This project will implement an Adaptive Signal Control Technology (ASCT) system along North Rutherford Boulevard/South Rutherford Boulevard /East Northfield Boulevard from SR-2 (SE Broad Street, US-41) to SR-10 (Memorial Boulevard, US-231). It will include the interconnection of 14 traffic signals with fiber optic cable connecting to existing Traffic Operations Center. The project will also install 9 additional CCTV cameras and upgrade selected signals to include pedestrian signal elements.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: Intelligent Transportation System

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	CMAQ	100	0	0	\$110,086.00
PE-DESIGN	CMAQ	100	0	0	\$262,666.00
RIGHT-OF-WAY	CMAQ	100	0	0	\$50,000.00
CONSTRUCTION	CMAQ	100	0	0	\$2,602,255.00
CONSTRUCTION	CMAQ	80	0	20	\$1,000,000.00
CEI	CMAQ	100	0	0	\$300,228.00
TDOT ES	CMAQ	100	0	0	\$29,825.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to insure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

LEGISLATIVE AUTHORITY: **CMAQ: 23 U.S.C.A., Section 149**, Congestion Mitigation and Air Quality Improvement Program funds allocated or subject to allocation to the Agency.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Signal Maintenance Agreement for I-840 & Veterans Parkway Exit Ramp Signalization

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Agreement with TDOT for future installation of traffic signaton at I-840 and Veterans Parkway off-ramps.

Staff Recommendation

Approve agreement with TDOT for electric service and maintenance of signals installed at I-480 and Veterans Parkway.

Background Information

TDOT has completed a Roadway Safety Audit (RSA) Ramp Queue study at the request of the City for the I-840 eastbound and westbound exit ramps at Exit 50, Veterans Parkway. The project qualified as a ramp queue RSA due to documented queuing on the I-840 eastbound and westbound exit ramps.

The review report provides safety recommendations for the eastbound off-ramp to include restriping pavement markings and signalization to improve operations. The westbound off-ramp will include adding an additional left turn lane, restriping pavement markings, and signalization to reduce the queue on the off ramp and improve operations.

When the State installs a traffic signal as a component of a project within the City, the City is required to provide electricity and maintain the traffic signal in proper working order. Accordingly, TDOT has provided a contract for this purpose.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Safe and Livable Neighborhoods

Signalization enhances the safety and operations of the City's roadway network.

Operational Issues

None. The City will be prepared to accept the maintenance obligation of the facility.

Fiscal Impact

The costs of electric service and maintenance of the traffic signals will be paid out of State Street Aid.

Attachments

TDOT Agreement Number 2000320 Signal Maintenance I-840 at Veterans Parkway.

AGREEMENT NO: 200320
PROJECT IDENTIFICATION NO: 129899.00
FEDERAL PROJECT NO: HSIP-I-840(16)
STATE PROJECT NO: 75840-3135-94

State of Tennessee Department of Transportation

GENERAL MAINTENANCE AGREEMENT WITH LOCAL AGENCY

THIS AGREEMENT, made and entered into this _____ day of _____, 20____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency").

W I T N E S S E I H:

WHEREAS, certain routes in the Agency's jurisdiction have been designated as being eligible for Highway Safety Improvement Project (HSIP) funds under 23 U.S.C. § 148 (CFDA # 20.205); and

WHEREAS, the Department desires to assist the Agency by installing various signs, snowplowable markers, reflectors, chevrons, thermoplastic white and yellow lines, guardrails, and other safety improvements within the jurisdiction of the Agency in furtherance of this program, and

WHEREAS, the Agency, in recognition of the benefits to be received from the installation of said safety improvements, desires to cooperate with the Department such that the safety improvements may be installed by the Department, and maintained by the Agency in accordance with Tennessee and federal law.

NOW THEREFORE, in consideration of these premises, the Department and the Agency hereby enter into this Agreement regarding the maintenance, existence, and use of the Project as described in SECTION 1 below.

SECTION 1: The Project to be performed is described as follows:

"I-840 Interchange at Veterans Parkway (5739), LM 0.61 and
LM 0.85"

SECTION 2: Tenn. Code Ann. § 54-1-126 provides that the Department shall enter into a written contract that provides that the Agency is solely responsible for all maintenance of the completed work of the Project. Therefore, the provisions set forth in Tenn. Code Ann. § 54-1-126 shall apply to this Agreement. The Agency shall

be solely responsible for and pay all costs associated with maintenance of the Project.

The Agency's maintenance responsibility described herein includes, but is not limited to, signals and other electrically operated and/or solar powered devices which may be installed as part of the Project. The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices which may be installed as part of the Project, together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar powered devices which may be installed as part of the Project, including but not limited to replacement of solar panels, batteries, lights and lenses.

SECTION 3: The Agency shall assume all liability for third-party claims and damages arising from the maintenance, existence, and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

SECTION 4: The Agency agrees to comply with all applicable federal and Tennessee laws and regulations in the performance of its duties under this Agreement. The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all funds expended, or expenses incurred, under this Agreement.

SECTION 5: This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

SECTION 6: Nothing in this Agreement, whether express or implied, is intended to confer upon any person or entity not a party to this Agreement, any rights or remedies by reason of this Agreement.

SECTION 7: The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

SECTION 8: The Agency 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 Agreement or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal and Tennessee constitutional or statutory law. The Agency shall, upon

request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

SECTION 9: The Department may terminate this Agreement without cause for any reason. Said termination shall not be deemed a breach of contract by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. In no event shall the Department's exercise of its right to terminate this Agreement relieve the Agency of any liability to the Department for any damages or claims arising under this Agreement. All provisions that logically ought to survive termination of this Agreement shall survive.

SECTION 10: This Agreement may be modified only by a written amendment executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

SECTION 11: The Department shall have no liability except as specifically provided in this Agreement.

SECTION 12: The Agency warrants that no amount 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 Agency in connection with any work contemplated or performed relative to this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials, effective as of the last date of signature below.

CITY OF MURFREESBORO

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

By: _____
Shane McFarland
Mayor

Date

By: _____
Clay Bright
Commissioner

Date

APPROVED AS TO
FORM AND LEGALITY

APPROVED AS TO
FORM AND LEGALITY

By: _____
Adam Tucker
Attorney

2/23/2021
Date

By: _____
John Reinbold
General Counsel

Date

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: SRWTP Switchgear Improvements

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Approval of an engineering task order with Smith Seckman and Reid (SSR) for design and construction services for the Stones River Water Treatment Plant (SRWTP) Switchgear Improvements.

Staff Recommendation

Approve SSR's Engineering Task Order 20-41-011.0 in the amount of \$93,920.

Background Information

John Bouchard and Sons was approved to conduct cleaning and testing of the switchgear at the Stones River Water Treatment Plant under the Water/Wastewater Mechanical/Electrical Services contract Task Order 19-13 in January 2020.

A cleaning and inspection of the existing outdoor switchgear was conducted in May 2020. Issues identified during this inspection was that the switchgear is over thirty years old and many of the components are now obsolete. This presents problems with repairs and replacement of items in the switchgear. In addition, the switchgear is located outside in the elements and the housing of two of the switchgear is in poor condition. It was noted that the Department should address this soon, or the equipment could be placed out of service. The recommendation was for the Department to consider moving the equipment inside a building which would greatly extend it life and make repairs safer in all weather conditions.

MWRD reviewed multiple options identified by SSR and elected to proceed with the option to replace the switchgear in its entirety in a more centralized outdoor lineup in lieu of new switchgear inside a new standalone building. The revised and finalized scope for this project will include new switchgear including new breakers, primary and secondary disconnects, and remote racking mechanisms for the SRWTP. All switchgear lineups will be reorganized in one central location nearby the existing switchgear to allow for minimal new raceways. This option will also provide more convenient construction sequencing when time to transition from the old switchgear.

Council Priorities Served

Maintain public safety

MWRD ensures that facilities are properly maintained to provide quality water to its customers and to protect employees.

Fiscal Impact

The immediate fiscal impact will be associated with approving SSR's task order for projected engineering and construction administration costs at \$93,920. Funding will come from rate-funded capital reserves. The estimated costs for the project are in the table below.

Summary of Opinion of Project Costs

Description	Opinion of Probable Cost
SRWTP Switchgear Improvements	\$725,000
Contingency	\$145,000
Total Probable Construction Cost	\$870,000
Engineering and Construction Administration	\$93,920
Total Probable Project Cost	\$963,920
<u>Notes:</u>	
1. Costs include Contractor's Overhead and Profit	
2. Costs are rounded up to the nearest thousand dollars.	

Attachments

SSR Task Order 20-41-011.0

ENGINEERING TASK ORDER 20-41-011.0**Task Order**

In accordance with the Standard Form of Agreement Between Owner and Engineer for Professional Services, dated August 6, 2002 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- | | | |
|----|---------------------------------|--|
| a. | Effective Date of Task Order: | March 16, 2021 |
| b. | Owner: | Murfreesboro Water Resources Department (MWRD) |
| c. | Engineer: | Smith Seckman Reid (SSR) |
| d. | Specific Project (title): | Stones River Water Treatment Plant Switchgear Improvements |
| e. | Specific Project (description): | The project includes the design and construction administration for the demolition and replacement of the existing switchgear for the Stones River Water Treatment Plant and the construction of new switchgear in a new lineup. |

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are the services (and related terms and conditions) set forth in the following sections of Basic Services of Engineer in the Agreement modified herein for this specific Task Order, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- ☐ Preliminary Design Phase (Agreement, Paragraph 1.3).
 - Including necessary topographical survey for Engineer's design purposes.
 - Including a brief, bullet point style basis of design document including key design criteria, and conceptual switchgear layout drawings.
- ☐ Final Design Phase (Agreement, Paragraph 1.4).
- ☐ Bidding Services (Agreement, Paragraph 1.5).
- ☐ Construction Phase Services (Agreement, Paragraph 1.6) and the following:
 - Establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
 - Visit the Site promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

- Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.

☐ Post Construction Phase Services (Agreement, Paragraph 1.7).

- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Exclusions

- A. Services associated with government funding programs, i.e., State Revolving Fund (SRF) loan program.

4. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are set forth as Additional Services in Part 2—Additional Services of Engineer, of the Agreement modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

5. Owner's Responsibilities

- A. Owner shall have those responsibilities set forth in Section 3 of the Agreement, subject to the following:
- ☐ Delete Paragraph 3.5.

6. Task Order Schedule

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish electronic review copies of the 50% Drawings and Specifications, assembled drafts of other Construction Contract Documents, updated construction cost estimate, basis of design memorandum, and any other Preliminary Design Phase deliverables, to Owner.	Within 12 weeks following project kick-off meeting.
Owner	Submit comments regarding 50% Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within 10 days of the receipt of 50% Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish electronic review copies of the 100% Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents, and any other Final Design Phase deliverables, to Owner.	Within 12 weeks of the receipt of Owner's comments regarding the 50% Preliminary Design Phase documents.

Owner	Submit comments and instructions regarding the 100% Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents, and any other Final Design Phase deliverables, to Engineer.	Within 10 days of the receipt of the 100% Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents, and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish electronic copies of the 100% Drawings and Specifications, assembled Construction Contract Documents, requests for proposals, and any other Final Design Phase deliverables, to Owner and TDEC.	Within 10 days of the receipt of Owner's comments and instructions regarding the 100% Drawings and Specifications, assembled drafts of other Construction Contract Documents, and any other Final Design Phase deliverables.

7. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
Basic Services (Section 1 of Agreement)		
a. Preliminary Design Phase*	\$ 22,255.00	Hourly Not to Exceed
b. Final Design Phase	\$ 31,490.00	Hourly Not to Exceed
c. Bidding Phase	\$ 11,615.00	Hourly Not to Exceed
d. Construction Phase**	\$ 24,500.00	Hourly Not to Exceed
e. Post Construction Phase	\$ 4,060.00	Hourly Not to Exceed
TOTAL COMPENSATION (lines 1.a-e)	\$ 93,920.00	

Reimbursable Expenses***	Amount	Basis of Compensation
a. Out-of-Town Mileage	\$0.00	\$0.56 /mile
b. Air Transportation	\$0.00	At Cost
c. Meals and Lodging	\$0.00	At Cost
d. External Plotting	\$1000.00	At Cost

* Includes payment to land surveying consultant.

** Based on a 40-week continuous construction period.

***Reimbursable expenses are estimated amounts.

Engineer expects the entire contract duration for these services to be less than 76 weeks. If the contract duration extends beyond this time, commensurate additional compensation may be required.

8. Consultants retained as of the Effective Date of the Task Order:

A. Surveying – TBD.

9. Attachments:

A. Detailed project understanding.

10. Terms and Conditions

- A. Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is March 16, 2021.

CITY OF MURFREESBORO:

WITNESS:

By: _____

By: _____

Print Name: _____

Print Name: _____


Title: _____

Title: _____

SMITH SECKMAN REID:

WITNESS:

By: 

By: 

Print Name: Andrew Johnson

Print Name: Luke Williams

Title: Principal

Title: Water/Wastewater Engineer

APPROVED AS TO FORM:

DocuSigned by:



43A2035E51F9401
Adam F. Tucker, City Attorney

**STONES RIVER WATER TREATMENT PLANT SWITCHGEAR IMPROVEMENTS
DETAILED PROJECT UNDERSTANDING
ATTACHMENT TO TASK ORDER 20-41-011.0**

Project Understanding

The task order covers the engineering basic services necessary to complete each of the following:

Project will include preparation of a design, bidding, and construction administration, as limited herein, of improvements to existing switchgear at the Stones River Water Treatment Plant.

The project includes the complete replacement of existing switchgear with new and modern outdoor rated arc quenching switchgear as the existing switchgear is past it's useful life. To consolidate the switchgear and minimize the number of new raceways, the switchgear will be constructed on a new pad to minimize it's footprint. New switchgear will include new breakers and remote racking mechanism. All components such as the outdoor enclosure, panel doors, relays, and busbars will be new. Eaton outdoor rated arc-quenching switchgear will be provided as arc-rated enclosures as defined by ANSI C37.20.7 are not suitable outdoor installation. Design will also include modifications to the existing site and electrical infrastructure as needed to accommodate the new lineup, including site grading, utility relocation, and fencing modifications.

This task order covers the engineering basic services necessary to complete each of the following:

- Preparation of construction drawings and specifications to be delivered for MWRD review at 50% and 100% project milestones
 - Final Design Drawing Deliverables Include:
 - Equipment foundation design drawings
 - Demolition sketches
 - Electrical Equipment Layout
 - Grounding Drawings
 - Duct bank design drawings
 - Cable Schedule
 - General Notes and Details
 - Final Specifications Include:
 - Switchgear Procurement Specification
 - General Work Specification with commodities specifications
- Preparation of estimate of probable construction costs to be delivered for MWRD review at the 50-percent milestone and a final cost opinion delivered to MWRD prior to 100% milestone.
- Construction Administration

Assumptions

The following assumptions have been made to support the Work as described above:

- No lighting is required

- Switchgear will be sole sourced to Eaton
- No wiring or schematic drawings are included

Project Meetings

In addition to meetings referenced in the Agreement, Engineer will perform each of the following:

- Conduct an Owner kickoff meeting to discuss the overall scope, schedule, construction costs, and other pertinent items critical to project success.
- Conduct Owner review workshops at 50-percent and 100-percent deliverable milestones.
- Conduct Pre-Bid meeting prior to bid date.
- Conduct a kick-off and monthly construction progress meetings (as needed) with Owner and Contractor.

SRWTP Switchgear Improvements

Replace SRWTP Existing Switchgear

Murfreesboro Water Resource Department

20410110



	TOTAL	Project Management/Civil	Structural	Electrical	Surveying (Sub)	Duration (weeks)
Phase 1100 - Preliminary Design	\$22,255	\$7,440	\$820	\$10,995	\$3,000	12
Phase 1200 - Final Design	\$31,490	\$10,355	\$3,055	\$18,080	\$0	12
Phase 1300 - Bidding	\$11,615	\$5,945	\$1,045	\$4,625	\$0	10
Phase 1400 - Construction	\$24,500	\$12,335	\$1,290	\$10,875	\$0	40
Phase 1500 - Post Construction	\$4,060	\$3,100	\$0	\$960	\$0	2
Subtotal	\$93,920	\$39,175	\$6,210	\$45,535	\$3,000	76

COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: Outside City Sewer Requests – Rutherford Co. EMS & Fire Stations

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Rutherford County has requested outside city sewer service for two proposed County Fire and EMS Stations. One will be located on the Walter Hill Elementary School property and the other at Rockvale Elementary School.

Staff Recommendation

Approve to serve the proposed Rutherford County Fire & EMS Stations as outside the City sewer customers.

Background Information

Sewer service to this facility meets consideration criteria due to a Fire and EMS Station meeting a higher benefit to the public than annexation affords.

Portion of Policy Section 1.3.2 states: Should annexation not be recommended service as an outside the city customer may be possible by written agreement under the following utility extension policy:

- 1) Only properties within the Buchanan and Elam Road Interchanges Sanitary Sewer Assessment District, as defined in City Code Section 33-206 will be considered for outside the City sewer service, and
- 2) Only properties may be considered outside the City sewer customers where providing sewer services is deemed a higher benefit to the public than annexation affords (e.g., parks, schools, etc.).

Council Priorities Served

Maintain public safety

Affording Rutherford County access to City sewer will increase public safety and fire protection with the construction of the new EMS and Fire Station. This will not only serve the schools, but also County residents and businesses in each respective area.

Fiscal Impact

There is no fiscal impact in the form of capital costs to the Department or City in serving these proposed facilities. All sewer improvements will be paid for by the County.

Attachments

1. Letters of Request
2. Exhibits

BILL KETRON
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

June 22, 2020

Mr. Darren Gore, P.E.
Murfreesboro Water Resources
300 NW Broad Street
Murfreesboro, TN 37130

RE: Proposed Rutherford County Fire & EMS Station
Rockvale Elementary School Property
6550 Highway 99
Rockvale TN 37153
Request to Access to Murfreesboro Sewer as an Outside the City Customer

Dear Mr. Gore,

Please accept this letter and attached exhibit as a formal request to grant sanitary sewer access as an Outside the City Customer to the proposed Rutherford County Fire & EMS Station to be located on a portion of the Rockvale Elementary School property at 6550 Highway 99 (Rutherford County Tax Map 123, Parcel 16.00). The rapidly growing Rockvale Community is in desperate need of a new combined Fire & EMS Station to provide necessary life safety & property protection to the area.

The proposed Rutherford County Fire & EMS Station will have a full-time staff of 6 to 7 Fire & EMS employees operating this location 24-hours a day & 7-days a week. The attached exhibit indicates a proposed sewer route of 1,250-feet of new 8-inch gravity sewer line, to be all on the Rockvale Elementary School property and running parallel with the school's northern property line. The new sewer line would tie into the existing 8-inch gravity sewer line on the school's property, somewhere between existing manholes 091C0050 & 091C0060.

If you have any questions or comments, feel free to contact this office or Mike Hughes at the Rutherford County Planning & Engineering Department. Thank you for your time and consideration for sewer service for this much needed public safety resource for the Rockvale Community.

Sincerely,

Bill Ketron
Rutherford County Mayor

BILL KETRON
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

March 4, 2021

Ms. Valerie Smith, P.E.
Assistant Director of Engineering
Murfreesboro Water Resources Department
300 NW Broad Street
Murfreesboro, TN 37130

RE: Proposed Rutherford County Fire & EMS Station
Walter Hill Elementary School Property
6309 Lebanon Pike
Murfreesboro, TN 37129
Request to Access to Murfreesboro Sewer as an Outside the City Customer

Dear Ms. Smith,

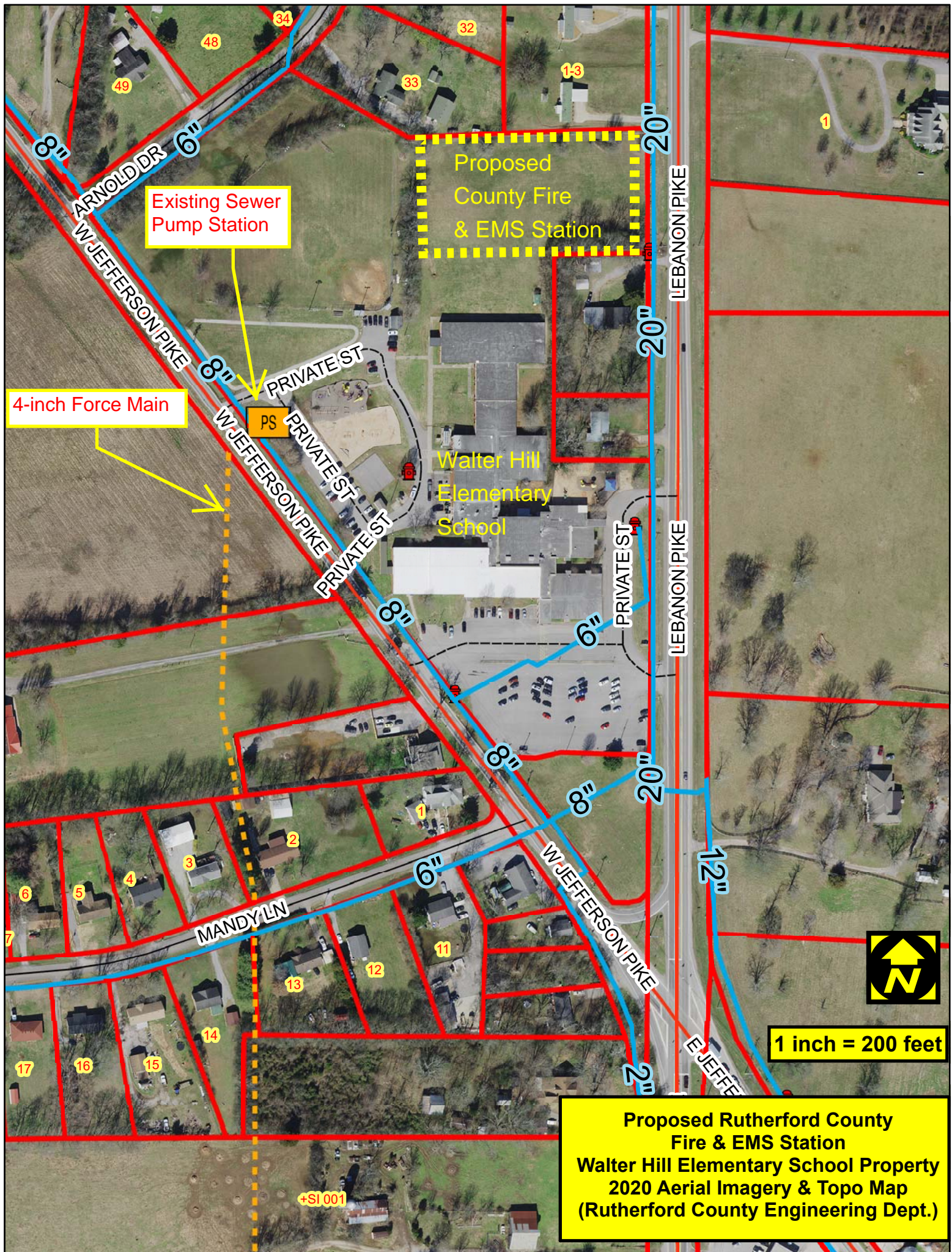
Please accept this letter and attached exhibit map as a formal request to grant sanitary sewer access as an Outside the City Customer to the proposed Rutherford County Fire & EMS Station to be located on a portion of the Walter Hill Elementary School property at 6309 Lebanon Pike (Rutherford County Tax Map 36, Parcel 41.00). Rutherford County is in desperate need of a new combined Fire & EMS Station to provide necessary life safety & property protection to the Walter Hill area. The existing Walter Hill Fire Station at 854 E. Jefferson Pike has a failing septic system and often times the fire crews have to evacuate the station after significant or sustained rainfall events.

The proposed Rutherford County Fire & EMS Station will have a full-time staff of 6 to 7 Fire & EMS employees operating at this location for 24-hours a day & 7-days a week. The attached exhibit map shows the proposed Fire & EMS Station location, which will be just north of the school and front on Lebanon Pike (US 231 / SR 10). The new station will connect to an existing sewer pump station serving the school with approximately 600-feet of new sewer line. The existing sewer pump station is owned & maintained by Rutherford County.

If you have any questions or comments, feel free to contact this office or Mike Hughes at the Rutherford County Planning & Engineering Department. Thank you for your time and consideration for sewer service for this much needed public safety resource for the Walter Hill Community.

Sincerely,


Bill Ketron
Rutherford County Mayor



COUNCIL COMMUNICATION

Meeting Date: 04/08/2021

Item Title: TDOT – Salem Hwy Ph. 2 Easement Offers

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Summary

Purchase water/sewer easements necessary for the relocations of the mainlines associated with the widening of the highway.

Staff Recommendation

Approve the purchase of water/sewer easements and move forward with condemnation should these easements not be obtained within a reasonable amount of time.

Background Information

The final plans for the water and sewer relocations associated with the Salem Highway Widening from Old Fort Parkway to I-24, have been submitted to TDOT to be included in their contract for construction. In January, it was determined there were 14 properties the Department needed to secure easements.

Draft appraisals have been received and per those appraisals, offer amounts have been prepared for each property based on the easement size and type as attached. Typically, the City offers 50% of the appraised land value for permanent easement and 10% per year for temporary construction easement. In anticipation of the widening taking two years, the offer for temporary construction easement is 20%.

The Department has earmarked \$1.5, from Working Capital Reserves for the project costs. The estimated costs to the MWRD is \$524,550, which is composed of easements, \$407,350, engineering \$30,450, and upgrade of a water main estimated \$86,750. The total estimated relocation costs, \$1,321,656, is funded by TDOT.

Council Priorities Served

Responsible budgeting

Securing easement for infrastructure is a prudent use of funds relative to the requirement to purchase the required land.

Expand infrastructure

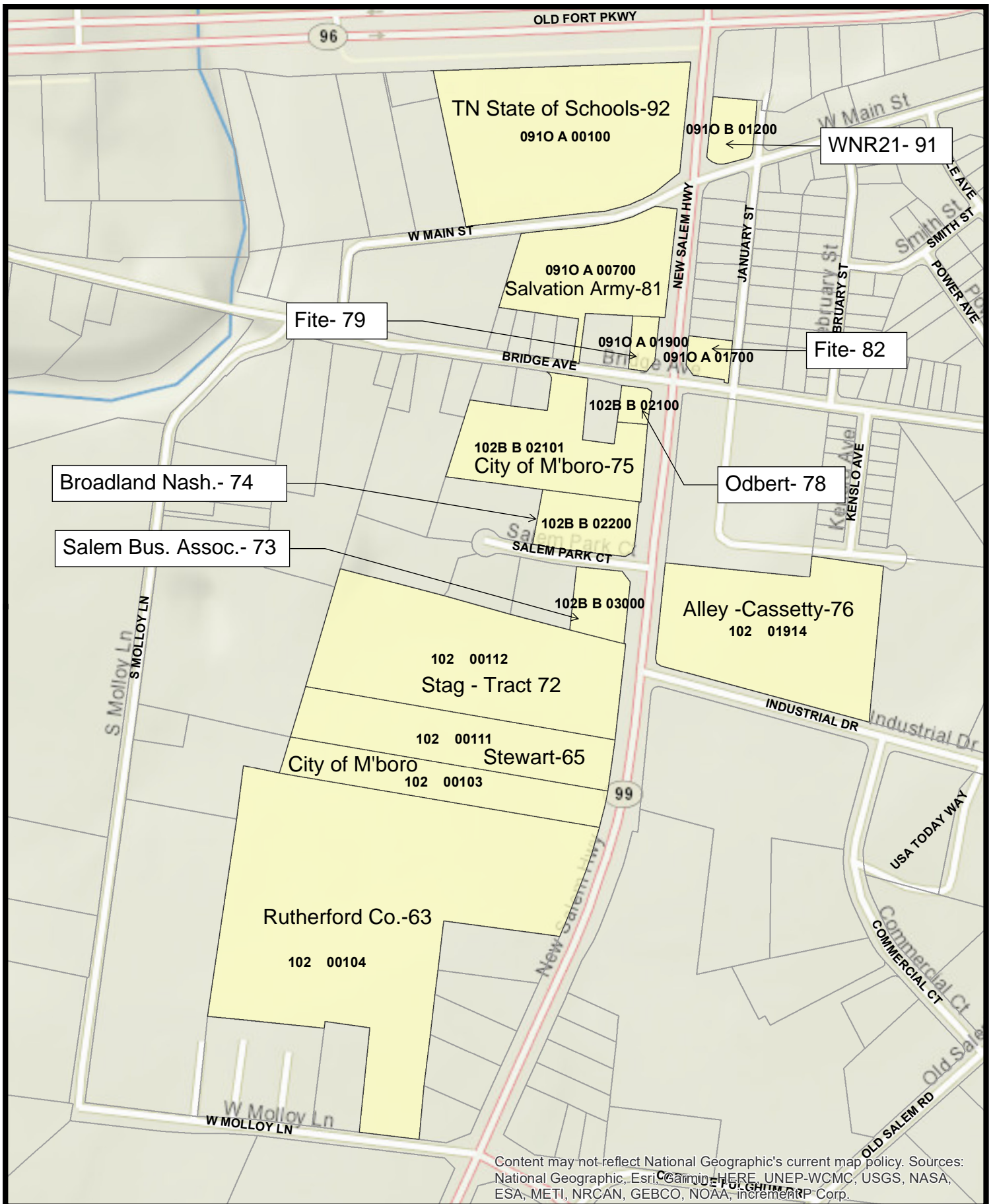
A portion of water main upgrade allows the Department to upgrade additional lines in the future that may increase pressures and water volumes in the area.

Fiscal Impact

Total project costs, \$524,550, is funded by Working Capital Reserves.

Attachments

1. Easement Offers
2. GIS Exhibit



SCALE : 1" = 500'

MURFREESBORO WATER RESOURCES DEPARTMENT

New Salem Hwy Widening Phz 2 - Easement Properties



SalemHwyWidening.mxd

NEW SALEM HIGHWAY WATER/SEWER EASEMENTS

Tract #	Owner	Zoning Fee Value	PWE \$/SF TCE \$/SF	PWE SF TCE SF	Total PWE	Total TCE	Improv. Acquired	Grand Total	Rounded
63	Rutherford Cty.	H-I	\$3.00	1,685	\$5,055	\$3,282	\$0	\$8,337	\$8,350
		\$6.00	\$1.20	2,735					
65	Stewart	H-I	\$3.00	4,251	\$12,753	\$5,101	\$0	\$17,854	\$17,900
		\$6.00	\$1.20	4,251					
72	Stag Murfreesboro	H-I	\$3.00	7,508	\$22,524	\$8,832	\$20,900	\$52,256	\$52,300
		\$6.00	\$1.20	7,360					
73	Salem Bus. Associ.	H-I	\$3.00	6,463	\$19,389	\$7,428	\$6,400	\$33,217	\$33,250
		\$6.00	\$1.20	6,190					
74	Broadland Nashville	H-I	\$3.00	4,138	\$12,414	\$5,921	\$5,100	\$23,435	\$23,500
		\$6.00	\$1.20	4,934					
76	Alley-Cassetty	H-I	\$3.00	759	\$2,277	\$4,069	\$0	\$6,346	\$6,350
		\$6.00	\$1.20	3,391					
78	Odbert	CH	\$7.00	2,782	\$19,474	\$8,599	\$840	\$28,913	\$28,950
		\$14.00	\$2.80	3,071					
79	Fite	CH	\$7.00	3,315	\$23,205	\$12,603	\$0	\$35,808	\$35,850
		\$14.00	\$2.80	4,501					
81	Salvation Army	CH	\$7.00	8,466	\$59,262	\$25,043	\$0	\$84,305	\$84,350
		\$14.00	\$2.80	8,944					
82	Fite	CL	\$7.00	1,525	\$10,675	\$7,274	\$0	\$17,949	\$17,950
		\$14.00	\$2.80	2,598					
91	WNR21	CH	\$7.00	1,041	\$7,287	\$5,289	\$0	\$12,576	\$12,600
		\$14.00	\$2.80	1,889					
92	TN State of Schools	CH	\$7.00	8,604	\$60,228	\$25,726	\$0	\$85,954	\$86,000
		\$14.00	\$2.80	9,188					
TOTALS					\$254,543	\$119,168	\$33,240	\$406,951	\$407,350

TCE Temporary Construction Easement
 PWE Permanent Water Easement
 SF Square Foot

COUNCIL COMMUNICATION

Meeting Date: 03/19/2020

Item Title: Cable Television Commission Appointment

Department: Administration

Presented by: Mayor McFarland

Requested Council Action:

Ordinance ☐

Resolution ☐

Motion ☒

Direction ☐

Information ☐

Summary

Appointment of Cable Television Commission member to fill vacancy.

Background Information

The purpose of the Cable Television Commission is to oversee the cable television franchise for the City and other cable television functions as designated by ordinance.

As established by City Code § 2-166—168, there are 7 members appointed for 3-year terms. Appointment of one member to the Cable Television Commission, filling the vacancy left by Ronald Lindsey.

Council Priorities Served

Engaging Our Community

Residents volunteer for service on the City several boards and commissions and are instrumental in the operations of several City departments.

Attachments:

Memo from Mayor McFarland



. . . creating a better quality of life.

April 8, 2021

Members of City Council

RE: Recommended Reappointment – Cable Television Commission

As an item for the Council Agenda, I am recommending the following reappointments for the Cable Television Commission.

Reappointments

Rosann Barton (term expires April 30, 2024)

Tommy Campbell (term expires April 30, 2024)

Sincerely,

Shane McFarland
Mayor