

MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
March 17, 2022

PRAYER

Mr. Kirt Wade

PLEDGE OF ALLEGIANCE

Ceremonial Items

Proclamation: Athletic Training Month

STARS Award: Maria Routon, Building Codes and Crystal Ellis, Parks

Consent Agenda

1. Town Creek, Phase II Concept Planning Study (Administration)
2. Purchase of Portable Flypack (Communications)
3. Community Investment Program Funds Transfer (Finance)
4. FY22 City Manager Approved Budget Amendments (Finance)
5. IP Telephony Contract Amendments (Information Technology)
6. Mandatory Referral for Abandonment of Water and Sanitary Sewer Easement along South Church Street (Planning)
7. Purchase of Office Furniture (Police)
8. True North Work Order No. 4 (Police)
9. Asphalt and Concrete Purchase Report (Street)
10. Main Street Banner Request (Street)
11. Guardrail Replacement Contract Amendment 1 (Street)
12. Asphalt Purchases Report (Water Resources)
13. Annual Audit Contract (Water Resources)
14. TTL Geotechnical Services Proposal for Overall Creek Pump Station (Water Resources)

Minutes

15. Approval of City Council Minutes (Finance)
 - a. February 16, 2022 (Regular Meeting)
 - b. February 16, 2022 (Special Joint Meeting)
 - c. February 24, 2022 (Regular Meeting)

New Business

On Motion

16. Public Right-of-way Use License for Elam Farms Parkway by FedEx and Proligis (Administration)
17. Purchase of Property Located at 2140 N Thompson Lane (Administration)
18. Presentation of Annual Audit Report (Finance)
19. Rutherford Blvd Extension – Professional Services Agreement (Engineering)
20. Final Change Order for Rucker Lane Phase 1 Project (Engineering)
21. Professional Services Contract – Butler Drive Realignment (Engineering)
22. City Schools Roofing (Schools)
23. HVAC Unit Replacement (Water Resources)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Town Creek, Phase II Concept Planning Study
Department: Administration
Presented by: Sam A. Huddleston, PE, Executive Director Development 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

Approve proposal for Concept Planning Study for Town Creek Phase II.

Staff Recommendation

Approve the Agreement with Ragan Smith.

Background Information

Staff has received a proposal from Ragan Smith to provide concept planning phase study for Town Creek Phase II. Phase II extends from South Church Street along Hickerson Drive to Front Street at Cannonsburgh. The study will identify stream geometry and hydraulics, general constraints, ecological aspects, permitting requirements, transportation opportunities, and interactions with local streets and properties.

Council Priorities Served

Responsible budgeting

Utilization of Federal American Recovery Plan Act (ARPA) funds provides a cost effective means of addressing stormwater improvements.

Improve economic development

The Historic Bottoms area is designated as a redevelopment priority. Addressing stormwater improvements to the locations, which historically was subject to significant flooding, is environmentally important as is the aesthetic enhancements that can assist with redevelopment of this area.

Expand infrastructure

Completion of the Town Creek Phase II project will provide walking and biking connectivity from the Discovery Center/Murfree Springs to Cannonsburgh Village and the Greenway trail system while replacing aging infrastructure in our stormwater system.

Fiscal Impact

The cost of the study, \$24,000, will be funded by federal ARPA funds.

Attachments

Ragan Smith Proposal



January 14, 2022

VIA ELECTRONIC MAIL: gwhitaker@murfreesborotn.gov

Mr. Gary Whitaker
Assistant City Manager
City of Murfreesboro
111 W. Vine Street
Murfreesboro, TN 37130

RE: TOWN CREEK CORRIDOR OPPORTUNITIES / CONSTRAINTS MASTER

Dear Gary:

Ragan-Smith Associates, Inc. (Ragan-Smith) is pleased to offer the following professional service proposal to the **City of Murfreesboro** for planning, engineering and landscaper architectural services related to the potential daylighting of Town Creek and its associated public open space and amenities.

PROJECT

Town Creek has, for many years, been encapsulated underground within a series of corrugated metal pipes and concrete box culverts. Some sections are documented to be in poor condition and in need of repair or replacement. Rather than replacing the existing infrastructure, the City's long term planning studies have identified the benefits of abandoning the existing infrastructure and daylighting Town Creek. **RaganSmith** proposes to collaborate with **Griggs and Maloney** to provide a consulting team that will identify the key opportunities and constraints involved in daylighting Town Creek from the culvert at S. Church Street to the culvert at S. Front Street. This team will work closely with the city staff and leadership to generate concepts for this corridor relative to its environmental, land use and transportation enhancement opportunities and development potential. This effort will be conceptual in nature and does not include in depth engineering analysis, architectural development or traffic studies.

SCOPE OF SERVICES

Outlined below are the proposed scope of services anticipated to prepare a conceptual opportunities and constraints master plan for the City of Murfreesboro:

- Identify general constraints along the potential stream corridor based on readily available information for existing ROW and easements, utilities, and physical condition of existing infrastructure
- Provide a general evaluation of potential stream channel geometry and hydraulics
- Environmental aspects of the stream such as ecological uplift and stream credit potential for use on other City projects
- An assessment of general permitting requirements if concepts were to be implemented
- Identify multi modal transportation opportunities along the Town Creek Corridor that include options for pedestrians, bicycles, and automobiles
- Impacts on the local street network and considerations of how potential future intersection improvements at Front St and N.W. Broad Street might interface with the Town Creek Corridor

NASHVILLE

315 Woodland Street
Nashville, TN 37206
(615) 244-8591

MURFREESBORO

100 East Vine Street, Suite 402
Murfreesboro, TN 37130
(615) 546-6050

CHATTANOOGA

1410 Cowart Street, Suite 200
Chattanooga, TN 37408
(423) 490-9400



- Land use considerations including the creation of public space within linear park, greenway and pocket park settings
- Connections to future land development patterns for mixed use development adjacent to the Town Creek Corridor
- Connections to the surrounding context of Cannonsburgh, the Discovery Center and adjacent city owned property
- Presentation of the developed concept plan to city staff and leadership and one set of revisions to the plan based on feedback from the City of Murfreesboro

Project deliverables shall include a graphic, colored conceptual master plan to scale depicting general environmental, transportation and public space opportunities and constraints and a summary written report

The City of Murfreesboro shall provide all available GIS, planning and engineering documents and data as required background for the opportunities and constraints master plan

COMPENSATION

Ragan-Smith will provide/coordinate the above Scope of Services for the following ***lump sum fee*** based on providing the scope as outlined. The project will be billed as a percentage of completion on a monthly basis as outlined in the **Ragan-Smith Schedule of Services and Expenses, Contract Terms and Conditions** which is attached and considered a part of this agreement. Further adjustments to the scope and fee can be discussed based on The City's needs.

Conceptual Opportunities and Constraints Master Plan and Summary Report \$ 24,000.00

Should additional work be required outside the Scope of Services noted above, said work will be mutually agreed to prior to commencing and billed hourly according to the **Ragan-Smith Schedule of Services and Expenses, Contract Terms and Conditions** (attached). Invoices will be submitted monthly and are due and payable within 30 days of invoice date. Twelve (12) hard copies and one digital copy of the final Composite Sub Area Plan will be provided as part of the lump sum amount. Any additional printing costs will be charged as additional services to the quoted lump sum fees.

The rates outlined in the scheduled services are good for a period of two (2) years from execution of contract. Work performed after that period will be billed at the most current **Ragan-Smith** rate schedule.

We appreciate the opportunity to provide this proposal to you. If you agree to the terms, please sign and return a copy of this document that will serve as authorization to proceed with the work.



RAGAN-SMITH ASSOCIATES, INC.

Kevin D. Guenther, PLA, LEED AP
Vice President

Brett Smith, PLA, AICP
Vice President

KDG:kal

Attachments

CLIENT ACCEPTANCE AND AUTHORIZATION TO PROCEED:

By _____ Date: _____

Print Name _____ Title: _____

**CONTRACT TERMS AND CONDITIONS**

SCHEDULE OF SERVICES AND EXPENSES - The below hourly billing rates are valid and effective for a period of one year from the date of the signed contract unless stated differently in the project specific work agreement. Hourly rates after this period will be based on the most current RaganSmith rate sheet and are therefore subject to increase.

PROFESSIONAL SERVICES

| Classification | Hourly Rate |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Principal | \$240.00 |
| Senior Project Manager | 210.00 |
| Project Manager | 185.00 |
| Professional Engineer | 160.00 |
| <ul style="list-style-type: none"> Civil Engineer Traffic Engineer Hydrology/Hydraulics Engineer Environmental Engineer Construction Engineer | |
| Registered Landscape Architect | \$150.00 |
| Registered Land Surveyor | 145.00 |
| Planner | 145.00 |

TECHNICAL SERVICES

| Classification | Hourly Rate |
|--------------------------|--------------------|
| Senior Designer | \$140.00 |
| Senior Technician | 135.00 |
| Designer | 115.00 |
| Technician | 115.00 |
| Administrative Assistant | 90.00 |

FIELD SURVEY SERVICES

| Classification | Hourly Rate |
|--------------------------------|--------------------|
| Survey Manager | \$145.00 |
| One Man Survey Crew | 150.00 |
| Two Man Survey Crew | 200.00 |
| Three Man Survey Crew | 250.00 |
| 3-D Laser Scanning Survey Crew | 275.00 |
| Unmanned Aircraft Crew | 300.00 |

CONSTRUCTION SERVICES

| Classification | Hourly Rate |
|--------------------------------|--------------------|
| Construction Manager | \$180.00 |
| CEI Resident Engineer | 155.00 |
| Asphalt/Concrete Plant Manager | 130.00 |
| Senior Inspector | 120.00 |
| CEI Contract Specialist | 110.00 |
| Inspector | 95.00 |

EXPENSES

Expenses (not limited) are not included in the service fees of this agreement unless specifically stated.

| | |
|--------------------------------------------------------------------|------------------|
| Travel: | Cost |
| Travel and subsistence expenses (Lodging, meals, mileage, etc.) | |
| Subcontracts: | Cost |
| Sundries / Review/Submittal Fees: | Cost |
| Printing/reproductions: | Commercial Rates |

Review/submittal fees over \$200 are to be paid by the client directly to the jurisdictional agency.

PARTIES, SERVICES, ASSIGNMENT AND ENTIRE AGREEMENT - RaganSmith Associates, Inc., as an independent consultant, agrees to provide consulting services to the Client for the Client's sole benefit and exclusive use. No third party beneficiaries are intended by this agreement. The ordering of services from RaganSmith constitutes acceptance of the terms and conditions set out in this Agreement. This Agreement may not be assigned by either party without prior written permission of the other party. This Agreement constitutes the entire understanding of RaganSmith and the Client and there are no other warranties or representation made other than as set forth herein and specifically within the Agreement.

STANDARD OF CARE - RaganSmith agrees to perform consulting services in accordance with the degree of care and skill ordinarily exercised by other reputable members of our profession under similar circumstances. No warranty expressed or implied is made or intended by this Agreement relating to the services provided by RaganSmith.

CONCEALED OR UNKNOWN CONDITIONS - If conditions are encountered at the site that are concealed or unknown, then RaganSmith will be entitled to an equitable adjustment in the contract sum or contract time or both.

OPINIONS OF COST - When requested by the Client, RaganSmith will use its best efforts, experience and judgment to offer an opinion of estimated construction costs. Such opinions are based on available historical data and are intended to provide an estimate of cost. No warranty of the actual construction cost is expressed or implied.

SITE ACCESS - Client will grant or obtain free access to the site for all equipment and personnel necessary for RaganSmith to perform the services set forth in this Agreement. Client will notify any and all tenants or possessors of the project site that Client has granted RaganSmith free access to the site.

JOB SITE SAFETY - Client agrees that, in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the services, and with compliance with all OSHA regulations. Neither the professional activities of RaganSmith nor the presence of RaganSmith or its employees and sub-consultants on the job site shall relieve the General Contractor of its responsibilities.

INSURANCE - RaganSmith maintains insurance coverage including Workers' Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Errors and Omission Insurance. Certificates of Insurance will be furnished upon request.

LIMITATION OF LIABILITY - In recognition of the relative risks and benefits of the project to both the Client and RaganSmith, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the total aggregate liability of RaganSmith and its sub-consultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, to \$100,000 or RaganSmith's total fee for services rendered on the project, whichever is greater. Such claims and causes include, but are not limited to, claims for negligence, professional errors or omissions, negligent misrepresentation, strict liability, breach of contract, breach of warranty.

WAIVER OF CONSEQUENTIAL DAMAGE - RaganSmith and Client waive their right to recover consequential damages against each other, and RaganSmith and Client do hereby release each other from 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 including damages resulting from the termination of this Agreement.

PAYMENT TERMS - Client will be invoiced once each month for services performed during the preceding period. If payment is not received within thirty (30) days of the invoice date, the Client agrees to pay a service charge on the past due amount of one and one half percent (1 ½%) per month compounded monthly. The Client additionally agrees to pay all attorney fees, collection fees, court and lien costs, and other such expenditures incurred to satisfy any unpaid balance.

LIEN RIGHTS - The parties agree that the design services provided by RaganSmith under this Contract will improve the value of the real property, regardless of whether any physical improvements are made to the property in furtherance of RaganSmith's services, and the parties agree that RaganSmith will have lien rights in and to the property to the extent of the services provided by RaganSmith under this agreement regardless of whether any improvements are made to the property.

DISPUTE RESOLUTION/MEDIATION - In an effort to resolve any disputes that arise during or subsequent to the performance of services outlined in this Agreement, the Client and RaganSmith agree to submit all such disputes to mediation prior to the commencement of litigation.

TERMINATION - The Agreement may be only terminated for cause upon seven (7) days of written notice. In the event of termination, RaganSmith will be entitled to compensation for all services provided and expenses incurred up to and including the termination date.

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Purchase of Portable Flypack

Department: Communications

Presented by: Alan Bozeman

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 a Portable Flyback system for live/recorded video productions

Staff Recommendation

Approve the agreement with United Productions Services, Inc. d/b/a Take One Film & Video for a Portable Flypack system

Background Information

The Communications Department proposes to purchase a Portable Flypack system for live/recorded video productions. A Portable Flypack system will also be used for outdoor productions such as the Murfreesboro Christmas Parade. Additionally, Murfreesboro Parks and Recreation is hosting the Miracle League All Stars Game in September and has requested CityTV to televise these games. A Portable Flypack system will allow this event to be televised.

Council Priorities Served

Establish City Brand

Ability to televise the Miracle League All Stars Game, Murfreesboro Christmas Parade, and other community events the City is involved with.

Fiscal Impact

Total expenditure, \$30,294.46, will be funded from various line items savings within the Communications Department budget.

Attachments

1. ITB-36-2022 Portable Flypack
2. Agreement for Portable Flypack with United Productions Services Inc.



City of Murfreesboro

ITB-36-2022

PORTABLE FLYPACK

WRITTEN PROPOSAL

3/8/22



125 COMMERCE DRIVE HENDERSONVILLE, TN 37075 615.431.5822

WWW.TAKEONE.TV

INTRODUCTION

Take One Film & Video (Take One) is pleased to present this proposal to City of Murfreesboro for the design build of a Portable Flypack for Live/Recorded Video/Audio Production System. The number one goal of Take One is to provide solutions for our clients that meet both technical and budgetary goals. We accomplish this by listening to the needs of our clients and designing systems that blend the right products, at the right price, which meet the right technical specifications. We also put to work our team's seventy-five plus years of combined professional video and audio production experience. This invaluable, real-world experience reveals itself in our designs, builds and training as it offers our clients efficient, high-quality solutions and insightful after-sales support.

The purpose of this written proposal is to communicate the scope of work that we are planning to accomplish. This written proposal will include an equipment, materials, and labor price quote that will list the pricing associated to what has been described within. This proposal will also provide an invoice/payment schedule for the project. This document will also serve as a good will agreement between Take One and City of Murfreesboro. Therefore, it will be agreed upon by both parties and signed accordingly. Once signed, the project will "start," and details described in the following pages will be put into motion.

Take One would like to express our thanks for the opportunity that has been presented to us and we look forward to working with City of Murfreesboro on this important project and continuing to grow our working relationship.

Kind regards,

Chad Hall, President/CEO Take One Film & Video

Jason Kress, VP, Systems Integration, Take One Film & Video

SCOPE OF WORK

Take One has been tasked with providing City of Murfreesboro with the design and build of a Portable Flypack for Live/Recorded Video/Audio Production System.

TAKE ONE WILL BE RESPONSIBLE FOR:

I. BUILDING THE FLYPACK

Take One will engineer and build the portable flypack along with input and approval from City of Murfreesboro

II. PROCUREMENT OF EQUIPMENT AND MATERIALS

Take One will order, purchase, and receive all equipment and materials specified on the equipment list.

SHOP BUILD OF FLYPACK

Take One will configure and build the flypack off site.

DELIVERY, ORIENTATION & TRAINING

Take One will deliver the portable flypack to the client and confirm functionality of the intended design. Take One will also provide a day of training with a Take One Engineer.

CITY OF MURFREESBORO WILL BE RESPONSIBLE FOR:

I. EXTERNAL POWER NEEDS

This "portable flypack" is **NOT** self-powered, requires power of the facilities to operate.

OWNER FURNISHED EQUIPMENT

City of Murfreesboro will provide Take One with all Owner Furnished Equipment (OFE) specified in this bid. Client is responsible for OFE compatibility and their conditions of operation and their own warranties.

II. ANY INTERCONNECT / NETWORK

City of Murfreesboro will be responsible for any facility interconnect(s) or networking needs of the portable flypack. Cases will be autonomous in their features, but network and third-party interconnects are not provided for and the responsibility of the client.

CHANGE ORDERS

Even with a good design and equipment list in place, the need may arise to make changes to the original design, equipment list and/or scope of work that has been agreed upon. Any change to the original design, equipment list and/or scope of work at the request of City of Murfreesboro (or due to an "act of God") that requires additional equipment, materials and/or labor will be constituted as a change order. Take One will provide pricing to City of Murfreesboro before any change is made. Upon the approval of the change order and respective pricing, Take One will move forward to accomplish the change. Changes needed resulting from equipment being on back order for an

unreasonable amount of time or simply a discontinuation of a piece of equipment will not be the responsibility of Take One. These types of occurrences are outside the control of Take One. A change order needed and resulting from equipment availability will be fully documented and City of Murfreesboro will be provided cost changes. Once approved by City of Murfreesboro, Take One will proceed with the change. Our goal with change orders is to simply make sure that we reasonably cover our costs when changes to the system do occur.

WARRANTY

Take One offers a 1-year warranty on all cables, connectors, and wiring integrity for the complete system. If any cable goes "bad" or any connector is determined to be faulty for any reason, Take One will replace it at no additional charge to City of Murfreesboro. All manufacturers' individual warranties apply per each piece of equipment. Take One will assist in facilitating a return or repair that falls under the manufacturer's warranty. Take One has very good relationships with our vendors, and we will use that as leverage to make sure any equipment issues are taken care of in timely fashion and with excellence. All related shipping costs for a repair or replacement of a piece of equipment will be the responsibility of City of Murfreesboro.

CONFIDENTIALITY

All information provided by Take One Film & Video within this agreement or corresponding documents (including quotes) shall be kept strictly confidential unless disclosure is required by law. Design details, drawings, and other illustrations provided shall be considered the Intellectual Property of Take One Film & Video and shall not be disclosed to any other vendor of City of Murfreesboro or for any purpose other than described within this agreement.

EMPLOYMENT SOLICITATION

City of Murfreesboro understands and acknowledges that Take One Film & Video has expended and continues to expend significant time and expense on its personnel and that the loss of personnel would cause significant and irreparable harm to Take One Film & Video. City of Murfreesboro agrees and covenants NOT TO SOLICIT directly or indirectly, hire, or recruit, or attempt to solicit, hire, or recruit, any full-time Take One Film & Video personnel for a period of one year from the end of the current project. This provision explicitly covers all forms of communication.

INVOICING AND PAYMENT SCHEDULE

The following invoice and payment schedule will be used for the project. Our goal at Take One is to balance payments with the progress of the project. Equipment and materials purchases happen at the start of the project and labor is allocated across the whole course of the project. The "start date" of the project will be the noted as the date that City of Murfreesboro returns this signed written proposal.

INSTALLMENT #1: DOWN PAYMENT: An invoice for installment #1 will be sent within 3 business days of the start date of the project. It will be **due upon receipt**. It will contain the following:

1. 60% of all equipment pricing (with associated taxes).
2. 60% of all materials pricing (with associated taxes).
3. 40% of all labor pricing.

INSTALLMENT #2: Installment #2 will be **invoiced 10 calendar days from start date of the project** and will be **due net 7 days**. It will contain the following items:

1. 40% of all equipment pricing
2. 40% of all materials pricing
3. 40% of all labor pricing
4. 100% of all change order pricing incurred up until the time of Installment #2

INSTALLMENT #3: Installment #3 will be **invoiced at the close of the project** when it is agreed upon between Bentkey and Take One that the project is complete. It will be **due net 7 days**. It will contain the following:

1. 20% of all labor pricing
2. 100% of all change order pricing occurring between Installment #2 and Installment #3
3. 100% of all final shipping costs

AGREEMENT

Upon review to the above pages, the below signatures represent the agreement to those items. This document therefore serves as a good will agreement between Take One Film & Video and City of Murfreesboro for the design and build of a video production set.

City of Murfreesboro Representative, Title

DATE

Take One Film & Video Representative, Title

DATE

Purchasing Department
111 West Vine Street
Murfreesboro, TN 37130
615.849.2629
purchasing@murfreesborotn.gov



Thank you for your interest in working with the City of Murfreesboro on this project. Please complete the form below. The information provided will be incorporated into the sample agreement provided in the bid document once the award has been issued.

Bid Name/Project

ITB - 36-2022 - Portable Flypack

Company Name

Take One Film & Video

State of Business Registration

TN

Type of business entity (sole proprietorship, corporations, LLC)

S-Corp

Authorized Company Signatory Information

(This is the person authorized to bind the company in a contract)*

Name

William Chad Hall

Title

President / CEO

Email Address

chad@takeone.tv

Notices to Contractor/Vendor to

Name

Jason Kress

Address

125 Commerce Dr., Hendersonville, TN

Email Address

jason@takeone.tv

37075

*The City utilizes DocuSign for electronic signature of contracts.

SIGNATURE SHEET

I, the undersigned, do hereby agree to all terms and conditions listed within this formal solicitation, and will supply all information as required in this solicitation.

COMPANY NAME: Take One Film & Video

ADDRESS: 125 Commerce Drive
Hendersonville, TN 37075

TELEPHONE: 615-431-5822 FAX: _____

EMAIL: mail@takeone.tv

ADDENDUM ACKNOWLEDGEMENT

The proposer shall acknowledge obtaining all addenda issued to this formal solicitation within your response in the City's eProcurement Portal. Failure to acknowledge all addenda may be cause for rejection of the response.

AUTHORIZED SIGNATURE: 

TITLE: President / CEO

(Print / type name as signed above): William Chad Hall, President

DATE: March 8, 2022

******SIGN AND SUBMIT WITH BID PACKAGE******

REFERENCE LISTING FORM

List a minimum of 3 references (other than the City of Murfreesboro) for similar projects and contracts, preferably governmental, which you have completed within the past 5 years.

1 CUSTOMER NAME: City of LaVergne
ADDRESS: 5093 Murfreesboro Rd
LaVergne TN 37086
TELEPHONE: (615) 287-8678 EMAIL: j.davenport@laVergne.tn.gov
CONTACT NAME: JERRY DAVENPORT
DATE OF COMPLETION OF PROJECT: 10/20
CONTRACT AMOUNT: \$ 14.5/K

2 CUSTOMER NAME: Vanderbilt University
ADDRESS: 2601 Jess Neely Dr - McGuffin Complex
Nashville TN 37212
TELEPHONE: (615) 322-6016 EMAIL: STEVEN.PARKS@Vanderbilt.edu
CONTACT NAME: STEVEN PARKS
DATE OF COMPLETION OF PROJECT: 12/20
CONTRACT AMOUNT: \$ 172/K

3 CUSTOMER NAME: University of Kentucky
ADDRESS: 388 Lexington Ave #101 Joe Craft Center
Lexington KY 40506
TELEPHONE: (859) 361-1149 EMAIL: cmatekovich@uky.edu
CONTACT NAME: CLIFF MATEKOVICH
DATE OF COMPLETION OF PROJECT: 7/21
CONTRACT AMOUNT: \$ 40/K

My company has been in this type of business for 13 years


State License Number: 602855

Expires: 4/1/2023

*****SIGN AND SUBMIT WITH BID PACKAGE*****

Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to T.C.A. §12-12-106.

Signature:  Date: 3/8/22

Title: President / CEO

*****SIGN AND SUBMIT WITH BID PACKAGE*****


**BIDDER AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND
CERTIFICATE**

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. It has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this Affidavit; or,
2. It operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005, 3006, and 3023 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the City.

Take One Film & Video
Name of Bidder

William Chad Hall, President
Printed Name and Title of Principal Officer


Signature by Principal Officer

*****SIGN AND SUBMIT WITH BID PACKAGE*****

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of TN)

County of Sumner)

_____, being first duly sworn, deposes and says that;

- (1) The undersigned is the (owner, partner, officer, representative, or agent) of Take One Film + Video, the bidder submitting the attached bid.
- (2) Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or, to fix any overhead, profit or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract;
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest, including this affidavit.

(Signed) _____

(Title) _____

**This form does not require a notary signature; it only requires the officer of the company to sign affirming the affidavit*



This Invitation to Bid (ITB) is subject to the instructions, conditions, specifications, addenda, and any other elements of this ITB, including those incorporated by reference.

DATE ISSUED: 02/22/2022

BID TITLE: Portable Flypack for Live/Recorded Video/Audio Production System

CITY CONTACT PERSON: Cathy Smith

TELEPHONE NUMBER: (615) 849-2629

E-MAIL ADDRESS: purchasing@murfreesborotn.gov

All bid responses must be received and acknowledged by the Purchasing Department on or before the day and time listed below, at which time all bids will be publicly opened and read aloud via Zoom. A link will be provided to all those registered as following this bid. All bids must be submitted electronically via ProcureNow.

Bid must include the bid title, bid opening date, and the bidder's name. Failure to provide this information may result in the bid not being considered. Do not submit bids by fax. Bids submitted by fax cannot be accepted or considered for award.

BID OPENING DATE: March 8, 2022

BID OPENING TIME: 2:00 p.m., Central Standard Time

1. INSTRUCTIONS AND CONDITIONS

1.1. Bid Submission to the City of Murfreesboro

The City is seeking bids for "ITB-36-2022 - Portable Flypack for Live/Recorded Video/Audio Production System" for the City of Murfreesboro Communications Department. The scope of work is set forth in the specifications in Section 2 of this ITB. Electronic bids will be received by the City of Murfreesboro, until 2:00 p.m. local time on March 8, 2022, at which time the bids will be opened via Zoom. A Zoom link will be provided to all those proposers on file as following this ITB via ProcureNow.

1.2. Deadline and Late Responses.

No bids received after bid opening date and time will be accepted. The City will accept bids submitted electronically via our procurement portal, ProcureNow.

1.3. Organization of Bid and Completeness.

Please submit an electronic bid via our procurement portal, ProcureNow, at the website listed in Section 1.13. It shall be the sole responsibility of the bidder to have the bid delivered to the City before the bid deadline.

Partial or incomplete bids will be rejected. All bid responses should be typewritten. If not typewritten, they must be written in ink and clearly legible, and numbers must be expressed in both words and figures. Erasures, white-outs, typeovers, and other modifications should be initialed. Bidders are cautioned to verify their bid response prior to submission.

1.4. Signature.

All bids must be signed by a duly authorized officer of the company empowered with the legal right to bind the company. A typed name will not be acceptable without the person's written signature as well. Signatures are required where indicated; failure to comply with this requirement shall be cause for rejection of bid. All submitted bids must be binding for a period of ninety (90) calendar days from the bid submission deadline. The Signature Sheet must be uploaded to ProcureNow with the bid submission.

1.5. Response to Terms and Conditions.

Unless an exception is taken, the awarded contract will contain the requirements of this Invitation to Bid. In its sole discretion, the City reserves the right to either consider or reject any bid which takes exception to the specifications or attached contract.

1.6. Completeness of Invitation to Bid ("ITB").

These documents, and those listed on ProcureNow, constitute the complete set of specification requirements and ITB. The bidder is responsible for ensuring that all pages and all addenda are received. The City advises all bidders to closely examine this ITB package and immediately direct any questions regarding the completeness of this ITB package and any addenda thereto to the City's Contact Person via ProcureNow.

1.7. Bid Interpretation. Communication with the Purchasing Department

Cathy Smith is the City's contact for coordinating communications between the department and firms submitting bids. If additional information is required in order to make an interpretation of items in this ITB, questions will be accepted until five calendar (5) days prior (03/01/2022) to the bid opening date. All questions regarding the ITB should be addressed via ProcureNow Question/Answer tab or to purchasing@murfreesborotn.gov. The City specifically requests that

no contact concerning this ITB be made with any other City personnel until the selection process has been completed. Failure to honor this requirement will be viewed negatively in the award process and may result in the disqualification of a bid.

1.8. Discrepancies, Errors, and Omissions.

Any discrepancies, errors, omissions, or ambiguities in this ITB, the specifications or addenda (if any) should be reported to the contact person for the City. If necessary, a written addendum will be issued on ProcureNow, notifications made to firms on record, and the addendum will be incorporated in the ITB and will become part of the contract. The City will NOT be responsible for any oral instructions, clarifications or other communications and no such oral communication may be relied on by any bidder.

1.9. Errors.

Certain mistakes may be corrected so long as the intended correct bid response is clearly evident. In the event of a disagreement between unit price and extended price, the unit price will control.

1.10. Further Negotiation.

The City reserves the right to further negotiate contract terms, after the ITBs are opened, with any potential vendor if such is deemed necessary at the discretion of the City.

1.11. Economy of Preparation.

ITB should be prepared simply and economically, providing a straightforward, concise description of bidder's capabilities to satisfy the requirements of the ITB. Emphasis should be on completeness and clarity of content.

1.12. Subcontracting.

If any part of the work is, or is to be, subcontracted, the bidder shall provide within the ITB a description of the subcontracting organization and the contractual arrangements made therewith. All subcontractors will be subject to approval by the City. The successful bidder will also furnish the corporate or company name and the names of the officers or principals of said companies proposed as subcontractors by the bidder.

1.13. Bid Modification & Registration.

Bids may be modified, withdrawn, and/or resubmitted in writing to the City prior to the deadline for bid submission via the procurement portal. After this deadline, no withdrawals or resubmissions may be made for any reason. Bidders must register with **ProcureNow** to ensure that all relevant written communications are available to them in the preparation of their proposal. Registration can be accomplished through the website:

<https://secure.procurenw.com/portal/murfreesborotn>.

1.14. Tax Exempt.

The City is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded firm. Contractors doing business with the City shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the City, nor shall any vendor be authorized to use the City's Tax Exemption Number in securing such materials.

1.15. Contract Term.

If an award is made, any contract resulting from this ITB will be effective on the date the contract is signed. The contract shall not be effective until approved by the City Council and signed by all required parties. The term shall be 6 months from the Effective Date.

1.16 Pricing Effective for Six (6) Months.

The successful bidder shall provide in the bid price the cost for services rendered. Pricing shall be effective for six months from date of bid award. If, in the bidder's opinion, additional equipment or services are necessary to make the equipment fully operational, this shall be included with explanation in the bid. It is requested that bidders raise any such questions in advance of submitting a bid to the City. To submit a bid implies consent to the terms set forth in this ITB.

1.17 Approval Required.

No award or acquisition can be made until approved by the City Council. The City will not be obligated to bidders for equipment and/or services until the completion of a signed contract approved by authorized officials of the City. This solicitation in no manner obligates the City to the eventual rental, lease, or purchase of any equipment or services described, implied, or which may be proposed, until confirmed by a written contract. Progress towards this end is solely at the discretion of the City and may be terminated at any time prior to the signing of a contract.

1.18 Evaluation of Bid. Any contract awarded pursuant to this ITB shall be awarded to the lowest responsive and responsible bidder whose bid response meets the requirements and criteria set forth in this ITB. A "responsive bidder" means a person who has submitted a bid response, which conforms in all material respects to the ITB. A "responsible" bidder means a person who has the capacity, reputation, and experience in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance within the time specified without delay or interference. The City may make such investigations as deemed necessary to determine the ability of the bidder to provide the products and services required by the bid package. Any items proposed deemed not of equal and/or better and of comparable quality as that specified shall be cause for rejection of a bid. The City will evaluate bid based on lowest cost which fully conforms to specifications and whether the proposed costs and terms are, in the City's judgment, consistent with current market pricing, appropriate for the services provided, and commensurate with the level of quality expected. In addition to the price, the following aspects will be considered in the award of a contract:

- 1.18.1** The ability of the bidder to perform the contract or to provide the material for service required;
- 1.18.2** Whether the bidder can perform the contract and provide the material or service promptly or within the time specified without delay or interference;
- 1.18.3** The character, integrity, reputation, experience, and efficiency of the bidder;
- 1.18.4** The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- 1.18.5** The ability of the bidder to provide future maintenance and service for the use of the subject contract;
- 1.18.6** Terms and conditions stated in the bid;
- 1.18.7** Compliance with specifications or the ITB;
- 1.18.8** Utilization of the format set forth in this ITB for submittal of a bid; and,
- 1.18.9** Bidder's past performance with the City.

1.19 Terms and Conditions.

The City reserves the right to reject any and all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept the bid (or bids)

which, in the judgment of the governing body, is in the best interest of the City. The City also reserves the right to make revisions to any quantity shown on the bid form dependent upon bid prices and available funding. Prices bid on each item shall be firm regardless of the actual quantity of item(s) purchased.

1.20 Withdrawal of Bid.

No bidder may withdraw its bid for a period of ninety (90) calendar days after the date and time set for the opening of the responses. In the event the City awards a contract to a bidder and during such ninety (90) day period determines that such bidder will be unable to properly perform the contract, the City reserves the right to terminate the contract and award the contract to the next best offer without being required to re-advertise the project.

1.21 Cost of Response.

The City will not be liable for any costs incurred by the bidders in preparing a response to this solicitation. Bidders will submit responses at their own risk and expense. The City makes no guarantee that any equipment or services will be purchased as a result of the solicitation and reserves the right to reject any and all responses. All responses and their accompanying documentation will become the record of the City.

1.22 Contract.

The successful bidder's response to this ITB shall be included as an addendum to the contract. Should any conflict or discrepancy arise between the ITB and the contract, the contract shall control. All bidders who are awarded contracts pursuant to this ITB agree to be bound by the terms and conditions set forth in the sample City Contract provided at the end of this ITB. If the bidder objects to any contract terms or proposes any additional terms, such objections and terms must be set forth in the bid. Rejection of any proposed City Contract terms may be a basis for rejection of the bid.

1.23 Contract Termination.

The City reserves the right to cancel the contract for the equipment without cost or penalty to the City if, in the City's opinion, there is a failure at any time by the contractor to adequately perform the contract, or if there is any attempt to willfully impose upon the City a material or product or workmanship which is, in the opinion of the City, of an unacceptable quality. Cancellation of the contract shall not impair any rights or claim of the City to damages for the breach of any covenants of the contract by the contractor.

The contract awarded may be terminated upon any of, but not limited to, the following occurrences:

- 1.23.1** Bankruptcy or insolvency of the bidder or one or more of the bidder's principal owners;
- 1.23.2** Unauthorized substitution of products other than those identified in the specifications or specifically approved by the City as a substitute prior to award of the contract;
- 1.23.3** Unsatisfactory performance of products supplied by the bidder or services provided by the bidder;
- 1.23.4** Fraud or;
- 1.23.5** Any other breach of the terms of the ITB specifications or contract.

1.24 Contract Modification.

The contract may be modified only by written amendment executed by all parties and their signatories hereto.

1.25 Replacement or Repair.

No waiver of any provision of the contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

The City, at its option and in lieu of immediate termination, may request the awarded bidder replace or repair any defective goods or correct performance by written notice to the contractor. In that event, the contractor shall take corrective action within the amount of time specified by the City in the written notice. Exercise of this option shall not relieve the contractor of any liability to the City for damages for the breach of any covenants of the contract by the contractor.

1.26 Expense of Legal Action.

The venue for any legal action shall be in the courts of Rutherford County, Tennessee. Awarded bidder agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the City prevails, awarded bidder shall pay all expenses of such action including the City's attorney fees and costs at all stages of the legal action.

1.27 Governing Laws.

The validity, construction and effect of the contract, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.

1.28 Severability.

Should any provision of the contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of the contract. Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.

1.29 Indemnification and Hold Harmless.

1.29.1 Contractor shall indemnify and hold harmless the City, its officers, agents and employees from: i) any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omission of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this contract; and ii) any claims, damages, penalties, costs, and attorney's fees arising from any failure of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

1.29.2 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.

1.30 Statutory Disqualification.

By submitting a response, it is represented that neither it nor any of its officers, directors, shareholders, member, or partners has been convicted or plead guilty or nolo contendere to any violation of the Sherman Anti-Trust Act, mail fraud, or other state or federal criminal violation in connection with a contract let by the City of Murfreesboro or any political subdivision of the State of Tennessee.

1.31 Contractor's Employment Practices.

Bidder, after being first duly sworn, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color,

national origin, age or sex and it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

1.32 City's Employment Practices.

It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

1.33 Conflict of Interest.

By submitting a response, it is represented that no officer, committee member, or director of the City or other persons whose duty is to vote for, let out, overlook, or in any manner supervise any work on any contract for the City has a "direct interest", as defined by T.C.A. §12-4-101, in the bidder or in the work which is subject to this ITB.

1.34 Ethical Standards.

Bidder understands that it shall be 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 bid therefore.

1.35 Breach of Ethical Standards.

A breach of ethical standards could result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under City contracts.

1.36 Payments.

Payments under the contract shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. Payments under the contract shall be made by the City after services have been accepted and properly invoiced as indicated in the contract and/or purchase order. Invoices must bear the purchase order number. The final payment shall not be made until after the performance is complete.

1.37 Codes & Regulation.

All services and/or equipment must comply with city, county, state, and federal laws, rules, codes and regulations. The contractor will obtain and pay for all permits, if any, necessary to complete the work.

1.38 Iran Divestment Act of Tennessee

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to Tenn. Code Ann. §12-12-106. Bids not conforming with this provision shall not be considered. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered.

2. BID SPECIFICATIONS

2.1. Scope of Project

The purpose of this Invitation to Bid (ITB) is to purchase a Portable Flypack for Live/Recorded Video/Audio Production System based on specifications below for the Murfreesboro Communications Department. The flypack must meet specifications with audio and video format and resolution that match output of the studio located at City Hall.

2.2. Specifications

The City of Murfreesboro reserves the right to waive minor technicalities on bid proposals when it is in the best interest of City. If award is made by the City, a contract will be initiated and approved by City Council and subsequently, a Purchase Order will be forwarded to the successful bidder.

A blanket statement that equipment proposed will meet all requirements will not be sufficient to establish equivalence. Original manufacturer's brochures of the proposed unit are to be submitted with the proposal, NO EXCEPTIONS.

The specification herein states the requirements of the City of Murfreesboro. Unauthorized conditions, limitations, or provisions shall be cause for rejection. Any bid not prepared and submitted in accordance with the bid document and specification, or any bid lacking sufficient technical literature to enable City of Murfreesboro to make a reasonable determination of compliance to the specification will be considered "non-responsive" and grounds for rejection.

Inspection Upon Delivery of the specified vehicles and equipment - City of Murfreesboro will conduct an in-depth initial visual examination solely for the purpose of identifying gross and obvious damage as well as equipment specifications. The bidding company representative shall be present for the initial examinations. If defects, omissions, or any deviations from these specs are discovered during the inspection, the City will refuse acceptance of any/all units.

BIDDER MUST MARK YES/NO TO THE FOLLOWING: Failure to Mark each individual line item will result in bid being considered non-responsive. If Bidder marks "NO", please explain in detail. The City will determine eligibility requirements.

****This form must be submitted with the bid form****

| SPECIFICATION CHECKLIST | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| Portable Flypack for Live/Recorded Video/Audio Production System | Yes | No |
| A. Cases | ✓ | |
| 1. Two (2) Roaddog 5MFP-7RU Portable Cases. One to include a 22" Viewsonic Monitor. | ✓ | |
| B. Video Components | | |
| 1. Ross Carbonite Black SOLO 1 M/E Live Production Switcher (CB-SOLO) including LiveCG License and Dashboard software. Requires BNC SDI 1080i/59.94/16/9 video with embedded audio output with reference 1080i/59.94/16/9 for AJA Ki Pro and LiveU. Requires Input 1-5 to be connections to five (5) Sony PMW-300k1 and/or PXW-Z280 camcorders (CITY SUPPLIED CAMCORDERS) via 1080i/59.94 SDI BNC. Input 6 to be full page graphics from laptop (CITY SUPPLIED LAPTOP) running LiveCG software. Bidder installs and configures LiveCG software onto the laptop and integrates with switcher. | ✓ | |
| 2. HP EliteDesk 800 G6 Mini Desktop Computer (ElitDesk) i7 Processor, 16Gb RAM, 512Gb SSD to use with Ross Dashboard software (Ross Dashboard software installed and configured by Bidder) | ✓ | |
| 3. Dell KM7120W Wireless Keyboard and Mouse for computer. | ✓ | |
| 4. EXISTING EQUIPMENT PROVIDED BY THE CITY TO BE INTEGRATED BY THE BIDDER INTO THE SYSTEM: AJA Ki Pro Rack File Based Recorder/Player. Bidder will configure and connect the Recorder/Player to BNC 1080i/29.97 input with a Record Format to 1080i/29.97 Pro Res 422 and 2 Channels analog XLR audio so storage modules will work interchangeably with other existing Ki Pro units in Communications Department. | ✓ | |
| 5. EXISTING EQUIPMENT PROVIDED BY THE CITY TO BE INTEGRATED BY THE BIDDER INTO THE SYSTEM: LiveU LU-300 Compact HEVC encoder for live video/audio transmissions. Bidder will configure a BNC SDI 1080i embedded audio output connection of the system to LiveU. | ✓ | |
| C. Audio Components | | |
| 1. Yamaha TF-RACK 3RU 16x8 Digital Mixer. Mixer will have 8 XLR inputs configured for use with existing City-supplied microphones requiring phantom power and/or an output of another external audio mixer board. Bidder installs and configures Yamaha TF StageMix app on iPad Pro (CITY-SUPPLIED IPAD) for use with mixer. | ✓ | |
| 2. Sennheiser EW IEM G4-TWIN A1 Wireless Monitoring Set with SR IEM G4 Transmitter and (2) EK IEM G4 Receivers. Two receivers to be configured and tested. | ✓ | |
| 3. EXISTING EQUIPMENT PROVIDED BY THE CITY TO BE INTEGRATED BY THE BIDDER INTO THE SYSTEM: RTS BTR-800 1RU UHF Intercom Unit | ✓ | |

| | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|
| | | |
| D. Networking/Power | | |
| 1. Two (2) Tripp Lite SMART1000RM1U Smart UPS Back Ups, 1U Rackmount | ✓ | |
| 2. Two (2) Whirlwind Power Link PLR-PS1 Rack Mount Strip for Portable Power Distribution | ✓ | |
| 3. One (1) Cisco SG350-28MP-K9-NA 28-Port Gigabit PoE Managed Network Switch | ✓ | |
| 4. One (1) Cisco SG110-24HP-NA 24-Port Unmanaged PoE Network Switch | ✓ | |
| | | |
| E. Labor | | |
| 1. All Labor to Design, Build, Rack, Integrate, and Configure System. Bidder responsible for making certain all features and workflow of the flypack system are working and functioning properly. Provide drawings of flypack system configuration. | ✓ | |
| 2. Turn over all warranty cards/information, instruction manuals, equipment list with serial numbers, and service manuals to the City's representative. | ✓ | |
| 3. Training on setup and operation of the system. | ✓ | |
| | | |
| F. Materials | | |
| 1. All cable and materials to integrate functional video and audio systems into flypack including panels to connect field cameras video and audio sources. Panel configurations to be based on City recommendations including providing 5 inputs for field camera and outputs for LiveU LU-300 and confidence monitor SDI with embedded audio (CITY SUPPLIED MONITOR) to verify audio and video signals. Audio auxiliary balanced XLR and 1/4" unbalanced outputs needed for portable speakers (CITY SUPPLIED SPEAKERS). | ✓ | |

**PURCHASING DEPARTMENT
BID FORM**

Name of Bid:
ITB-36-2022 - Portable Flypack for Live/Recorded
Video/Audio Production System

Name of Bidder:
Date:

INSTRUCTIONS:

All prices must include all costs. Costs included in the bid prices shall include services rendered, labor, set-up, accessories, training, shipping, and any other standard equipment necessary provide this service. Pricing for each component shall be effective for six (6) months from date of bid award. The City is not subject to sales tax.

| ITEM NO. | QUANTITY (ESTIMATED) | UNIT | DESCRIPTION | UNIT PRICE | TOTAL |
|----------|----------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------|
| 1 | 1 | Ea. | Portable Flypack System for Live/Recorded Video/Audio Production System <u>Specification Checklist must be included with each Bid Form</u> | \$ <u>30,294.⁴⁶</u> | \$ <u>30,294.⁴⁶</u> |

GRAND TOTAL: \$ 30,294.⁴⁶



Take One Film & Video
125 Commerce Drive
Hendersonville, Tennessee 37075
615.431.5822

Company:
City of Murfreesboro, TN

BILL TO:
City of Murfreesboro, TN
Finance Dept
PO Box 1139
Murfreesboro, TN 37133

Take One Contact:
Chris Forte
615.431.5822
chris@takeone.tv

Customer Contact:
Alan Bozeman
615-848-3245 x1501
abozeaman@murfreesborotn.gov

SHIP TO:

ESTIMATE #
CF22-03081444

DATE
3/8/2022

TIME
2:44 PM

SUBJECT
ITB-36-2022
Portable Flypack
REVISED 03-14-2022

Video

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------|-------------|-----|-------------|
| 01-01 | Ross | CB-SOLO | Carbonite Black SOLO 1 M/E Live Production Switcher with 9 Inputs and 6 Outputs All-In-One <i>*LiveCG license is being included</i> | \$ 5,764.50 | 1 | \$ 5,764.50 |
| 01-02 | AJA | KI-PRO-RACK-R0 | Rackmount File Based Recorder/Player, with ProRes 422 and DNxHD <i>*6 Month Lead Time</i> | OFE | 1 | OFE |
| 01-03 | LiveU | LU-300 | Compact HEVC encoder for live transmission on-the-go. | OFE | 1 | OFE |
| 01-04 | HP | EliteDesk | EliteDesk 800 G6 Mini Desktop Computer i7 16GB 512GB RAM | \$ 1,621.20 | 1 | \$ 1,621.20 |
| 01-05 | Dell | 580-AISY | Multi-Device Bluetooth Keyboard and Mouse Combo | \$ 96.79 | 1 | \$ 96.79 |

SECTION SUB TOTAL \$ 7,482.49

Audio

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------|-----|-------------|
| 02-01 | Yamaha | TF-RACK | 3RU 16x8 Digital Mixer | \$ 1,750.70 | 1 | \$ 1,750.70 |
| 02-02 | RTS | BTR-800 | 1RU UHF Intercom Unit | OFE | 1 | OFE |
| 02-11 | Sennheiser | EW IEM G4-TWIN-A1 | Sennheiser EW IEM G4-TWIN-A1 Wireless Stereo Monitoring Set w / SR IEM G4 Transmitter & (2) EK IEM G4 Receivers <i>(470-516)</i> | \$ 1,316.38 | 1 | \$ 1,316.38 |

SECTION SUB TOTAL \$ 3,067.08

Networking/Power

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|------------------|-----------------------------------------------------------------------------------------------|-------------|-----|-------------|
| 03-01 | Tripp Lite | SMART1000RM1U | Tripp Lite 1000VA Smart UPS Back Up, Sine Wave, AVR, 120V 800W Line-Interactive, 1U Rackmount | \$ 616.00 | 2 | \$ 1,232.00 |
| 03-02 | Whirlwind | PLR-PS1 | Power Link PLR Power Strip with Powercon 20A I / O - (7) 15A Edison - 15A Circuit Breaker | \$ 258.74 | 2 | \$ 517.48 |
| 03-03 | Cisco | SG350-28MP-K9-NA | 28-Port Gigabit PoE Managed Switch | \$ 1,068.23 | 1 | \$ 1,068.23 |
| 03-04 | Cisco | SG110-24HP-NA | 24-Port Unmanaged PoE Network Switch | \$ 474.58 | 1 | \$ 474.58 |

SECTION SUB TOTAL \$ 3,292.29



Case

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|----------|------------------------------------------------------------------|-------------|-----|-------------|
| 04-01 | Roaddog | 5MFP-7RU | 5 Minute Flypack - 7RU 18" Rack Depth with 22" Viewsonic Monitor | \$ 1,549.00 | 2 | \$ 3,098.00 |

SECTION SUB TOTAL \$ 3,098.86

EQUIPMENT TOTAL \$ 16,939.86

LABOR

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|-------|-----------------------------------------------------------------|-------------|-----|-------------|
| 05-01 | LABOR | LABOR | All Labor to Design, Build and Integrate, and Configure system. | \$ 7,743.12 | 1 | \$ 7,743.12 |

MATERIALS

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|-----------|---------------------------------------------------------------------------|-------------|-----|-------------|
| 06-01 | MATERIALS | MATERIALS | All Cable and Materials to Integrate Functional Video System into Flypack | \$ 3,966.48 | 1 | \$ 3,966.48 |

TRAINING

| SECTION | MANUFACTURER | MODEL | DESCRIPTION | PRICE EA | QTY | EXTENSION |
|---------|--------------|-------|-------------------------------------------------------------------------------|-----------|-----|-----------|
| 07-01 | LABOR | LABOR | OnSite Training w/One Engineer - Per Day 1 day Represented | \$ 725.00 | 1 | \$ 725.00 |

| | | |
|---------------------|----|-----------|
| SUB TOTAL | \$ | 29,374.46 |
| TAX | | - |
| *ESTIMATED SHIPPING | \$ | 920.00 |
| TOTAL | \$ | 30,294.46 |

Quote valid for 15 days

W-9 required upon order. A delay in receiving this information may hinder completion of orders and projects.

Shipping pre-paid and invoiced at cost

Additional 4% Fee for processing Credit Cards

*SALES TAX EXEMPTION STATUS REQUIRES A SALES TAX EXEMPTION CERTIFICATE PRIOR TO ANY PURCHASES

**Agreement
for
Portable Flypack for Live/Recorded Video/Audio
Productions System**

This Agreement is entered into and effective as of the ____ day of _____ 2022, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **UNITED PRODUCTION SERVICES INC.**, a Corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-36-2022 – Portable Flypack for Live/Recorded Video/Audio Production System issued February 22, 2022 (the "Solicitation");
- Contractor's Proposal, dated March 8, 2022 ("Contractor's Proposal");
- Contractor's Price Proposal, dated March 8, 2022 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

In the event of conflicting provisions, all documents will be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Solicitation; and
- Lastly, Contractor's Proposal.

1. Duties and Responsibilities of Contractor.

Contractor shall provide and City shall purchase the following equipment based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-36-2022 – Portable Flypack for Live/Recorded Video/Audio Production System."

2. Term.

The term of this Agreement commences on _____ and expires in one year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not

relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. Payment and Delivery.

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal which reflects a total purchase price of **\$30,294.46 (Thirty Thousand, Two Hundred Ninety-Four Dollars and Forty Six Cents)**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. All items must be available for delivery within 180 days from execution of this contract. Delivery shall be done Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. Forty-eight (48) hours advance notice should be given prior to delivery. The equipment shall be delivered to the City of Murfreesboro Communications Department, 111 W. Vine Street, Murfreesboro, TN 37130, attention: Alan Bozeman, abozeman@murfreesborotn.gov; 615-848-3245.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

4. Warranty. Contractor shall provide all warranties as described in the ITB and Bid Proposal.

5. Taxes. The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

6. Insurance. During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

7. Indemnification.

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- c. Copyright, Trademark, Service Mark, or Patent Infringement.
 - I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
 - II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - a. Procure for the City the right to continue using the products or services.
 - b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 - c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
 - III. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

8. **Notices.** Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:
City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

If to Contractor:
United Productions Services INC.
Attn: Jason Kress
125 Commerce Drive
Hendersonville, TN 37075
jason@takeone.tv

9. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be

required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

15. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
16. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
17. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
18. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
19. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
20. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

22. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

IN WITNESS WHEREOF, the parties enter into this agreement as of the effective date first above.

City of Murfreesboro, Tennessee

By: _____
Shane McFarland, Mayor

United Production Services INC.

By: _____
Chad Hall, President/CEO

Approved as to form:

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Community Investment Program Funds Transfer

Department: Finance

Presented by: Jennifer Brown

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 for the Street Department:

Masonbrooke Road Development

Transfer \$1,500,000 from Cherry Lane (Sazerak) to Masonbrooke Road Development.

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:


Cherry Lane (Sazerac) \$ (1,500,000.00)

Masonbrooke Road Development 1,500,000.00

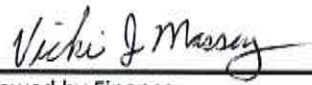
TOTAL TRANSFER \$ (1,500,000.00)

TOTAL TRANSFER \$ 1,500,000.00

Explanation: As part of the Road Development Agreement for Short Term Improvement (STI) 8 Phase 1,
from the 2040 Major Transportation Plan in Masonbrooke Subdivision, the City is required to purchase
ROW, provide for the surveying and design of STI-8 and install the final asphalt surface on the roadway
constructed by Alcorn Properties. It has been requested that funds to be used for this purpose be
transferred from the Cherry Lane (Sazerac) project. After this transfer is made, there will be \$1,593,750
remaining for the Cherry Lane (Sazerac) project.

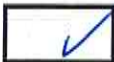

Budget Director Signature

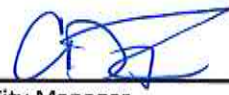
3-4-22
Date


Reviewed by Finance

3-4-22
Date

Approved




City Manager

Declined



3.4.22
Date

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

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: FY22 City Manager Approved Budget Amendments

Department: Finance

Presented by: Jennifer Brown

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 budget amendments.

Background Information

Ordinance 15-O-48 requires notification to Council of City Manager approved budget amendments. The following budget amendments have been approved:

Other General Government

The hard-to-fill Project Engineer position has been supplemented with a contracted engineering firm to assist with plans review. This position has now been filled with full-time staff; however, contracted work will overlap. Move \$50,000 from Unforeseen to Planning Salary – Full-Time - Regular.

Additional engineering plans review services are required. Move \$55,000 from Unforeseen to Planning Professional Services.

For the County portion of the parking garage sprinkler replacement. Move \$115,500 from Unforeseen to Parking Garage Machinery & Equipment.

Council Priorities Served

Responsible budgeting

Inter-Fund budget amendments reallocate resources in an efficient manner.

Fiscal Impact

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

Attachments

Detailed Inter-Fund Budget Requests



... creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2022

Move funds from:

Org 10130008
Object 599909
Acct Name Unforeseen Contingencies
Amount \$ 50,000.00

Move funds to:

Org 10119007
Object 511100
Acct Name Salary - Full-Time - Regular

Explanation: The hard-to-fill Project Engineer position has been supplemented with a contracted engineering
firm to assist with plans review. This position will be filled with full-time staff, however, contracted
work will overlap.

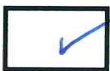
Jennifer B...
Department Head Signature

2/25/22
Date

Amanda DeRosia
Reviewed by Finance

02/25/2022
Date

Approved



Declined



[Signature]
City Manager

2.28.22
Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.



... creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2022

Move funds from:

Org 10130008
Object 599909
Acct Name Unforeseen Contingencies
Amount \$ 55,000.00

Move funds to:

Org 10119008
Object 525000
Acct Name Professional Services

Explanation: To cover additional plans review services.

Jennifer Burr
Department Head Signature

3/2/22
Date

Amanda DeRosia
Reviewed by Finance

03/02/2022
Date

Approved



Declined



[Signature]
City Manager

3.3.22
Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.



... creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2022

Move funds from:

Org 10130008
Object 599909
Acct Name Unforeseen Contingencies
Amount \$ 115,500.00

Move funds to:

Org 10315129
Object 594000
Acct Name Machinery & Equipment

Explanation: For th County portion of the parking garage sprinkler replacement.

Jennifer Burr
Department Head Signature

3/2/22
Date

Amanda DeRosia
Reviewed by Finance

03/02/2022
Date

Approved



Declined



C. D. Tindall
City Manager

3.3.22
Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: IP Telephony Contract Amendments

Department: Information Technology – City Hall

Presented by: Matt Jarratt

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 IP Telephony contract amendments

Staff Recommendation

Approve the amendments to existing IP Telephony agreements.

Background Information

IDeACOM Networks Nashville office (IDeACOM Networks) joined forces and was acquired by a larger group known as Slappey Communications, dba IT Voice (IT Voice) an innovative, IT Managed Services and Voice Technologies company with 8 offices in 6 States, and partner service provider to clients across the country.

Council Priorities Served

Expand Infrastructure

Maintaining technology contracts and keeping information current protects the City's infrastructure

Fiscal Impacts

These amendments have no impact on current contract pricing.

Attachments

1. IT Voice The New IDeACOM Networks Letter
2. Amendment For City of Murfreesboro Agreement
3. Amendment For City of Murfreesboro Facilities Agreement



IT-VOICE The New IDEACOM Networks

City of Murfreesboro Purchasing Department,

As you may have heard, on December 30, 2021, IDEACOM Networks Nashville office (*IDeACOM Networks*) joined forces and was acquired by a larger group known as Slaphey Communications, dba IT Voice (*IT Voice*) an innovative, IT Managed Services and Voice Technologies company with 8 offices in 6 States, and partner service provider to clients across the country. This exciting opportunity for IDEACOM Networks to become part of IT-VOICE enables us to bring more resources to bear for the benefit of our valued customers now and in the future. I hope you'll share our enthusiasm!

Most immediately, we want to assure you that our priorities have not changed as we will continue to provide you quality Mitel support as always. And Slaphey Communications, LLC dba IT Voice retains the same Gold Certified Mitel Partner status and is a registered, value added reseller under Mitel's U.S. Government Program with access to government purchasing contract programs including PEPPM, TIPS and Sourcewell.

Let me also share some administrative information:

- Our updated W-9 form is attached.
- Please update your vendor information systems to reflect these details.
- Please continue to direct all payments to IT Voice The New IDEACOM Networks with the same payment remittance details that can be found on our invoices.

Action Required

The same remittance details will appear on your current invoice and all invoices thereafter. Our preferred method of payment is by ACH or wire. If paying by ACH please update the ACH payment information in your system as follows.

Account Number 01360158167
Routing Number ACH/EFT 044000024

If paying by check, please continue to send payments to the address on the invoice:

If you have any remittance questions, please contact Richelle.deharde@ITVoice.com or call 615 248-5716

Warm regards,

Richelle Deharde



IT VOICE The New IDEACOM Networks

**AMENDMENT #1
TO
AGREEMENT FOR IP TELEPHONY
BETWEEN
THE CITY OF MURFREESBORO
AND
MEEHAN CORPORATION d/b/a IDEACOM NETWORKS
(an authorized reseller for Mitel Networks, Inc.)**

WHEREAS, the City of Murfreesboro ("City") entered into a contract with Meehan Corporation d/b/a IDEACOM Networks, a corporation of the State of Tennessee ("Contractor"), and an authorized reseller for Mitel Networks, Inc. on January 22, 2019, to purchase Communications System services and equipment and the Design, Integration, Support Services from Contractor per Contractor's Proposal dated October 24, 2018, in accordance with The Interlocal Purchasing System (TIPS) Master Agreement NO. 180304 Telephone and Communications Data Systems and Solutions awarded June 22, 2018 to Mitel Networks, Inc.; and,

WHEREAS, the Contractor is an authorized reseller of Mitel Networks, Inc. products and services pursuant to The Interlocal Purchasing System (TIPS) Master Agreement no. 180304 Telephone and Communications Data Systems and Solutions awarded June 22, 2018, to Mitel Networks, Inc.; and,

WHEREAS, Clause 19 of the Contract, allows the Contractor to assign or otherwise transfer this Agreement or any of Contractor's rights or obligations under this Agreement in whole or in part with written consent of City; and,

WHEREAS, Contractor notified the City on March 1, 2022, that Meehan Corporation d/b/a IDEACOM Networks joined forces and was acquired by a larger group known as Slappey Communications LLC d/b/a IT Voice; and,

WHEREAS, City consents to the assignment or transfer of this Agreement to the entity known as Slappey Communications LLC d/b/a IT Voice.

NOW THEREFORE, the City and Contractor mutually agree:

1. To amend the contract to reflect the acquisition of Meehan Corporation d/b/a IDEACOM Networks by Slappey Communications LLC d/b/a IT Voice
2. All other terms of the contract shall remain the same.
3. Amendment is effective as of _____.

CITY OF MURFREESBORO

Shane McFarland, Mayor

**SLAPPEY COMMUNICATIONS LLC d/b/a
IT VOICE**

DocuSigned by:

Will Slappey

Will J. Slappey, IV, Chief Executive Officer

Approved as to form:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

**AMENDMENT #1
TO
AGREEMENT FOR IP TELEPHONY FOR CITY OF MURFREESBORO FACILITIES
BETWEEN
THE CITY OF MURFREESBORO
AND
MEEHAN CORPORATION d/b/a IDEACOM NETWORKS
(an authorized reseller for Mitel Networks, Inc.)**

WHEREAS, the City of Murfreesboro ("City") entered into a contract with Meehan Corporation d/b/a IDEACOM Networks, a corporation of the State of Tennessee ("Contractor"), and an authorized reseller for Mitel Networks, Inc. on June 6, 2019, to purchase Communications System services and equipment and the Design, Integration, Support Services from Contractor per Contractor's Proposal dated May 22, 2019 in accordance with The Interlocal Purchasing System (TIPS) Master Agreement NO. 180304 Telephone and Communications Data Systems and Solutions awarded June 22, 2018 to Mitel Networks, Inc.; and,

WHEREAS, the Contractor is an authorized reseller of Mitel Networks, Inc. products and services pursuant to The Interlocal Purchasing System (TIPS) Master Agreement no. 180304 Telephone and Communications Data Systems and Solutions awarded June 22, 2018, to Mitel Networks, Inc.; and,

WHEREAS, Clause 19 of the Contract, allows the Contractor to assign or otherwise transfer this Agreement or any of Contractor's rights or obligations under this Agreement in whole or in part with written consent of City; and,

WHEREAS, Contractor notified the City on March 1, 2022, that Meehan Corporation d/b/a IDEACOM Networks joined forces and was acquired by a larger group known as Slappey Communications LLC d/b/a IT Voice; and,

WHEREAS, City consents to the assignment or transfer of this Agreement to the entity known as Slappey Communications LLC d/b/a IT Voice.

NOW THEREFORE, the City and Contractor mutually agree:

1. To amend the contract to reflect the acquisition of Meehan Corporation d/b/a IDEACOM Networks by Slappey Communications LLC d/b/a IT Voice
2. All other terms of the contract shall remain the same.
3. Amendment is effective as of _____.

CITY OF MURFREESBORO

Shane McFarland, Mayor

**SLAPPEY COMMUNICATIONS LLC d/b/a
IT VOICE**

DocuSigned by:

Will Slappey

Will J. Slappey, IV, Chief Executive Officer

Approved as to form:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Mandatory Referral for Abandonment of Water and Sanitary Sewer Easement along South Church Street

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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 request to allow abandonment of a water and sanitary sewer easement on property at the southwest corner of South Church Street and Westgate Boulevard.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission voted to recommend approval on March 2, 2022.

The Water Resources Board voted to recommend approval on January 25, 2022.

Background Information

In this mandatory referral [2022-701], Council is being asked to consider the abandonment of a water and sanitary sewer easement on property located along the west side of South Church Street. There is an existing Mapco gas station on the subject property. The easement in question was dedicated in conjunction with a previous redevelopment plan for Mapco, which never materialized. Since the redevelopment never moved forward, no water or sewer infrastructure was ever constructed within this easement. A new site plan for the redevelopment of the site was recently submitted and approved. The development plan is reliant on the abandonment and relocation of this easement. Murfreesboro Water Resources Department (MWRD) Staff does not object to this mandatory referral request. Correspondence from MWRD is included in the agenda materials. The Murfreesboro Water Resources Board met on January 25, 2022 and voted to recommend approval of the easement abandonment request. Planning Staff recommends that the City Council approve this request subject to the following conditions:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument. The legal instrument will be subject to the final review and approval of the City Legal Department.
- 2) The applicant will be responsible for recording the legal instrument, including paying any recording fees.

Council Priorities Served

Establish Strong City Brand

The abandonment of this easement is consistent with the City's goals to be customer service-oriented, relinquishing its rights to a surplus easement so that property owners can more fully enjoy and utilize their property.

Improve Economic Development

The abandonment of this easement will help to facilitate commercial development with the potential of creating jobs and generating tax revenue.

Attachments:

1. Staff comments from March 2, 2022 Planning Commission meeting
2. Memo from MWRD
3. Letter and exhibits from applicant

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
MARCH 2, 2022
PROJECT PLANNER: AMELIA KERR**

- 5.a. Mandatory Referral [2022-701] to consider the abandonment of a water and sanitary sewer easement located on property at the southwest corner of South Church Street and Westgate Boulevard, Josh Hutcheson of Fulmer Lucas applicant.**

This easement abandonment request is from Josh Hutcheson with Fulmer Lucas on behalf of Mapco Express, Inc. which is located on property at the southwest corner of South Church Street and Westgate Boulevard.



In this mandatory referral, the Planning Commission is being asked to consider abandoning an existing water and sanitary sewer easement on property developed with a Mapco gas station. The request is to abandon an existing water and sewer easement as shown in the hatched area on the attached exhibit. This easement was dedicated by plat a few years ago. Mapco now proposes a different layout on the property for a totally new rebuild. A new site plan was submitted and administratively approved on February 16, 2022 and Mapco proposes to relocate the existing water and sewer mains and dedicate new easements. Therefore, this easement is no longer needed.

The Murfreesboro Water Resources Board met on January 25, 2022 and MWRD Staff recommended that the Board recommend to Planning Commission and City Council approval of the abandonment of this existing water and sewer easement.

The Murfreesboro Water Resources Board voted to recommend approval of this abandonment. Staff recommends that the Planning Commission recommend approval to the City Council subject to the following conditions:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument. The legal instrument will be subject to the final review and approval of the City Legal Department.
- 2) The applicant will be responsible for recording the legal instrument, including paying any recording fees.

If approved by the City Council, then the Mayor will be authorized to sign the necessary documents to convey the City's interest back to the owner.



City of Murfreesboro
Mandatory Referral Application

111 W Vine Street • Murfreesboro, TN 37130 • 615-893-6441

Mandatory Referral Fees:

Mandatory Referral, **INCLUDING** abandonment of right-of-way..... \$350.00
Mandatory Referral, **NOT INCLUDING** abandonment of right-of-way..... \$150.00

Property Information: 113K A 00100

113K A 00200

Tax Map/Group/Parcel: 113K A 00204

Address (if applicable): 2430 S. Church Street

Street Name (if abandonment of ROW): No ROW being abandoned

Type of Mandatory Referral: Utility Easement Abandonment

Applicant Information:

Name of Applicant: Josh Hutcheson

Company Name (if applicable): Fulmer Lucas

Street Address or PO Box: 2002 Richard Jones Road, Suite B200

City: Nashville

State: Tennessee

Zip Code: 37215

Email Address: josh@fulmerlucas.com

Phone Number: 615-477-9440

Required Attachments:

- ☒ Letter from applicant detailing the request
- ☒ Exhibit of requested area, drawn to scale
- ☒ Legal description (if applicable)

Applicant Signature

Date

2/2/22

February 2, 2022

Matthew Blomeley
ASSISTANT PLANNING DIRECTOR
MURFREESBORO PLANNING DEPARTMENT
111 W. Vine Street
Murfreesboro, Tennessee 37130

Re: 2430 S Church Water & Sewer Easement Abandonment

Dear Mr. Blomeley,

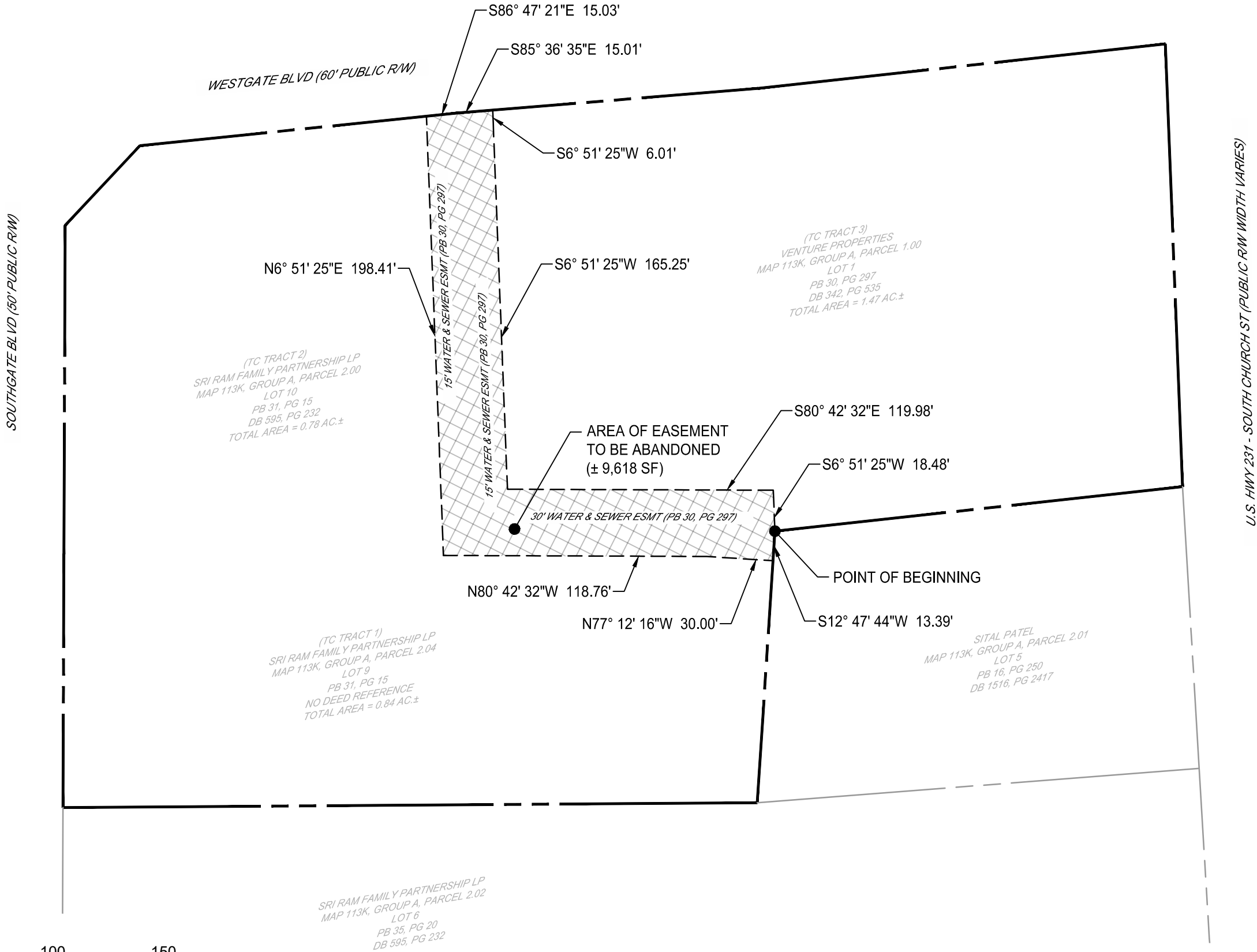
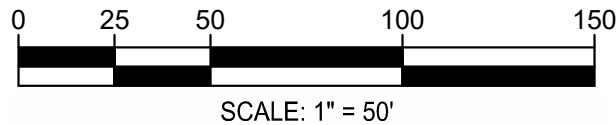
As part of the new Mapco development at 2430 S. Church Street, +/- 9,618 sf of existing utility easement will need to be abandoned for our proposed development. No water or sewer mains were ever installed in this easement. You will find included in this submittal package an exhibit and a legal description of the area being abandoned, as well as a signed Mandatory Referral Application. The Murfreesboro Water Resources Department Board has already approved this easement abandonment. Please put us on the agenda for the March 2nd Planning Commission meeting, and the subsequent City Council meeting.

If you have any questions or require additional information, please contact me via email (josh@fulmerlucas.com) or phone (615-477-9440).

Sincerely,

Josh Hutcheson

Josh Hutcheson, PE



FULMER LUCAS

2002 RICHARD JONES RD - SUITE B200
NASHVILLE, TENNESSEE 37215
INFO@FULMERLUCAS.COM - (615) 345-3770

EXHIBIT FOR:
MAPCO STORE #3312
2430 S. CHURCH STREET
MURFREESBORO, RUTHERFORD COUNTY, TN 37127

SEWER
EASEMENT
ABANDONMENT
EXHIBIT

EXH

AREA OF EASEMENT TO BE ABANDONED (+/- 9,618 SF)

BEGINNING AT THE NORTHWEST CORNER OF THE PROPERTY WITH PARCEL ID 113K-A-002.01-000, THENCE WITH THE FOLLOWING CALLS: SOUTH 12 DEG 47 MIN 44 SEC WEST, 13.39 FEET TO A POINT; THENCE, NORTH 77 DEG 12 MIN 16 SEC WEST, 30.00 FEET TO A POINT; THENCE, NORTH 80 DEG 42 MIN 32 SEC WEST, 118.76 FEET TO A POINT; THENCE, NORTH 06 DEG 51 MIN 25 SEC EAST, 198.41 FEET TO A POINT; THENCE, SOUTH 86 DEG 47 MIN 21 SEC EAST, 15.03 FEET TO A POINT; THENCE, SOUTH 85 DEG 36 MIN 35 SEC EAST, 15.01 FEET TO A POINT; THENCE, SOUTH 06 DEG 51 MIN 25 SEC WEST, 6.01 FEET TO A POINT; THENCE, SOUTH 06 DEG 51 MIN 25 SEC WEST, 165.25 FEET TO A POINT; THENCE, SOUTH 80 DEG 42 MIN 32 SEC EAST, 119.98 FEET TO A POINT; THENCE, SOUTH 06 DEG 51 MIN 25 SEC WEST, 18.48 FEET TO THE POINT OF BEGINNING.



... creating a better quality of life

MEMORANDUM

DATE: January 18, 2022

TO: Water Resources Board

FROM: Valerie H. Smith

SUBJECT: Water & Sewer Easement Abandonment
Mapco – S. Church St.

Background

This easement abandonment request is from Fulmer Lucas on behalf of Mapco. They are requesting the abandonment of an existing water and sewer easement as shown in the hatched area on the attached exhibit. This easement was dedicated by plat a few years ago when the Mapco had a different proposed layout for a total rebuild of the property. Now, with they propose to relocate the existing water and sewer mains and new easements will be dedicated. Therefore, this easement is no longer needed.

Recommendation

Staff recommends approval of abandoning this existing water and sewer easement at the time that the new proposed easement is dedicated.

Fiscal Impact

Not applicable. The easement was dedicated through the recording of a plat.

Attachment

Easement Abandonment Request
Abandonment Exhibit

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Purchase of Office Furniture

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 office furniture for the Police Department.

Staff Recommendation

Approve the purchase of office furniture from Synergy.

Background Information

The Police Department has several offices that have not yet been furnished. One of these offices will be designated as the Real Time Crime Center.

The purchase of furniture is available through the OMNIA and Sourcewell cooperative contracts, which is permitted by State statute and Council resolution. Staff has verified the cost effectiveness of the current contracts.

Council Priorities Served

Responsible Budgeting

By utilizing a cooperative purchasing program, the department benefits from competitive pricing.

Fiscal Impact

Expenditure, \$56,616, is funded by the department's Felony Funds and FY22 operating budget.

Attachments

Contract for Purchase of Furniture for Police Department

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
HENRICKSEN, TN, LLC DBA SYNERGY BUSINESS ENVIRONMENTS
FOR PURCHASE OF
FURNITURE FOR POLICE DEPARTMENT**

This Contract is entered into and effective as of the _____ day of _____ 2022, by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **HENRICKSEN, TN, LLC DBA SYNERGY BUSINESS ENVIRONMENTS**, a Corporation of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***Omnia Contract #R191802 between Omnia Partners and Allsteel, Inc.***
- ***Omnia Contract #R180402 between Omnia Partners and Krueger International. Inc.***
- ***Sourcewell Contract # 121919-HMN between Sourcewell and Humanscale Corp.***
- ***Price Quote Sheet #15138, dated January 19, 2022 based on Cooperative purchasing agreement Sourcewell & Humanscale 121919-HMN***
- ***Price Quote Sheet #15137 dated February 9, 2022, based on Cooperative purchasing agreement Omnia Partners and Krueger International. Inc. R180402***
- ***Price Quote Sheet #15136 dated February 9, 2022, Cooperative purchasing agreement Omnia Partners & All Steele Inc. R191802***
- ***Price quote Sheets #15142, #15145 dated February 10, 2022, Cooperative purchasing agreement Omnia Partners & All Steele Inc. R19180***
- ***Price Quote Sheets #15140 (\$2,144.38), #15143 (\$1,709.54), #15144 (\$1,275.10), #15146 (\$7,467.30), #15147 (\$2,043.43) dated January 19, 2022***
- ***Any properly executed amendments to this Agreement***

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- ***First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)***
- ***Omnia Contract #R191802 between Omnia Partners and Allsteel, Inc.***
- ***Omnia Contract #R180402 between Omnia Partners and Krueger International. Inc.***
- ***Sourcewell Contract # 121919-HMN between Sourcewell and Humanscale Corp.***
- ***Price Quote Sheet #15138, dated January 19, 2022 based on Cooperative purchasing agreement Sourcewell & Humanscale 121919-HMN***
- ***Price Quote Sheet #15137 dated February 9, 2022, based on Cooperative purchasing agreement Omnia Partners and Krueger International. Inc. R180402***
- ***Price Quote Sheet #15136 dated February 9, 2022, Cooperative purchasing agreement Omnia Partners & All Steele Inc. R191802***
- ***Price quote Sheets #15142, #15145 dated February 10, 2022, Cooperative purchasing agreement Omnia Partners & All Steele Inc. R19180***
- ***Price Quote Sheets #15140 (\$2,144.38), #15143 (\$1,709.54), #15144 (\$1,275.10), #15146 (\$7,467.30), #15147 (\$2,043.43) dated January 19, 2022***
- ***Any properly executed amendments to this Agreement***

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase: Office Furniture as set forth in Price Quotes #15140, #15143, #15144, #15146, #15147, # 15136, #15142, #15145, #15137 & #15138. The term of this contract shall be from the Effective Date to the expiration of the Omnia Cooperative Contracts #R191802 and #R191808 on April 30, 2023 & the Sourcewell contract #121919-HMN on February 18, 2024. Contractor's performance may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
 - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.
 - f. Notwithstanding the expiration of the Cooperative Contracts, the terms of this Contract and Contractor's obligations herein shall survive said expiration and continue in full force and effect until: (i) delivery and acceptance of the items or (ii) other termination as provided in this section.

2. **Price; Compensation; Method of Payment.**
 - a. The price for the goods and other items to be provided under this Contract is set forth in the Contractor's Quotes #15140, #15143, #15144, #15146, #15147, # 15136, #15142, #15145, #15137 & #15138 reflecting a combined price of **Fifty-Six Thousand Six Hundred Sixteen Dollars and Seventy-Six Cents (\$56,616.76)**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
 - b. All items must be available for delivery on or before September 30, 2022. Delivery shall be done Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. Forty-eight (48) hours advance notice should be given prior to delivery. The furniture shall be delivered to Murfreesboro Police Department, 1004 N. Highland Ave., Murfreesboro, TN 37130. Contact Jenny Licsko, dlicsko@murfreesborotn.gov, (615) 201-5575 prior to delivery.
 - c. Deliveries of all items shall be made as stated in the Contract documents. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.

- d. Delivered items will not be considered “accepted” until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor’s Quote.
 - e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.
- 3. **Warranty.** Unless otherwise specified, every item shall meet the warranty requirements set forth by the manufacturer.
- 4. **Indemnification.**
 - a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees (“Expenses”) arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
 - c. **Copyright, Trademark, Service Mark, or Patent Infringement.**
 - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
 - ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - 1. Procure for the City the right to continue using the products or services.

2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
 - iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.
5. **Notices.** Notice of assignment of any rights to money due to Contractor under this Contract must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:

City of Murfreesboro
Attn: City Manager
111 West Vine Street
Murfreesboro, TN 37130

If to the Contractor:

Henricksen, TN, LLC dba Synergy Business
Environments
Michael Moore, President
800 Sixth Avenue South
Suite 200
Nashville, TN 37203
E:mail: mmoore@synergybe.com

6. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
7. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
8. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
9. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
10. **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.

11. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
12. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
13. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
14. **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.
15. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder
16. **Integration.** This Contract and Cooperative contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
17. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
18. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action

between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

19. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
20. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution
21. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2022 (the "Effective Date").

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

**HENRICKSEN, TN, LLC DBA SYNERGY
BUSINESS ENVIRONMENTS**

DocuSigned by:
By: Michael Moore
Michael Moore, President

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: True North Work Order No. 4
Department: Police
Presented by: Bill Terry, Public Safety IT Manager
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

True North work order for implementation of Cityworks Storeroom.

Staff Recommendation

Approve Work Order No. 4 with True North for the implementation of Cityworks Storeroom.

Background Information

Council approved the Master Services Agreement with True North Geographic Technologies, LLC on April 11, 2019 for the use of Cityworks licensing. Included in the Cityworks ELA is the Storeroom module for tracking of inventory and assets. The department would like to transition to a digital tracking system with the implementation of Storeroom.

Council Priorities Served

Responsible Budgeting

Efficient tracking of inventory and assets will control overspending.

Fiscal Impact

Expenditure, \$18,960, is funded by the department's FY22 operating budget.

Attachments

True North Work Order No. 4

True North Client Work Order: **MBORO004-03022022**

This Client Work Order, effective as of March ____, 2022, is made pursuant to the Master Services Agreement dated April 11, 2019, ("MSA") by and between True North Geographic Technologies, LLC ("True North") and the City of Murfreesboro ("Client").

1. Scope and Description of Services/Work: **Cityworks Storeroom implementation for the Police Department. The project includes installing Cityworks on an on-premises Police Department server and configuring the Storeroom Application to support Police Department workflows. Cityworks Storeroom tracks incoming and outgoing materials from warehouse or storage areas, including work vehicles. The configuration will allow department staff to manage stock, material cost, suppliers, and requisitions.**
2. Work Products/Deliverables: **Deliverables include 120 hours of professional services for Cityworks Storeroom implementation, training and support. The initial implementation and training will be completed in four (4) to eight (8) weeks. Support will be ongoing.**
3. Term: **March 2, 2022, through June 30, 2023, unless earlier terminated.**
4. Work Order Total Costs: **\$18,960**
5. Supplemental Invoicing and Payment Information: **The hours for professional services described above are based on the attached Enterprise Support pricing model.**
6. The Designated Project Management Representatives responsible for this Client Work Order:

True North:

David Speight
119 MTCS Rd
Murfreesboro, TN 37129
Phone: (615) 890-7728
Fax: (615) 890-7729
E-mail: dspeight@tngeo.com

City of Murfreesboro:

Jenny Licsko
1004 N. Highland Ave.
Murfreesboro, TN 37130
Phone: 629-201-5575
Fax:
E-mail: dlicsko@murfreesborotn.gov

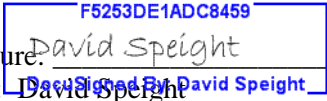

NOTE: Any changes to this Client Work Order, including, but not limited to, any increase in scope, costs, or True North resource hours, shall require a Client Work Order Amendment.

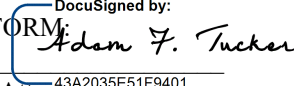
The undersigned designated Client Project Management representative has reviewed and concurs with all aspects of this Client Work Order and is the Client representative authorized to approve True North's expenditure and use of any of this Client Work Order's allotted True North resource hours in the performance of this Client Work Order.

Concurrence By:
Client Management Representative

Signature: _____
Name: _____
Title: _____
Date: _____

Accepted By:
True North Geographic Technologies, LLC

Signature: 
Name: 
Title: President
Date: 3/9/2022

APPROVED AS TO FORM: 
Adam F. Tucker, City Attorney



ArcGIS/Cityworks Support Blocks

Support Blocks are discounted blocks of support hours purchased in advance for customers who do not have a long-term Master Services Agreement with True North. Because support blocks are agreements with no expiration date, there is no risk involved. Support hours can be used as needed without concern over losing the support investment. In addition, for customer convenience, True North will track the usage of support blocks and provide a report documenting hours as they are used.

Standard Support Blocks

Listed below are the options for purchasing Standard GIS Support Blocks as of January 1, 2022:

| Regular Hourly Rate | Number of Hours | Rate per Hour | Extended Price | Savings |
|---------------------|-----------------|---------------|----------------|----------|
| \$175 | | | | |
| | 40 | \$170 | \$6,800 | \$200 |
| | 56 | \$166 | \$9,296 | \$504 |
| | 80 | \$162 | \$12,960 | \$1,040 |
| | 120 | \$158 | \$18,960 | \$2,040 |
| | 200+ | \$148 | \$29,600+ | \$5,400+ |

* Please Note: Travel time is charged one way. If necessary, overnight travel expenses are charged separately at cost plus 10%.

Blocks do not expire.

Standard Block Time Use – Support Block time may include, but is not limited to:

- System Planning - needs assessment, system architecture/design, server sizing, budget planning
- Consulting - RFP development & review, project management
- Server Support - administration, configuration, preventative maintenance, troubleshooting
- Esri Software Support - installation, configuration, customization, troubleshooting of ESRI desktop and server software applications
- Cityworks Software Support - installation, configuration, customization, troubleshooting
- Database Management - geodatabase design, data loading, ETL automation, database tuning
- Application Development - desktop applications, server applications, process automation; code modification/update for existing applications

Basic Support Blocks

Listed below are the options for purchasing Basic GIS Support Blocks as of January 1, 2022:

| Regular Hourly Rate | Number of Hours | Rate per Hour | Extended Price | Savings |
|---------------------|-----------------|---------------|----------------|---------|
| \$136 | | | | |
| | 20 | \$133 | \$2,660 | \$60 |
| | 40 | \$129 | \$5,160 | \$280 |
| | 80 | \$126 | \$10,080 | \$800 |
| | 120 | \$122 | \$14,640 | \$1,680 |
| | 200+ | \$116 | \$23,200+ | \$4000+ |

* Please Note: Travel time is charged one way. If necessary, overnight travel expenses are charged separately at cost plus 10%.

Blocks do not expire.

Basic Block Time Use – Support Block time may include, but is not limited to:

- Data Conversion – migrating/transforming data from one format or structure to another
- Data Cleanup – editing and correction of GIS feature geometries and/or attributes
- Data Maintenance – ongoing update and editing of customer GIS data
- Geocoding – conversion of tabular data into spatial features
- Map Production – preparing and producing digital or hardcopy map documents
- Data Collection – remote data entry using GPS or other mobile devices (equipment and travel expense not included in hourly rate)

Escalated Rates – When necessary and upon customer approval, True North will upgrade a customer support request to escalated status. This allows the support issue to receive immediate priority over other existing support requests and project work. In the event that escalation requests are received from multiple customers, the requests will be handled in the order received. Time for an escalated request is charged at 1.2 times the standard rate.

Emergency Rates – True North reserves the right to charge time at 1.5 times the standard rate for requests for unplanned emergency service during non-business hours.

Fixed Fee Projects – In addition to GIS Support Blocks, True North also offers fixed fee billing for projects that require a more predictable expense approach. All Fixed Fee Projects require a Project Manager to build a scope of work for the project. Once the scope of work is in place, the project is priced. Time required to build the scope of work for the project may be charged against an existing Support Block or rolled into the fixed cost of the project.

Acceptance

These service rates become effective on receipt of payment for the Service Block requested.

Initial the Number of Hours Purchased with this agreement:

Standard: 20_____ 40_____ 80_____ 120 X_____ 200+_____ (# of hrs)

Basic: 20_____ 40_____ 80_____ 120_____ 200+_____ (# of hrs)

CUSTOMER

True North Geographic Technologies LLC

City of Murfreesboro Police Department

Customer Name

1004 N Highland Avenue

Address 1

Address 2

Murfreesboro, TN 37130

City/State/Zip

Authorized Signature

Shane McFarland, Mayor

Printed Name

Date

Purchase Order # (if applicable)

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

F5253DE1ADC8459

David Speight

DocuSigned By: David Speight

True North Representative

3/9/2022

Date

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Asphalt and Concrete Purchase Report

Department: Street

Presented by: Raymond Hillis

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 and concrete purchases.

Background Information

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

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

Fiscal Impacts

Asphalt purchases, \$65,000, and concrete purchases, \$35,000, are funded by the Department's FY22 Budget.

Attachments

Asphalt and Concrete Purchases Report

STREET DEPARTMENT ASPHALT PURCHASES FY 22

| Invoice Date | Vendor | Type | Rate | Tons | Total | FY Total |
|--------------|---------|-------------------------|----------|-------|-------------|-------------|
| 7/9/2021 | Hawkins | 411-E/64-22 Asphalt Mix | \$ 66.50 | 7.80 | \$ 518.70 | \$ 518.70 |
| 12/20/2021 | Hawkins | 307-BM 64-22 | \$ 60.50 | 2.07 | \$ 125.24 | \$ 643.94 |
| 12/28/2021 | Hawkins | 307-BM 64-22 | \$ 60.50 | 2.01 | \$ 121.61 | \$ 765.55 |
| 12/28/2021 | Hawkins | 307-BM 64-22 | \$ 60.50 | 1.95 | \$ 117.98 | \$ 883.53 |
| 12/31/2021 | Hawkins | 307-BM 64-22 | \$ 60.50 | 2.01 | \$ 121.61 | \$ 1,005.14 |
| 1/12/2022 | Hawkins | 411-E/64-22 Asphalt Mix | \$ 68.25 | 21.88 | \$ 1,493.31 | \$ 2,498.45 |
| 2/7/2022 | Hawkins | 307-BM 64-22 | \$ 60.75 | 1.50 | \$ 91.13 | \$ 2,589.58 |

| Invoice Date | Vendor | Type | Rate | Tons | Total | FY Total |
|--------------|------------|-----------------|----------|-------|-------------|--------------|
| 7/7/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.64 | \$ 180.84 | \$ 180.84 |
| 7/28/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 8.11 | \$ 555.54 | \$ 736.38 |
| 7/29/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 9.14 | \$ 626.09 | \$ 1,362.47 |
| 7/30/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.40 | \$ 164.40 | \$ 1,526.87 |
| 7/31/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.48 | \$ 169.88 | \$ 1,696.75 |
| 8/9/2021 | Blue Water | BM Mix 64-22 RP | \$ 57.50 | 18.66 | \$ 1,072.95 | \$ 2,769.70 |
| 8/26/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 5.11 | \$ 350.04 | \$ 3,119.74 |
| 8/31/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.06 | \$ 141.11 | \$ 3,260.85 |
| 9/7/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.28 | \$ 156.18 | \$ 3,417.03 |
| 9/7/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.49 | \$ 170.57 | \$ 3,587.60 |
| 9/7/2021 | Blue Water | E Mix 64-22 | \$ 57.50 | 16.81 | \$ 966.58 | \$ 4,554.18 |
| 9/7/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 18.29 | \$ 1,252.87 | \$ 5,807.05 |
| 9/7/2021 | Blue Water | BM Mix 64-22 RP | \$ 57.50 | 12.56 | \$ 722.20 | \$ 6,529.25 |
| 9/14/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 18.47 | \$ 1,265.20 | \$ 7,794.45 |
| 9/14/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 4.09 | \$ 280.17 | \$ 8,074.61 |
| 9/14/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 18.24 | \$ 1,249.44 | \$ 9,324.05 |
| 9/14/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 15.31 | \$ 1,048.74 | \$ 10,372.79 |
| 9/15/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 10.25 | \$ 702.13 | \$ 11,074.92 |
| 9/15/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.59 | \$ 177.42 | \$ 11,252.34 |
| 9/17/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 15.20 | \$ 1,041.20 | \$ 12,293.54 |
| 9/20/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 9.24 | \$ 632.94 | \$ 12,926.48 |
| 9/22/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.04 | \$ 139.74 | \$ 13,066.22 |
| 9/22/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.34 | \$ 160.29 | \$ 13,226.51 |
| 9/27/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.59 | \$ 177.42 | \$ 13,403.93 |
| 9/30/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.38 | \$ 163.03 | \$ 13,566.96 |
| 10/11/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 3.18 | \$ 217.83 | \$ 13,784.79 |
| 10/13/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.36 | \$ 161.66 | \$ 13,946.45 |
| 10/18/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.06 | \$ 141.11 | \$ 14,087.56 |
| 10/18/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.42 | \$ 165.77 | \$ 14,253.33 |
| 10/28/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.15 | \$ 147.28 | \$ 14,400.61 |
| 10/19/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.12 | \$ 145.22 | \$ 14,545.83 |
| 10/27/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 14.75 | \$ 1,010.38 | \$ 15,556.21 |
| 10/28/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.22 | \$ 152.07 | \$ 15,708.28 |
| 10/28/2021 | Blue Water | BM Mix 64-22 RP | \$ 57.50 | 3.62 | \$ 208.15 | \$ 15,916.43 |
| 11/2/2021 | Blue Water | BM Mix 64-22 RP | \$ 57.50 | 2.16 | \$ 124.20 | \$ 16,040.63 |
| 11/2/2021 | Blue Water | BM Mix 64-22 RP | \$ 57.50 | 3.22 | \$ 185.15 | \$ 16,225.78 |
| 11/2/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 3.45 | \$ 236.33 | \$ 16,462.11 |
| 11/3/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.39 | \$ 163.72 | \$ 16,625.83 |
| 11/4/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.26 | \$ 154.81 | \$ 16,780.64 |
| 11/5/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.19 | \$ 150.02 | \$ 16,930.66 |
| 11/8/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.04 | \$ 139.74 | \$ 17,070.40 |
| 11/8/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 17.93 | \$ 1,228.21 | \$ 18,298.61 |
| 11/9/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.42 | \$ 165.77 | \$ 18,464.38 |
| 11/9/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 8.11 | \$ 555.54 | \$ 19,019.92 |
| 11/10/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.23 | \$ 152.76 | \$ 19,172.68 |
| 11/11/2021 | Blue Water | E Mix 64-22 | \$ 68.50 | 2.13 | \$ 145.91 | \$ 19,318.59 |

| | | | | | | | | | |
|------------|------------|----------------|----|-------|-------|----|----------|----|-----------|
| 11/11/2021 | Blue Water | E Mix 64-22 | \$ | 68.50 | 11.05 | \$ | 756.93 | \$ | 20,075.52 |
| 11/16/2021 | Blue Water | E Mix 64-22 | \$ | 68.50 | 18.50 | \$ | 1,267.25 | \$ | 21,342.77 |
| 12/15/2021 | Blue Water | E Mix 64-22 | \$ | 68.50 | 2.52 | \$ | 172.62 | \$ | 21,515.39 |
| 1/28/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 22.34 | \$ | 1,296.84 | \$ | 22,812.23 |
| 1/28/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 18.79 | \$ | 1,220.41 | \$ | 24,032.64 |
| 1/28/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 17.46 | \$ | 1,134.03 | \$ | 25,166.67 |
| 1/28/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 15.05 | \$ | 977.50 | \$ | 26,144.17 |
| 2/2/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 22.37 | \$ | 1,298.58 | \$ | 27,442.75 |
| 2/2/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 2.37 | \$ | 137.58 | \$ | 27,580.33 |
| 2/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.06 | \$ | 133.80 | \$ | 27,714.13 |
| 2/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.01 | \$ | 130.55 | \$ | 27,844.68 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.00 | \$ | 129.90 | \$ | 27,974.58 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 1.98 | \$ | 128.60 | \$ | 28,103.18 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.07 | \$ | 134.45 | \$ | 28,237.63 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.07 | \$ | 134.45 | \$ | 28,372.08 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.10 | \$ | 136.40 | \$ | 28,508.48 |
| 2/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.00 | \$ | 129.90 | \$ | 28,638.38 |
| 2/11/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 1.98 | \$ | 114.94 | \$ | 28,753.32 |
| 2/11/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 2.06 | \$ | 119.58 | \$ | 28,872.90 |
| 2/11/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 2.06 | \$ | 119.58 | \$ | 28,992.48 |
| 3/1/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.27 | \$ | 147.44 | \$ | 29,139.92 |
| 3/1/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.04 | \$ | 132.50 | \$ | 29,272.42 |
| 3/1/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.29 | \$ | 148.74 | \$ | 29,421.16 |
| 3/1/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 16.12 | \$ | 1,046.99 | \$ | 30,468.15 |
| 3/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.14 | \$ | 138.99 | \$ | 30,607.14 |
| 3/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.14 | \$ | 138.99 | \$ | 30,746.13 |
| 3/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 2.45 | \$ | 159.13 | \$ | 30,905.26 |
| 3/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 19.43 | \$ | 1,261.98 | \$ | 32,167.24 |
| 3/2/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 18.53 | \$ | 1,203.52 | \$ | 33,370.76 |
| 3/3/2022 | Blue Water | BM2 64-22 RP | \$ | 58.05 | 18.09 | \$ | 1,050.12 | \$ | 34,420.88 |
| 3/3/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 17.98 | \$ | 1,167.80 | \$ | 35,588.68 |
| 3/10/2022 | Blue Water | E Mix 64-22 RP | \$ | 64.95 | 10.06 | \$ | 653.40 | \$ | 36,242.08 |

| Invoice Date | Vendor | Type | Rate | Tons | Total | FY Total |
|--------------|--------|----------------|----------|-------|-------------|--------------|
| 7/7/2021 | Vulcan | 411E PG 64-22 | \$ 80.85 | 2.20 | \$ 177.87 | \$ 177.87 |
| 7/15/2021 | Vulcan | 307BM PG 64-22 | \$ 69.89 | 20.40 | \$ 1,425.76 | \$ 1,603.63 |
| 7/15/2021 | Vulcan | 307BM PG 64-22 | \$ 69.89 | 18.20 | \$ 1,272.00 | \$ 2,875.63 |
| 8/6/2021 | Vulcan | 411E PG 64-22 | \$ 81.02 | 8.82 | \$ 714.60 | \$ 3,590.23 |
| 8/24/2021 | Vulcan | 307BM PG 64-22 | \$ 70.01 | 13.04 | \$ 912.93 | \$ 4,503.16 |
| 9/8/2021 | Vulcan | 307BM PG 64-22 | \$ 69.98 | 18.39 | \$ 1,286.94 | \$ 5,790.10 |
| 9/9/2021 | Vulcan | 307BM PG 64-22 | \$ 69.98 | 18.24 | \$ 1,276.44 | \$ 7,066.54 |
| 9/28/2021 | Vulcan | 307BM PG 64-22 | \$ 69.98 | 18.23 | \$ 1,275.74 | \$ 8,342.28 |
| 9/28/2021 | Vulcan | 307BM PG 64-22 | \$ 69.98 | 9.36 | \$ 655.01 | \$ 8,997.29 |
| 9/29/2021 | Vulcan | 411E PG 64-22 | \$ 80.97 | 10.44 | \$ 845.33 | \$ 9,842.62 |
| 9/29/2021 | Vulcan | 411E PG 64-22 | \$ 80.97 | 10.25 | \$ 829.94 | \$ 10,672.56 |
| 9/29/2021 | Vulcan | 411E PG 64-22 | \$ 80.97 | 12.45 | \$ 1,008.08 | \$ 11,680.63 |
| 10/4/2021 | Vulcan | 307BM PG 64-22 | \$ 69.89 | 10.77 | \$ 752.72 | \$ 12,433.35 |
| 10/4/2021 | Vulcan | 411E PG 64-22 | \$ 80.85 | 18.70 | \$ 1,511.89 | \$ 13,945.24 |
| 10/19/2021 | Vulcan | 307BM PG 64-22 | \$ 69.98 | 2.80 | \$ 195.94 | \$ 14,141.18 |
| 10/26/2021 | Vulcan | 411E PG 64-22 | \$ 80.97 | 2.22 | \$ 179.75 | \$ 14,320.93 |
| 12/21/2021 | Vulcan | 411E PG 64-22 | \$ 82.99 | 2.19 | \$ 181.75 | \$ 14,502.68 |

STREET DEPARTMENT CONCRETE PURCHASES FY 22

| Invoice Date | Vendor | Type | Rate | Yards | Surcharge | Total | FY Total |
|--------------|---------------------|---------------------------------|-----------|-------|-----------|-------------|--------------|
| 7/2/2021 | Nashville Ready Mix | 3500 CF5 | \$ 107.00 | 2 | | \$ 214.00 | \$ 214.00 |
| 7/2/2021 | Nashville Ready Mix | 3500 CF5 | \$ 107.00 | 2.5 | | \$ 267.50 | \$ 481.50 |
| 7/13/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2 | | \$ 214.00 | \$ 695.50 |
| 7/14/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 3 | | \$ 321.00 | \$ 1,016.50 |
| 7/15/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2 | | \$ 214.00 | \$ 1,230.50 |
| 7/16/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2.5 | | \$ 267.50 | \$ 1,498.00 |
| 7/29/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 1,658.50 |
| 7/30/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 1,819.00 |
| 8/3/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 1,979.50 |
| 8/4/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2.5 | | \$ 267.50 | \$ 2,247.00 |
| 8/10/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 2,407.50 |
| 8/11/2021 | Nashville Ready Mix | 3413 CF5 | \$ 105.00 | 2.5 | | \$ 262.50 | \$ 2,670.00 |
| 8/13/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2.5 | | \$ 267.50 | \$ 2,937.50 |
| 8/17/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 3 | | \$ 321.00 | \$ 3,258.50 |
| 8/18/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2 | | \$ 214.00 | \$ 3,472.50 |
| 8/20/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 3 | | \$ 321.00 | \$ 3,793.50 |
| 8/23/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 3,954.00 |
| 8/27/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1 | | \$ 107.00 | \$ 4,061.00 |
| 9/3/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 4,221.50 |
| 9/3/2021 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | | | \$ 20.00 | \$ 4,241.50 |
| 9/23/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 2.5 | | \$ 267.50 | \$ 4,509.00 |
| 10/7/2021 | Nashville Ready Mix | 3500 CF5 | \$ 107.00 | 1 | | \$ 107.00 | \$ 4,616.00 |
| 10/11/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 6 | | \$ 642.00 | \$ 5,258.00 |
| 10/13/2021 | Nashville Ready Mix | 3413 CF5 | \$ 107.00 | 1.5 | | \$ 160.50 | \$ 5,418.50 |
| 10/19/2021 | Nashville Ready Mix | 3413 CF5 | \$ 102.00 | 2.5 | | \$ 255.00 | \$ 5,673.50 |
| 10/21/2021 | Nashville Ready Mix | 3413 CF5 | \$ 105.00 | 2 | | \$ 210.00 | \$ 5,883.50 |
| 11/16/2021 | Nashville Ready Mix | 3413 CF5/Full Fibers | \$ 107.00 | 2 | | \$ 214.00 | \$ 6,097.50 |
| 11/30/2021 | Nashville Ready Mix | 4000 PSI AE/Accel/Full Fibers | \$ 113.50 | 26 | | \$ 2,951.00 | \$ 9,048.50 |
| 12/2/2021 | Nashville Ready Mix | 4000 PSI/full fibers | \$ 108.00 | 17 | | \$ 1,836.00 | \$ 10,884.50 |
| 12/2/2021 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | 2 | | \$ 40.00 | \$ 10,924.50 |
| 12/2/2021 | Nashville Ready Mix | 4451 LF5/Full Fibers | \$ 108.00 | 17 | | \$ 1,836.00 | \$ 12,760.50 |
| 12/2/2021 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | 2 | | \$ 40.00 | \$ 12,800.50 |
| 12/13/2021 | Nashville Ready Mix | 4000 PSI AE/Calcium/Full Fibers | \$ 110.00 | 17 | | \$ 1,870.00 | \$ 14,670.50 |
| 12/15/2021 | Nashville Ready Mix | 4000 PSI AE/Accel/Full Fibers | \$ 113.50 | 4 | | \$ 454.00 | \$ 15,124.50 |
| 12/20/2021 | Nashville Ready Mix | 4451 LF5/Full Fibers | \$ 108.00 | 15 | | \$ 1,620.00 | \$ 16,744.50 |
| 12/20/2021 | Nashville Ready Mix | Liquid Calcium Chloride | \$ 2.00 | 15 | | \$ 30.00 | \$ 16,774.50 |
| 12/27/2021 | Nashville Ready Mix | 4000 PSI AE/Full Fibers | \$ 108.00 | 14 | | \$ 1,512.00 | \$ 18,286.50 |
| 12/27/2021 | Nashville Ready Mix | 3500 CF5/Full Fibers | \$ 107.00 | 2 | | \$ 214.00 | \$ 18,500.50 |
| 1/24/2022 | Nashville Ready Mix | 4451 LF5/Fibers | \$ 108.00 | 8 | | \$ 864.00 | \$ 19,364.50 |
| 2/14/2022 | Nashville Ready Mix | 4451 LF5/Full Fibers | \$ 108.00 | 4 | | \$ 432.00 | \$ 19,796.50 |
| 2/14/2022 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | 1 | | \$ 20.00 | \$ 19,816.50 |
| 2/15/2022 | Nashville Ready Mix | 3413 CF5/full fibers | \$ 107.00 | 1 | | \$ 107.00 | \$ 19,923.50 |
| 2/16/2022 | Nashville Ready Mix | 3413 CF5/Full Fibers | \$ 107.00 | 1 | | \$ 107.00 | \$ 20,030.50 |
| 2/25/2022 | Nashville Ready Mix | Flowable Fill | \$ 94.00 | 10 | | \$ 940.00 | \$ 20,970.50 |
| 2/25/2022 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | 1 | | \$ 20.00 | \$ 20,990.50 |
| 2/28/2022 | Nashville Ready Mix | 4451 LF5/Full Fibers | \$ 114.00 | 4 | | \$ 456.00 | \$ 21,446.50 |
| 2/28/2022 | Nashville Ready Mix | fuel surcharge | \$ 20.00 | 1 | | \$ 20.00 | \$ 21,466.50 |

| Invoice Date | Vendor | Type | Rate | Yards | Surcharge | Total | FY Total |
|--------------|------------------|----------------------------------------|-----------|-------|-----------|-------------|-------------|
| 7/6/2021 | Orgain Ready Mix | Flowable fill | \$ 102.00 | 2 | | \$ 204.00 | \$ 204.00 |
| 8/2/2021 | Orgain Ready Mix | 3500 PSI Conc. 1/2 aggregate | \$ 112.00 | 4 | | \$ 448.00 | \$ 652.00 |
| 8/9/2021 | Orgain Ready Mix | 3500 PSI Conc. 1/2 aggregate | \$ 112.00 | 5 | | \$ 560.00 | \$ 1,212.00 |
| 8/26/2021 | Orgain Ready Mix | 3500 PSI Conc. 1/2 aggregate | \$ 112.00 | 2.5 | | \$ 280.00 | \$ 1,492.00 |
| 11/24/2021 | Orgain Ready Mix | 4000 PSI Conc., Fibermesh, 2% polarset | \$ 124.00 | 10 | | \$ 1,240.00 | \$ 2,732.00 |
| 11/24/2021 | Orgain Ready Mix | 4000 PSI Conc., Fibermesh, 2% polarset | \$ 124.00 | 10 | | \$ 1,240.00 | \$ 3,972.00 |
| 11/24/2021 | Orgain Ready Mix | 4000 PSI Conc., Fibermesh, 2% polarset | \$ 124.00 | 5 | | \$ 620.00 | \$ 4,592.00 |
| 10/5/2021 | Orgain Ready Mix | 3500 PSI/Fibermesh | \$ 112.00 | 2 | | \$ 224.00 | \$ 4,816.00 |

| Invoice Date | Vendor | Type | Rate | Yards | Surcharge | Total | FY Total |
|--------------|------------------|-------------------------|-----------|-------|-----------|-----------|-----------|
| 7/27/2021 | Smyrna Ready Mix | 3500 PSI Strt Chips Air | \$ 113.00 | 1.5 | | \$ 169.50 | \$ 169.50 |
| | | Microfiber | \$ 6.00 | 0.75 | | \$ 4.50 | \$ 174.00 |

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Main Street Banner Request

Department: Street Department

Presented by: Jami Coffelt-Leibach

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

Requests from Parks and Rec, TN Philharmonic Orchestra and Main Street Murfreesboro to hang banners over East Main Street.

Staff Recommendation

Approve banners to be displayed as follows:

1. Parks and Rec from June 10th-June 20th, 2022 for *Juneteenth*.
2. Tennessee Philharmonic Orchestra from September 16th-23rd, 2022 for a musical event.
3. Tennessee Philharmonic Orchestra from November 7th- November 11th, 2022 for a musical event.
4. Main Street Murfreesboro from November 18th-November 25th, 2022 for the annual *Celebrate Christmas: Annual Tree Lighting Event*.
5. Tennessee Philharmonic Orchestra from November 25th- December 2nd, 2022 for a musical event.
6. Tennessee Philharmonic Orchestra from February 10th-17th, 2023 for a musical event.
7. Tennessee Philharmonic Orchestra from April 14th-21st, 2023 for a musical event.

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. The Murfreesboro Philharmonic Orchestra holds several concerts throughout the year. The banner helps to advertise the concerts and promote attendance. Ticket sales help to fund operating expenses for the Orchestra. Main Street Murfreesboro celebrates the annual Rutherford County

Christmas Tree Lighting Celebration to bring people to the downtown area and create a sense of place in our town.

Council Priorities Served

Establish strong City brand

Banners over East Main Street communicates and engages our community in various activities thereby enhancing the City reputation as an active, involved community.

Fiscal Impact

None.

Attachments

1. Letter of request from Parks and Rec
2. Letter of request from Tennessee Philharmonic Orchestra
3. Letter of request from Main Street Murfreesboro



February 24, 2022

To the Mayor and City Council,

Murfreesboro Parks and Recreation is requesting to hang a banner across East Main Street from June 10 – 20, 2022 to promote the Juneteenth Celebration at Bradley Museum & Cultural Center which will be held June 16-18, 2022 . 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-Leibach 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



February 24, 2022

Jami Coffelt -Leibach
620 W. Main St.
Murfreesboro, TN 37130

Dear Mayor McFarland and City Council,

The Tennessee Philharmonic Orchestra request your permission to hang a banner across East Main Street in anticipation of 5 of our upcoming concerts in the 2022-2023 season.

| | <u>Concert Date</u> | <u>Promotional Date</u> |
|----|---------------------|--------------------------------|
| 1) | September 29, 2022 | September 16 – 23, 2022 |
| 2) | November 10, 2022 | November 7 – 11, 2022 |
| 3) | December 1, 2022 | November 25 – December 2, 2022 |
| 4) | February 16, 2023 | February 10 - 17, 2023 |
| 5) | April 20, 2023 | April 14 – 21, 2023 |

Jami Coffelt-Leibach has indicated the dates are available.

Thank you in advance for consideration of this request. We cordially invite you to attend these events.

Sincerely,

Fran Campbell
Director of Operations
Tennessee Philharmonic Orchestra



2022 Board of Directors

Kirk Garrett - Chair

Tab Talbott – Past Chair

Ashley McDonald-Vice Chair

Dr. Gloria Bonner -Secretary

Patrick Cammack–Treasurer

Bill Shacklett- Historian

Joel Aguilera

Shannon Beckman

Michael Busey

Randy Caldwell

Tianna Christiansen

LaShan Dixon

Sean Gilliland

Ken Halliburton

Jonathan Harmon

Stephanie Kusch

Greg McKnight

Francela Salas

Chantho Sourinho

Shawn Wright

March 2, 2022

City of Murfreesboro
Jami Coffelt-Leibach
620 West Main Street
Murfreesboro, TN 37130

Dear Mayor and City Council,

I am reaching out as the Executive Director of Main Street Murfreesboro with a request to hang a “Celebrate Christmas, the annual Christmas tree lighting event” banner over Main Street in front of Central Magnet School. The purpose of the event is to promote the historic downtown square and invite the community to the free event celebrating the annual lighting of the Rutherford County courthouse Christmas tree. The tree lighting and Celebrate Christmas event is scheduled for Friday, December 2, 2022. I am requesting to hang our banner on November 18- 25.

Thank you in advance for your consideration of this request and any return correspondence can be sent to me at Main Street Murfreesboro, 225 West College Street, Murfreesboro, TN, 37130.

Sincerely,

Sarah Callender
sarah@downtownmurfreesboro.com
Executive Director
Main Street Murfreesboro

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Guardrail Replacement Contract- Amendment 1

Department: Street Department

Presented by: Raymond Hillis

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 on original agreement for guardrail replacement with LU Inc.

Staff Recommendation

Approve the Amendment to Agreement for Guardrail Replacement with LU Inc. for contract extension #1.

Background Information

This agreement allows the Street Department the capabilities to respond to damaged guardrails and provide safer roadways for motorists. The City entered into an agreement with LU Inc. on 3/25/2021 and that contract term is one year with the option to automatically renew in one-year increments for an additional two years. If all parties agree, LU Inc. is proposing a 33.9% increase for an extension on that contract for another calendar year; however, this amount would be locked in for the next year. As prices on materials continue to rise, the Department seeks to use responsible budgeting and ensure that we can continue to afford the replacement of critical materials for the City's street infrastructure.

Council Priorities Served

Responsible Budgeting

LU Inc. submitted the revised contract price terms and is within a reasonable sum, due to increased pricing on materials in the current economy.

Fiscal Impact

Funding for the Guardrail Replacement services is accommodated with Risk Management funds and Street Department Budget.

Attachments

Amendment for Guardrail Replacement Contract

**FIRST AMENDMENT TO
AGREEMENT FOR GUARDRAIL REPLACEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
LU INC.**

This First Amendment ("First Amendment") to the Contract entered March 25, 2021, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee, and Lu Inc., a Corporation of the State of Tennessee ("Contractor").

RECITALS

WHEREAS, the City of Murfreesboro entered into a contract with Lu Inc., on March 25, 2021, for Guardrail Replacement in accordance with the Bid Specifications set forth in ITB-16-2021 – Guardrail Replacement and any Addendums issued to ITB-16-2021; and,

WHEREAS, the term of the contract between the City and Contractor is currently from March 25, 2021 to March 25, 2022; and,

WHEREAS, City consents to the contractor's requested price adjustment for Guardrail Replacement through the remainder of the current term and until the contract end date; and,

WHEREAS, the City wishes to extend the contract term until March 25, 2023.

| Item | Current Contract Unit Price | Current Contract Total Price | Requested New Contract Unit Price | Requested New Contract Total Price |
|--------------------------------------------------|-----------------------------|------------------------------|-----------------------------------|------------------------------------|
| G-Rail @ Br. Ends | \$61.88 | \$6,683.04 | \$88.61 | \$9,569.88 |
| Single G-Rail (Post 7' -3') | \$27.50 | \$2,750.00 | \$44.63 | \$4,463.00 |
| Single G-Rail (Type 2) | \$24.00 | \$60,000.00 | \$34.43 | \$86,075.00 |
| Flared End | \$62.50 | \$625.00 | \$63.75 | \$637.50 |
| Rounded End | \$62.50 | \$625.00 | \$63.75 | \$637.50 |
| Type 13 | \$1,062.50 | \$4,250.00 | \$1,619.25 | \$6,477.00 |
| G-Rail Anchor (Type in-line) | \$656.25 | \$2,625.00 | \$1,130.93 | \$4523.72 |
| G-Rail Anchor (Type 21) | \$2,250.00 | \$9,000.00 | \$2,868.75 | \$11,475.00 |
| TYPE 38 | \$3,062.50 | \$12,250.00 | \$3,187.50 | \$12,750.00 |
| Metal Beam Guard Fence | \$63.60 | \$25,440.00 | \$79.82 | \$31,926.00 |
| Guard Rail Removal Traffic Control (Vert/Horiz.) | \$3.63 | \$1,815.00 | \$3.70 | \$1,850.00 |
| Re-Align G. Rail (Vert/Horiz.) | \$6.88 | \$3,440.00 | \$7.01 | \$3,505.00 |
| Traffic Control | \$1,125.00 | \$1,125.00 | \$1,275.00 | \$1,275.00 |
| Mobilization | \$1,125.00 | \$1,125.00 | \$1,275.00 | \$1,275.00 |
| Total Contract Price | | \$131,753.04 | | \$176,439.60 |

NOW THEREFORE, the City and Contractor mutually agree:

1. To amend the contract to reflect the price adjustments listed above, effective this _____ day of _____, 2022.
2. To extend the contract to March 25, 2023.
3. All other terms of the contract shall remain the same.

CITY OF MURFREESBORO

Shane McFarland, Mayor

LU INC.

DocuSigned by:

Novice J. Cole, Jr.

Novice J. Cole, Jr., President

Approved as to form:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

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 Purchases FY 2022

| <i>Invoice Date</i> | <i>Approval</i> | <i>Vendor</i> | <i>Type</i> | <i>Rate</i> | <i>Qty</i> | <i>Total</i> | <i>FY Total</i> |
|---------------------|-----------------|---------------|-------------|-------------|------------|--------------|-----------------|
| 7/20 | DH | Vulcan | 307-BM | \$58.39 | 18.60 | \$1,086.05 | \$1,086.05 |
| 7/20 | DH | Vulcan | 307-BM | \$58.39 | 18.38 | \$1,073.21 | \$2,159.26 |
| 7/20 | DH | Vulcan | 307-BM | \$58.39 | 18.56 | 1,083.72 | \$3,242.98 |
| 7/20 | DH | Vulcan | 307-BM | \$58.39 | 18.27 | 1,066.79 | \$4,309.77 |
| 7/26 | DH | Hawkins | 411- E | \$66.50 | 18.70 | 1,243.55 | \$10,074.44 |
| 7/26 | DH | Hawkins | 307-BM | \$59.00 | 13.60 | 802.40 | \$10,876.84 |
| 8/10 | DH | Vulcan | 411-E | \$67.35 | 13.66 | 920.00 | \$11,796.84 |
| 8/10 | DH | Vulcan | Cold Mix | \$83.00 | 17.58 | 1,459.14 | \$13,255.98 |
| 8/17 | DH | Vulcan | 307-BM | \$58.51 | 10.72 | 627.23 | \$13,883.21 |
| 9/7 | DH | Vulcan | Cold Mix | \$83.00 | 18.25 | 1,514.75 | \$15,397.96 |
| 10/15 | DH | Hawkins | 411-E | \$66.50 | 16.48 | 1,095.92 | \$16,493.88 |
| 10/20 | DH | Hawkins | 307-BM | \$62.75 | 16.69 | 1,047.30 | \$17,541.18 |
| 11/30 | DH | Hawkins | 307-BM | \$60.00 | 22.34 | 1,340.40 | \$18,881.58 |
| 11/30 | DH | Hawkins | 307-BM | \$60.00 | 19.28 | 1,156.80 | \$20,038.38 |
| 11/30 | DH | Hawkins | 307-BM | \$60.00 | 17.25 | 1,035.00 | \$21,073.38 |
| 11/30 | DH | Hawkins | 307-BM | \$60.00 | 20.26 | 1,215.60 | \$22,288.98 |
| 11/30 | DH | Hawkins | 307-BM | \$60.00 | 19.00 | 1,140.00 | \$23,428.98 |
| 11/30 | DH | Hawkins | 411-E | \$67.50 | 17.31 | 1,168.43 | \$24,597.41 |
| 11/30 | DH | Hawkins | 307-BM | \$65.00 | 22.37 | 1,454.05 | \$26,051.46 |
| 11/30 | DH | Hawkins | 307-BM | \$65.00 | 19.89 | 1,292.85 | \$27,344.31 |
| 11/30 | DH | Hawkins | 307-BM | \$65.00 | 22.86 | 1,485.90 | \$28,830.21 |
| 11/30 | DH | Hawkins | 307-BM | \$65.00 | 17.69 | 1,149.85 | \$29,980.06 |
| 11/30 | DH | Hawkins | 307-BM | \$65.00 | 3.06 | 198.90 | \$30,178.96 |
| 12/13 | DH | Hawkins | 307-BM | \$60.50 | 21.02 | 1,271.71 | \$31,450.67 |
| 12/13 | DH | Hawkins | 411-E | \$68.25 | 14.47 | 987.58 | \$32,438.25 |
| 12/18 | DH | Hawkins | 411-E | \$68.25 | 17.62 | 1,202.57 | \$33,640.82 |
| 12/18 | DH | Hawkins | 411-E | \$68.25 | 3.54 | 241.61 | \$33,882.43 |
| 12/28 | DH | Hawkins | 307-BM | \$60.50 | 18.00 | 1,089.00 | \$34,971.43 |
| 12/28 | DH | Hawkins | 307-BM | \$60.50 | 13.77 | 833.09 | \$35,804.52 |
| 12/29 | DH | Hawkins | 307-BM | \$60.50 | 15.84 | 958.32 | \$36,762.84 |
| | | | | | | | |
| | | | | | | | |

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2022

| | 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 | \$59.00 | \$66.50 | \$58.39 | \$67.35 | |
| Aug | \$65.00 | \$75.00 | \$59.00 | \$69.00 | \$57.85 | \$67.51 | |
| Sep | \$65.00 | \$75.00 | \$59.00 | \$66.50 | \$57.81 | \$67.46 | |
| Oct | \$65.00 | \$75.00 | \$59.00 | \$69.00 | \$57.81 | \$67.46 | |
| Nov | \$65.00 | \$75.00 | \$60.00 | \$67.50 | \$57.81 | \$67.46 | |
| Dec | \$65.00 | \$75.00 | \$60.50 | \$68.25 | \$60.50 | \$69.50 | |
| Jan | \$65.00 | \$75.00 | \$60.50 | \$68.25 | \$60.50 | \$69.50 | |
| Feb | \$65.00 | \$75.00 | \$60.75 | \$68.75 | | | |
| Mar | \$65.00 | \$75.00 | | | | | |
| Apr | \$65.00 | \$75.00 | | | | | |
| May | \$65.00 | \$75.00 | | | | | |
| Jun | \$65.00 | \$75.00 | | | | | |

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

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 services for Murfreesboro Water Resources Department and Stormwater Fund.

Staff Recommendation

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

Background Information

The annual audit report is a requirement of the State of Tennessee. The scope of services 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 will be budgeted in the FY23 MWRD/Stormwater budgets at \$30,500 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
C. Jared Forrester, CPA, CSEP
Andrew J. Nickerson, CPA

February 16, 2022

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, 2022. 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 \$30,500 (\$26,700 for the Murfreesboro Water Resources Department and \$3,800 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, 2022 and meet with departmental personnel to plan the audit time-line to ensure that the deadline of October 31, 2022 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: 03/17/2022

Item Title: TTL Geotechnical Services Proposal for Overall Creek Pump Station

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

Geotechnical professional services task order to perform construction inspections and testing for the Overall Creek Pump Station (OCPS) Expansion.

Staff Recommendation

Approval of the proposal from TTL in the amount of \$53,330.

Background Information

Staff received bids for the Overall Creek Pump Station (OCPS) Expansion on Tuesday February 8th. As required by the contract documents MWRD is required to hire a firm to perform construction inspections and testing to ensure that Blakley conforms to the project specifications. The firm will act as the Special Inspector required by the 2018 International Building Codes (IBC).

Generally, the following testing and inspections will be performed:

1. Concrete consistency, air content, compressive test cylinder casting and compressive strength testing.
2. Concrete formwork and steel reinforcement inspection.
3. Sieve analysis and proctor tests of proposed offsite backfill material
4. Backfill compaction testing and paving tests.
5. Geotechnical tests, such as inspection of pile foundation and load tests.
7. Masonry testing and steel inspections.

The Special Inspector shall document all inspections and tests providing daily reports and a final engineer stamped report of all tests per IBC. TTL has worked for the Department on several geotechnical and materials testing projects in the past and has always performed to the satisfaction of the Department, therefore staff requested a proposal from TTL, Inc.

A proposal was received in the amount of \$53,330, however, final costs will be determined based on actual time and materials and number of material tests performed per the submitted unit rates.

Council Priorities Served*Responsible budgeting*

Staff earmarked \$12.3M within the Departments Working Capital Reserves for both the pump station and forcemain projects for FY22 through FY24.

Expand infrastructure

This expansion will allow the western and southwestern areas of town to continue to develop and also alleviate overflows at the pump station due to heavy rains.

Fiscal Impact

The construction of this project will be funded from Working Capital Reserves. A proposal for Resident Project Representative (RPR) services for the pump station will be brought back at a later date.

Attachments

TTL Proposal



5010 Linbar Drive, #153
Nashville, TN 37211
615.331.7770
www.TTLUSA.com

February 16, 2022

Ms. Valerie Smith, P.E.
Murfreesboro Water Resources Department (MWRD)
300 NW Broad Street
Murfreesboro, Tennessee 37130

RE: PROPOSAL FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES
Overall Creek Pump Station Expansion
4656 NW Broad Street
Murfreesboro, Tennessee
TTL Project No. 22-08-00525.00

Dear Ms. Smith:

Thank you for the opportunity to provide materials engineering and testing services during the expansion of the existing Overall Creek Pump Station in Murfreesboro, Tennessee. This proposal contains our understanding of the project, the proposed scope of services, and fee and scheduling information.

PROJECT INFORMATION

Project information was obtained during email transmissions with Mr. Brent Fowler (Smith Seckman Reid, Inc. (SSR)) and Ms. Valerie Smithy (MWRD) in several e-mail transmissions between February 04, 2022 and February 14, 2022. We were provided Bid Set drawings and project specifications prepared by SSR, dated January 07, 2022. We were not provided with a construction schedule at this time. We request that these documents be provided when available so that we may revise our scope and/or estimate, if necessary.

The project consists of expanding the existing Overall Creek Pump Station from 7.4 million gallons per day (MGD) peak pumping capacity (5 MGD rated capacity) to approximately 15.4 MGD peak pumping capacity (12.4 MGD rated capacity) by installing new variable speed pumps, constructing a new drywell substructure, a new superstructure to house new electrical and controls equipment, and new heating, ventilating and air conditioning equipment.

PROPOSED SCOPE OF SERVICES

Based on our experience on similar projects, we propose to provide the following services during construction:

Earthwork and Foundation Installation:

- Observe and test fill placement and compaction activities to confirm the materials were placed and compacted to the project requirements. In general, this will include a proofroll and/or nuclear density gauge, if applicable.
- Performing laboratory classification and standard Proctor compaction testing for soil materials used as fill to verify conformance with project specifications and as a comparison for in-place density testing.

- Observe installation of micropile foundations including making test specimens of fresh plastic grout. Our representative will be on-site on a full-time basis to observe and document micropile installation, including the load verification test.

Asphalt Pavement Testing:

- Observe proofrolling and perform density testing of mineral aggregate base course materials and asphalt pavement layers.

Concrete Construction:

- Observe reinforcing steel, anchor bolts, and embedments prior to concrete placement to evaluate conformance with the specifications in regard to size, grade, spacing, profiles, lap lengths, and concrete coverage.
- Make test specimens and perform field tests on plastic concrete. Tests will include slump, air content, unit weight, and temperature. We will cast six test cylinders (6 in. x 12 in.) using the minimum number of samples chart provided in the project specifications (Section 03 31 00 – 3.12 - 13a).
- Field curing concrete samples using a contractor-provided on-site curing box for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.
- Perform weekly concrete batch plant visits to evaluate moisture contents of aggregate stockpiles.
- Obtain fine and coarse aggregate samples to determine water absorption prior to the first concrete placement and every 90-days thereafter until 95-percent of the project concrete has been placed.
- Obtain fine and coarse aggregate samples to perform Alkali-Silica Reaction (ASR) testing in general accordance with project specifications prior to the first concrete placement and every 90-days thereafter until 95-percent of the project concrete has been placed.
- Obtain fine and coarse aggregate samples for petrographic analysis by a third-party in general accordance with the project specifications prior to the first concrete placement and every 90-days thereafter until 95-percent of the project concrete has been placed.
- Obtain cement samples for alkaline content by a third-party in general accordance with project specifications prior to the first concrete placement and every 90-days thereafter until 95-percent of the project concrete has been placed.

Masonry Construction:

- Observe reinforcing steel prior to grout and mortar placement to evaluate conformance with the project drawings and specifications.
- Observe CMU block cells for cleanliness prior to grouting.
- Observe installation of masonry units for size, layout, bonding and placement of masonry units.
- Make test specimens and perform field tests on fresh mortar (six 2-in. by 2-in. cubes) and CMU block fill grout (four 3.25-in. by 3.25-in. by 6.5-in. grout prisms), including slump and temperature, as appropriate for the material.
- Perform compressive strength testing of contractor-made masonry prisms, if required.

- Field curing of the grout and mortar samples will be performed utilizing a contractor-provided on-site curing box for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.

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 issue a final special inspection report stamped by a licensed professional engineer at job completion. Our special inspection services are limited to those aspects of the Statement of Structural Special Inspections that are assigned to us. We are not the Special Inspector for the entire project, and our services and reports will not address the special inspections of architectural, mechanical, electrical, plumbing, or other systems, if any are required.

We will need to be provided copies of the full construction documents (plans, specifications, and submittals), 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. Additionally, 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 full-time (continuous) and/or part-time (periodic) basis, depending on the activity and level of inspection required. 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. We require at least 24 hours' notice to assist with scheduling our services for periodic observations.

COMPENSATION

Based on our understanding of the scope of work described within this proposal, we estimate the budget for our services to be about **\$80,000**. This fee includes a \$26,670 contingency for testing required under project specification section 03 31 00 – 3.12. Please be aware, these services may be able to be provided by the ready-mix producer, in which case, unless requested, we will not perform these services.

Our estimate is based on the project specifications and required tests as well as our experience with similar projects. We will provide our services on a time and materials basis. We request that final construction drawings, specifications, and a detailed construction schedule be provided prior to commencement of the work so that we may revise our scope and/or estimate, if necessary. 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. We will monitor and keep you apprised of the budget status and items requiring re-inspection. Our estimate does not include project delays and/or re-inspections.

AUTHORIZATION

To authorize our services, please sign the attached Professional Services Agreement and return it and the proposal to our office. This proposal will remain valid for a period of 60 days from the date of this letter.

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 Rogers
Construction Services Project Manager



Mark A. Herrmann, P.E.
Principal Engineer

Attachments: Construction Testing Estimate
 Schedule of Fees
 Professional Services Agreement

Client: Murfreesboro Water Resources Department
Project Name: Overall Creek Pump Station Expansion
Address: Leanna Road
City, State: Murfreesboro, Tennessee
TTL Proposal No.: 22-08-00525.00

TTL
5010 Linbar Drive, #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 | | | 0 | \$62.00 | \$0.00 | |
| Monitoring Cut/Fill Activities & Density Testing | | | 0 | \$62.00 | \$0.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| | | | 0 | \$81.00 | \$0.00 | |
| Project Manager / Engineer Review | | | 0 | \$161.00 | \$0.00 | |
| PM Support Services | | | 0 | \$62.00 | \$0.00 | |
| | | | | | | \$0 |
| RIGID / FLEXIBLE PAVEMENTS | No. Days | hrs/day | Total | Rate | Subtotal | |
| Subgrade Review / Proofrolling | 1 | 4 | 4 | \$62.00 | \$248.00 | |
| Monitoring Cut/Fill Activities & Density Testing | | | 0 | \$62.00 | \$0.00 | |
| Monitoring Basestone Placement | 1 | 4 | 4 | \$62.00 | \$248.00 | |
| Monitoring & Testing Pavement Placement | 1 | 4 | 4 | \$62.00 | \$248.00 | |
| Concrete Pavement Placement | | | 0 | \$62.00 | \$0.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| Test Specimen Pick-Up | | | 0 | \$62.00 | \$0.00 | |
| Project Manager / Engineer Review | 3 | 0.5 | 1.5 | \$161.00 | \$241.50 | |
| PM Support Services | 3 | 0.25 | 0.75 | \$62.00 | \$46.50 | |
| | | | | | | \$1,032 |
| FOUNDATIONS | No. Days | hrs/day | Total | Rate | Subtotal | |
| Shallow Foundations (Spread / Continuous Footings) | 1 | 4 | 4 | \$62.00 | \$248.00 | |
| Deep Foundations (Drilled Piers / Micropiles / etc.) | 14 | 10 | 140 | \$81.00 | \$11,340.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| Test Specimen Pick-Up | 15 | 1 | 15 | \$62.00 | \$930.00 | |
| Special Inspector (Bearing Eval / Reinforcement Insp. / etc) | 1 | 4 | 4 | \$81.00 | \$324.00 | |
| Project Manager / Engineer Review | 16 | 0.5 | 8 | \$161.00 | \$1,288.00 | |
| PM Support Services | 16 | 0.25 | 4 | \$62.00 | \$248.00 | |
| | | | | | | \$14,378 |
| CONCRETE | No. Days | hrs/day | Total | Rate | Subtotal | |
| Stair Walls / Dry Well Walls | 6 | 4 | 24 | \$62.00 | \$1,488.00 | |
| Slab-On-Grade / Slab-On-Deck / Beams | 5 | 4 | 20 | \$62.00 | \$1,240.00 | |
| Post-Tension / Tilt-Up / Precast / etc. | | | 0 | \$62.00 | \$0.00 | |
| Misc. Placements (Sidewalks / Stairwells / Curbs) | 2 | 4 | 8 | \$62.00 | \$496.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| Special Inspector (Post Tension / Reinforcement Insp. / etc) | 11 | 4 | 44 | \$81.00 | \$3,564.00 | |
| Test Specimen Pick-Up | 13 | 1 | 13 | \$62.00 | \$806.00 | |
| Project Manager / Engineer Review | 24 | 0.5 | 12 | \$161.00 | \$1,932.00 | |
| PM Support Services | 24 | 0.25 | 6 | \$62.00 | \$372.00 | |
| | | | | | | \$9,898 |
| STRUCTURAL STEEL | No. Days | hrs/day | Total | Rate | Subtotal | |
| Anchor Bolts / Bolted Connections | | | 0 | \$108.00 | \$0.00 | |
| Welded Connections | | | 0 | \$108.00 | \$0.00 | |
| Metal Decking | | | 0 | \$108.00 | \$0.00 | |
| Certified Welding Inspector Overtime | | | 0 | \$140.40 | \$0.00 | |
| Certified Structural Steel Inspector Overtime | | | 0 | \$140.40 | \$0.00 | |
| Project Manager / Engineer Review | | | 0 | \$161.00 | \$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 | \$81.00 | \$0.00 | |
| Project Manager / Engineer Review | | | 0 | \$161.00 | \$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) | 3 | 8 | 24 | \$81.00 | \$1,944.00 | |
| Project Manager / Engineer Review | 3 | 0.5 | 1.5 | \$161.00 | \$241.50 | |
| PM Support Services | 3 | 0.25 | 0.75 | \$62.00 | \$46.50 | |
| | | | | | | \$2,232 |
| MASONRY / MORTAR | No. Days | hrs/day | Total | Rate | Subtotal | |
| Masonry Monitoring / Masonry Sampling | 4 | 4 | 16 | \$62.00 | \$992.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| Special Inspector (Reinforcement Insp. / Cleanliness / etc) | 4 | 4 | 16 | \$81.00 | \$1,296.00 | |
| Test Specimen Pick-Up | 4 | 1 | 4 | \$62.00 | \$248.00 | |
| Project Manager / Engineer Review | 8 | 0.5 | 4 | \$161.00 | \$644.00 | |
| PM Support Services | 8 | 0.25 | 2 | \$62.00 | \$124.00 | |
| | | | | | | \$3,304 |
| WOOD FRAMING | No. Days | hrs/day | Total | Rate | Subtotal | |
| Nailing / Bolting / Anchoring Observation | 1 | 4 | 4 | \$161.00 | \$644.00 | |
| Technician Overtime | | | 0 | \$0.00 | \$0.00 | |
| Special Inspector (Hold Downs / Shear Eval. / etc) | | | 0 | \$81.00 | \$0.00 | |
| Project Manager / Engineer Review | 1 | 0.5 | 0.5 | \$161.00 | \$80.50 | |
| PM Support Services | 1 | 0.25 | 0.25 | \$62.00 | \$15.50 | |
| | | | | | | \$740 |
| HIGH-STRENGTH GROUT | No. Days | hrs/day | Total | Rate | Subtotal | |
| Grout Monitoring / Grout Sampling | | | 0 | \$62.00 | \$0.00 | |
| Technician Overtime | | | 0 | \$80.60 | \$0.00 | |
| Test Specimen Pick-Up | | | 0 | \$62.00 | \$0.00 | |
| Project Manager / Engineer Review | | | 0 | \$161.00 | \$0.00 | |
| PM Support Services | | | 0 | \$62.00 | \$0.00 | |
| | | | | | | \$0 |
| FIREPROOFING | Number | Units | Total | Rate | Subtotal | |
| Thickness Measurements (Special Inspector) | | | 0 | \$81.00 | \$0.00 | |
| Density Testing (Special Inspector) | | | 0 | \$81.00 | \$0.00 | |
| Adhesion / Cohesion Testing (Special Inspector) | | | 0 | \$81.00 | \$0.00 | |
| Project Manager / Engineer Review | | | 0 | \$161.00 | \$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 | \$81.00 | \$0.00 | |
| Proctor Density Testing | | | 0 | \$130.00 | \$0.00 | |
| Proctor Density Testing w/ Atterberg Limits | | | 0 | \$220.00 | \$0.00 | |
| Vapor Emmission Testing (Kit Only) | | | 0 | \$45.00 | \$0.00 | |
| Concrete Specimens (Slab on Grade) | 9 | 6 | 54 | \$15.00 | \$810.00 | |
| Concrete Specimens (Foundations/Walls/Site) | 4 | 6 | 24 | \$15.00 | \$360.00 | |
| Masonry Grout / Mortar Specimens | 4 | 10 | 40 | \$15.00 | \$600.00 | |
| Grout Monitoring / Grout Sampling | | | 0 | \$300.00 | \$0.00 | |
| Micropile Grout Specimens | 70 | 8 | 560 | \$15.00 | \$8,400.00 | |
| Progress Meeting / PM Site Visit / Kick-Off Meetings | 3 | 4 | 12 | \$161.00 | \$1,932.00 | |
| Special Inspection Letter & Engineer Review | 1 | 8 | 8 | \$211.00 | \$1,688.00 | |
| Engineer Site Visits (Micropile Proof Testing) | 2 | 8 | 16 | \$211.00 | \$3,376.00 | |
| Engineer Review of Concrete Cylinder Breaks | 87 | 0.25 | 21.75 | \$211.00 | \$4,589.25 | |
| Aggregate Water Absorption - Spec. Section 03 31 00 - 3.12 | 5 | 2 | 10 | \$90.00 | \$900.00 | |
| Weekly Aggregate Moisture Content Checks at Batch Plant - Spec. Section 03 31 00 - 3.12 | 12 | 2 | 24 | \$60.00 | \$1,440.00 | |
| Alkali Aggregate Reactivity - ASTM C1260 - Spec. Section 03 31 00 - 3.12 | 3 | 2 | 6 | \$1,000.00 | \$6,000.00 | |
| Alkali Aggregate Reactivity - ASTM C150 - Spec. Section 03 31 00 - 3.12 | 3 | 2 | 6 | \$2,695.00 | \$16,170.00 | |
| Cement Alkalinity - ASTM C150 - Spec. Section 03 31 00 - 3.12 | 3 | 2 | 6 | \$360.00 | \$2,160.00 | |
| | | | | | | |
| | | | | | | \$48,425 |
| DIRECT COSTS | Trips | Miles | Total | Rate | Subtotal | |
| Trip Charge | 88 | 0 | 0 | \$0.70 | \$0.00 | |
| | | | | | | |
| | | | | | | \$0 |
| PROJECT ESTIMATE / BUDGET | | | | | \$80,009 | |

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.



5010 Linbar Drive, #153
Nashville, TN 37211
615.331.7770
www.TTLUSA.com

Schedule of Fees (Labor)

| | |
|----------------------------------|---------------|
| Project Technician IV | \$62.00 / hr |
| Senior Project Technician I..... | \$81.00 / hr |
| Project Manager IV | \$161.00 / hr |
| Senior Project Manager II..... | \$211.00 / hr |
| Principal I | \$270.00 / hr |
| Project Administrator I..... | \$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% |



PROFESSIONAL SERVICES AGREEMENT

TTL PROJECT NO.: 000220800525.00

PROJECT NAME: OCPS Expansion

This Agreement made and entered into on 02/16/2022 by and between TTL, Inc., hereinafter called "Consultant" and Murfreesboro Water Resources Department hereinafter called "Client", is for the services described under this Agreement.

1. **SCOPE OF SERVICES:** Consultant's services are described in the Scope of Services (Services) section of the Proposal, which is attached to and made a part of this Agreement. 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. 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:** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. 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 both parties agree that this Agreement takes precedence over any additional or conflicting terms provided in other documents. This Agreement shall not be assigned by either party without prior written consent of the other party.
3. **CHANGE ORDERS:** Client may request changes to the 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. Similarly, if project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee. Following Client's review and concurrence with the change order request, Client shall provide written acceptance.
4. **COMPENSATION:** Client shall compensate Consultant for the Services performed at the fees stated in the Proposal. Fee schedules provided shall be valid for the calendar year in which they are issued. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing 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 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid 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.

For some projects and, prior to provision of services, the Consultant may require the Client to make an initial retainer payment. As it pertains to this Agreement, Client is requested to deposit a retainer of \$_____ with the Consultant. The retainer amount shall be credited upon completion of the services on the final invoice.

5. **THIRD PARTY RELIANCE:** This Agreement and the Services provided are for Consultant's and Client's sole benefit and exclusive use with no third-party beneficiaries made or intended. Reliance upon Consultant's work product Services is limited to Client. Permission to rely on Consultant's work product is not granted 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 issued strictly for informational purposes only and not for reliance. 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 a conflict of interest for Consultant and Client hereby waives any and all claims of conflict of interest against Consultant, Consultant's employees or sub-consultants or subcontractors regarding any disclosure to a third party for informational or reliance purposes. Consultant may rely upon information provided to Consultant by or on behalf of Client or third parties 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.
6. **LIMITATION OF LIABILITY:** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND CONSULTANT'S SUBCONSULTANTS AND SUBCONTRACTORS AND THE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, SHAREHOLDERS, AGENTS, REPRESENTATIVES AND EMPLOYEES OF ALL OF THE FOREGOING) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE INSURANCE COVERAGE, CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, STATUTORY, TORT, CONTRACTUAL OR EQUITABLE CONTRIBUTION OR INDEMNITY OBLIGATION OR ANY OTHER THEORY OF RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
7. **INDEMNIFICATION:** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for 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 or concurrent 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. Indemnification shall include but not be limited to failure to adequately implement and maintain effective best management practices for erosion and sediment control by Client, contractors, subcontractors, or others whether or not Consultant provides services related to such activities.

- 8. STANDARD OF CARE (WARRANTY):** The standard of care for all professional engineering, surveying, testing and related services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing with the same education and experience, under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished. Subject to the foregoing standard of care, the Consultant may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to manufacturers, suppliers, and publishers of technical standards.
- 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. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.
- 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. OPINIONS OF COST:** Consultant's opinions (if any) of probable construction costs are made on the basis of Consultant's experience, qualifications, and general familiarity with the construction industry. However, because Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Consultant's opinion of probable construction costs is not and shall not be considered a guaranteed estimate or exact price for construction of the Project. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- 12. SUBSURFACE EXPLORATION:** Subsurface conditions throughout the site may vary from those depicted on logs of discrete exploratory borings, test pits, or other subsurface exploratory services. Client understands Consultant's layout of exploratory 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 failure to request or schedule 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 Consultant explicitly is not responsible for their means and methods.
- 14. SAMPLE DISPOSITION:** 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 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. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, Consultant's related companies, Consultant's sub-consultants 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. 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 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.

- 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.
- 17. SITE ACCESS AND SAFETY:** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary for Consultant 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, 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.
- 18. OWNERSHIP OF DOCUMENTS:** All documents, including plans, drawings, specifications, reports, logs, data, calculations, and surveys prepared by the Consultant are instruments of service and shall remain the property of the Consultant. Such documents may not be used by CLIENT for any other endeavor without express written consent from TTL. Any unauthorized re-use is at Client's or the recipients' sole and exclusive risk and is without liability to TTL. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. 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. If Consultant's work product includes delivery of a design model or survey data file via electronic media, Consultant makes no warranty or representation to Client that the electronic copy is accurate or complete and Client shall be required to sign a separate Electronic Document Release Form evidencing this understanding. Consultant may rely upon information provided to Consultant by or on behalf of Client or third parties 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.
- 19. WAIVER:** Any failure by Consultant to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and Consultant may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.
- 20. DISPUTE RESOLUTION:** In the unlikely event a dispute arises out of or relates to this contract, or the breach thereof, the parties will attempt to settle the matter through amicable discussion. Client shall not be entitled to assert a claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion of a registered, independent, and reputable engineer, surveyor, or geologist licensed in the jurisdiction in which the work in question was performed indicating that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days. If no agreement can be reached, the parties agree to use mediation before resorting to a judicial forum. The cost of a third-party mediator shall be shared equally by the parties with proceedings to be held in Nashville, Tennessee. In the event of litigation, reasonable costs and attorneys' fees will be awarded to the prevailing party.
- 21. GOVERNING LAW:** Client and Consultant agree this Agreement and any legal actions related to its validity, interpretation and performance shall be governed by and according to laws of the state of Tennessee
- 22. 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.
- 23. TERMINATION:** This Agreement may be terminated at any time by either party by written notice in the event of substantial failure to perform in accordance with the terms herein by the other party through no fault of the terminating party. If this Agreement is so terminated by either party, regardless of reason, Client shall pay TTL compensation for work satisfactorily completed up to date of termination for said work and for reasonable termination expenses incurred as the result of termination. This Agreement shall remain in effect until completion of proposed scope of services unless terminated as provided herein, or extended by mutual agreement in writing.
- 24. SEVERABILITY:** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed to be omitted and the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is accepted on the date last written below, subject to the terms and conditions above stated and the provisions set forth herein.

CLIENT

ENTITY NAME: _____
CONTACT NAME: _____
TITLE: _____
ADDRESS: _____
CITY AND STATE: _____
OFFICE PHONE: _____
CELL PHONE: _____
EMAIL: _____

SIGNED: _____
DATE: _____

CONSULTANT

ENTITY NAME: TTL, Inc.
CONTACT NAME: Mark A. Hermann, PE
TITLE: Principal Engineer
ADDRESS: 5010 Linbar Drive, Suite 153
CITY, STATE, ZIP: Nashville, TN 37211
OFFICE PHONE: 615-331-7770
CELL PHONE: _____
EMAIL: mhermann@ttlusa.com

SIGNED: _____
DATE: _____

COUNCIL COMMUNICATION

Meeting Date: 3/17/2022

Item Title: Minutes of City Council Meetings

Department: Finance

Presented by: Jennifer Brown

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.

Attachments

- February 16, 2022 (Regular Meeting)
- February 16, 2022 (Special Joint Meeting)
- February 24, 2022 (Regular Meeting)

February 16, 2022

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session in the Business Center at the Murfreesboro Municipal Airport at 11:30 a.m. on Wednesday, February 16, 2022, 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 and 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
Jennifer Brown, City Recorder/
Finance Director
Darren Gore, Assistant City Manager
Gary Whitaker, Assistant City Manager
Angela Jackson, Executive Director/
Community Services
Chris Griffith, Executive Director/
Public Infrastructure
Sam Huddleston, Executive Director/
Development Services
Raymond Hillis, Executive Director/
Public Works
Michael Bowen, Police Chief
Trey Duke, City Schools Director
Erin Tucker, Budget Director
Randolph Wilkerson, Employee Services Director
Roger Toombs, Assistant Fire Chief
Karen Lampert, Grant Coordinator
Joshua Miller, Administrative Assistant

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

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

(Insert letter dated February 16, 2022 here with regards to Resolution to amend the City Charter for creation of the Community Investment Trust.)

Mr. Adam Tucker, City Attorney, presented details from the resolution concerning allocation of funds, creation of the Community Board, creation of the Trust and the Council appointed Board of Trustees, conditions for terminating the Trust, the referendum process and answered questions from Council.

The following RESOLUTION 22-R-05 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wright. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin

Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 22-R-05 here requesting the Tennessee General Assembly pass a Private Act amending the Murfreesboro City Charter by creating a Community Investment Trust to be funded initially from the proceeds of the City's sale of the Murfreesboro Electric Department.)

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

(Insert letter dated February 16, 2022 here with regards to issuance of General Obligation Debt.)

The following RESOLUTION 22-R-06 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

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

Nay: None

Abstain: Rick LaLance

(Insert RESOLUTION 22-R-06 here authorizing the issuance of general obligation bonds by the City of Murfreesboro, Tennessee, of not to exceed fifty-seven million dollars (\$57,000,000) to provide funding for certain public works projects, and to fund the incidental and necessary expenses related thereto.)

The following RESOLUTION 22-R-07 was read to the Council and offered for adoption upon motion made by Mr. Wade, seconded by Mr. Shacklett. Upon roll call said resolution was adopted by the following vote:

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

Nay: None

Abstain: Rick LaLance

(Insert RESOLUTION 22-R-07 here authorizing the issuance of general obligation bonds of the City of Murfreesboro, Tennessee in the aggregate principal amount of not to exceed fifty-seven million dollars (\$57,000,000), in one or more series; making provision for the issuance, sale and payment of said bonds, establishing the terms thereof and the disposition of proceeds therefrom; and providing for the levy of taxes for the payment of principal of, premium, if any, and interest on the bonds.)

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

(Insert letter dated February 16, 2022 here with regards to

Fiscal Year 2022 Budget Amendment Ordinance 22-O-01.)

An ordinance, entitled "ORDINANCE 22-O-01 amending the 2021-2022 Budget (4th Amendment)," was read to the Council and offered for passage on first reading upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said ordinance was passed on first reading by the following vote:

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

Nay: None

The following letter from the Grant Coordinator was presented to the Council:

(Insert letter dated February 16, 2022 here with regards to
Coronavirus State and Local Fiscal Recovery Funds Spending.)

Mrs. Karen Lampert, Grant Coordinator, presented the request to approve the proposed outline of projects for Local Fiscal Recovery Funds which included Public Health and Economic Impact in the amount of \$2 Million, Premium Pay in the amount of \$2 Million, Revenue Loss in the amount of \$10 Million, and Stormwater Improvements in the amount of \$9 Million.

Mr. Wade made a motion to approve the request and accepts staff's recommendation regarding the proposed outline of projects for Local Fiscal Recovery Funds. Mr. Shacklett seconded the motion and all members of the Council voted "Aye".

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

(Insert letter dated February 16, 2022 here with
regards to Fiscal Year 2023 Preliminary Budget.)

Mrs. Erin Tucker, Budget Director, presented Council with an overview of the Fiscal Year 2023 Preliminary Budget, highlighting revenues, expenditures, debt service, and inflation increases, answering questions from Council throughout the presentation.

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

(Insert letter dated February 16, 2022 here with
regards to Salary Market Survey.)

Mr. Craig Tindall, City Manager, presented Council with an overview of the Salary Market Survey, addressed the adjustments that were recommended based on the study, and gave a brief history of the City's current pay plan.

Council discussed with staff the current Step System Pay Plan, stagnation at the midpoint of the pay plan, the need to review current part-time pay, and comparisons of the City's pay plan to other comparable cities, specifically as it related to public safety positions. Mayor McFarland ended the discussion stating that a lot of effort had been made in

recruiting and retaining new employees, but he also wanted to make sure the City focused on retaining the employees who had been with the City for years.

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

(Insert letter dated February 16, 2022 here with regards to December 2021 Dashboard packet.)

The December 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 February 16, 2022 here with regards to Beer Permit Applications for Gandy Seafood Cajun Market, 2445 Memorial Blvd., Ste. D and Aldi #23, 3439 S Church St. and Special Event Permits for Rutherford County Chamber of Commerce on 3/8/22, 4/12/22, 9/13/22, 10/12/22, and 12/6/22 at 1023 Bridge Ave., S Walnut St., 540 New Salem Hwy., 2019 Memorial Blvd., and 2404 Medical Center Pkwy.; MBRC Foundation on 5/6/22 and 5/7/22 at 900 N Maney Ave.; and Center for the Arts Inc. on 5/21/22 at 2404 Medical Center Pkwy.)

Mr. Wright made a motion to approve the Beer Permits for Gandy Seafood Cajun Market, 2445 Memorial Boulevard, Suite D (New Location) and Aldi #23, 3439 South Church Street (New Location), pending Building and Codes approval and Special Event Beer Permits for the Rutherford County Chamber of Commerce on 3/8/22, 4/12/22, 9/13/22, 10/12/22, and 12/6/22 at 1023 Bridge Avenue, South Walnut Street, 540 New Salem Highway, 2019 Memorial Boulevard, and 2404 Medical Center Parkway; the MBRC Foundation on 5/6/22 and 5/7/22 at 900 North Maney Avenue; and the Center for the Arts Inc. on 5/21/22 at 2404 Medical Center Parkway. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

There being no further business, Mayor McFarland adjourned this meeting at 1:19 p.m.

SHANE MCFARLAND – MAYOR

ATTEST:

JENNIFER BROWN - CITY RECORDER

February 16, 2022

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in special session in the Business Center at the Murfreesboro Municipal Airport at 1:00 p.m. on Wednesday, February 16, 2022, 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

The following members of the Planning Commission were present:

Ken Halliburton, Vice-Chair
Jami Averwater
Warren Russell
Chase Salas

Planning Commission Chair Kathy Jones was absent and excused from this session.

The following representatives of the City were also present:

Craig Tindall, City Manager
Jennifer Brown, City Recorder/
Finance Director
David Ives, Assistant City Attorney
Darren Gore, Assistant City Manager
Gary Whitaker, Assistant City Manager
Angela Jackson, Executive Director/
Community Services
Sam Huddleston, Executive Director/
Development Services
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Joshua Miller, Administrative Assistant

Mayor McFarland called the recess of the special session of the City Council over followed by Vice-Chair Ken Halliburton calling the special session of the Planning Commission to order.

Mr. Greg McKnight, Planning Director, stated that this meeting was held for the purpose of showcasing the proposed updates to Future Land Use Map of the Murfreesboro 2035 Comprehensive Plan. He gave an overview of the history of the Murfreesboro 2035 Comprehensive Plan, explained what a Future Land Use Map was as well as what it was not, and gave a proposed timeline for adoption and implementation.

Mr. Kevin Guenther, Ragan-Smith Associates, Inc., summarized the proposed updates to the Future Land Use Map of the Murfreesboro 2035 Comprehensive Plan highlighting new land use character areas as well as the role potential economic development areas had on the proposed plan in collaboration with the City's economic development consultant Mr. Jim Coulson.

There being no further business, Mayor McFarland adjourned this special joint meeting at 2:02 p.m.

SHANE MCFARLAND – MAYOR

KEN HALLIBURTON – VICE-CHAIR

ATTEST:

JENNIFER BROWN - CITY RECORDER

February 24, 2022

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session at its regular meeting place in the Council Chambers at City Hall at 6:00 p.m. on Thursday, February 24, 2022, 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
Shawn Wright

Council Member Kirt Wade was absent and excused from this session.

The following representatives of the City were also present:

Craig Tindall, City Manager
Jennifer Brown, City Recorder/
Finance Director
David Ives, Assistant City Attorney
Mark Foulks, Chief of Fire Rescue
Michael Bowen, Chief of Police
Trey Duke, City Schools Director
Angela Jackson, Executive Director/
Community Services
Sam Huddleston, Executive Director/
Development Services
Erin Tucker, Budget Director
Greg McKnight, Planning Director
Michele Emerson, City Engineer
Nate Williams, Parks and Recreation Director
Bill Terry, Public Safety IT Manager
Matt Jarratt, IT Manager
Holly Smyth, Principal Planner
Joshua Miller, Administrative Assistant

Council Member Bill Shacklett introduced Dr. Gloria Bonner who explained the reasoning behind the month of February being chosen for Black History Month and commenced the meeting with a prayer followed by the Pledge of Allegiance.

The Consent Agenda was presented to the Council for approval:

1. Affordable Housing Program – Legacy Pointe Development (Community Development)
2. Lease for Wee Care Day Care (Community Services)
3. FY22 City Manager Approved Budget Amendments (Finance)
4. Wine Sales Certificate of Compliance – Aldi #23 (Finance)
5. Purchase of Apparatus Mobile Computers (Fire)
6. Mandatory Referral for Abandonment of Sanitary Sewer Easement along East Northfield Boulevard (Planning)
7. Agreements for Vehicle Striping and Logos (Police)
8. Contract for Purchase of Polaris Ranger UTVs (Police)
9. Purchase of Mobile Data Mounting Hardware (Police)
10. Contract Extension with Heritage Cleaners (Police/Fire)
11. Main Street Banner Request (Street)
12. Asphalt and Concrete Purchase Report (Street)
13. Contract with TDOT for Preventive Maintenance Expenses (Transportation)

(Insert letters from Community Development, Community Services,
Finance (2) Fire, Planning, Police (4), Street (2),
& Transportation Departments here.)

At Council's direction staff answered questions regarding Item No. 3 on the Consent Agenda, specifically relating to the amount of the Downtown Parking Study Fee.

Mr. LaLance made a motion to approve the Consent Agenda. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated February 24, 2022 here with regards
to approval of Minutes of City Council Meetings.)

Mr. LaLance made a motion to approve the minutes as written and presented for the special meeting held on January 20, 2022, the regular meeting held on January 27, 2022, the Public Comment Meeting held on February 3, 2022, and the regular meeting held on February 3, 2022. Mr. Wright seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated February 24, 2022 here with regards to
Fiscal Year 2022 Budget Amendment Ordinance.)

Mayor McFarland requested that Council consider amending the Ordinance to include a 7% COLA (cost of living adjustment) for all full-time employees, with the knowledge that pay adjustments for all part-time positions were being looked at by staff and would be forthcoming.

Mr. Shacklett made a motion to amend ORDINANCE 22-O-01 to include a 7% COLA for all full-time employees. Mr. LaLance seconded the motion and upon roll said ordinance was amended by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

Mr. LaLance made a motion to amend ORDINANCE 22-O-01 to include a new accountant position in the Finance Department. Mr. Shacklett seconded the motion and upon roll call said ordinance was amended by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright

Shane McFarland

Nay: None

An ordinance, entitled "ORDINANCE 22-O-01 amending the 2021-2022 Budget (4th Amendment)," which passed first reading on February 16, 2022, was read to the Council and offered for passage on second and final reading as amended to include a 7% COLA for all full-time employees and a new accountant position in the Finance Department, upon motion made by Mr. LaLance, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

(Insert ORDINANCE 22-O-01 here.)

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

(Insert letter dated February 24, 2022 here with regards to zoning of approximately 19 acres located along Florence Road.)

An ordinance, entitled "ORDINANCE 21-OZ-41 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 16.7 acres as Single-Family Residential Six (RS-6) District and approximately 2.1 acres as Commercial Fringe (CF) District, located along Florence Road; simultaneous with annexation; Alcorn Properties, Inc., applicant [2021-423]," which passed first reading on February 3, 2022, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. LaLance, seconded by Mr. Wright. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

(Insert ORDINANCE 21-OZ-41 here.)

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

(Insert letter dated February 24, 2022 here with regards to zoning of approximately 25 acres located along New Salem Highway.)

An ordinance, entitled "ORDINANCE 21-OZ-42 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 2.8 acres located along New Salem Highway as Highway Commercial (CH) District simultaneous with annexation and approximately 22.2 acres as Single-Family Residential Eight (RS-8) District simultaneous with annexation; Salem Properties, Inc., applicant [2021-422]," which passed first reading on February 3, 2022, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. Wright, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

(Insert ORDINANCE 21-OZ-42 here.)

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

(Insert letter dated February 24, 2022 here with regards to amending the Arbors PRD zoning on approximately 78.25 acres and rezoning 0.5 acres located along Compton Road.)

Ms. Holly Smyth, Principal Planner, stated that the developer has committed to removing the street connections to Lakes Edge and Bushnell Drive and that the pattern book has been updated to reflect that change.

An ordinance, entitled "ORDINANCE 21-OZ-46 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 78.25 acres in the Planned Residential Development (PRD) District (The Arbors PRD) located along Compton Road and to rezone approximately 0.5 acres along Compton Road from Planned Residential Development (PRD) District to Single-Family Residential Fifteen (RS-15) District, Middle TN Developers, LLC, applicant [2021-429]," which passed first reading on January 27, 2022, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. Wright, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: Ronnie Martin

(Insert ORDINANCE 21-OZ-46 here.)

The following letter from the City Schools Director was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to
Fiscal Year 2022 City Schools Budget Amendment #5.)

The following RESOLUTION 22-R-01 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 22-R-01 here amending the 2021-2022
Murfreesboro City Schools Budget (5th Amendment).)

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

(Insert letter dated February 24, 2022 here with regards to scheduling public hearings for April 7, 2022 for an annexation petition and plan of services [2021-516] for approximately 258.8 acres located along Northwest Broad Street and a zoning application [2021-433] for approximately 258.8 acres located along Northwest Broad Street to be zoned CH And GDO-1 simultaneous with annexation, SEC, Inc. on behalf of Legacy Sports Tennessee applicant.)

The following RESOLUTION 22-R-PH-02 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-PH-02 fixing the time for Public Hearings to consider (1) adoption of a Plan of Services for and annexation of approximately 258.8 acres located along Northwest Broad Street and (2) zoning of approximately 258.8 acres located along Northwest Broad Street to Highway Commercial (CH) District and Gateway Design Overlay One (GDO-1) District; which have been proposed to be annexed to the City of Murfreesboro, Hord Family and SEC, Inc. on behalf of Legacy Sports Tennessee, applicant(s) [2021-516 & 2021-433].)

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

(Insert letter dated February 24, 2022 here with regards to Road Development Agreement for Cherry Lane STI-8 Phase 1.)

Mr. Sam Huddleston, Executive Director of Development Services, presented the request to approve the Road Development Agreement with Alcorn Properties, LLC, pending Legal Department approval, for a public-private partnership in the construction of a portion of the Cherry Lane STI-8 Phase 1. Mr. Huddleston stated that costs of \$360,000 associated with this Agreement would be paid for by the reallocation of bond proceeds from other projects.

Mr. Shacklett made a motion to approve the Road Development Agreement with Alcorn Properties, LLC, pending Legal Department approval, for a public-private partnership in the construction of a portion of the Cherry Lane STI-8 Phase 1. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated February 24, 2022 here with regards to Cherry Lane STI-8 Phase 1 Professional Services Agreement.)

Ms. Michele Emerson, City Engineer, presented the request to approve the Professional Services Agreement with Civil Infrastructure Associates, LLC in the amount of \$110,084, funded from the reallocation of bond proceeds for design of the Cherry Lane STI-8.

Mr. Martin made a motion to approve the Professional Services Agreement with Civil Infrastructure Associates, LLC in the amount of \$110,084, funded from the reallocation of bond proceeds for design of the Cherry Lane STI-8. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

The following letter from the Chief of Fire Rescue was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to purchase of Firefighter Turnout Gear.)

Mr. Mark Foulks, Chief of Fire Rescue, presented the request to approve Amendment No. 1 to the Contract with Municipal Emergency Services, Inc., in the amount of \$123,095, funded from the Department's Budget for the purchase of turnout gear that was specified in the original Contract and is no longer due to manufacturer discontinuation.

Vice-Mayor Scales Harris made a motion to approve Amendment No. 1 to the Contract with Municipal Emergency Services, Inc., in the amount of \$123,095, funded from the Department's Budget for the purchase of turnout gear that was specified in the original Contract and is no longer due to manufacturer discontinuation. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated February 24, 2022 here with regards to Managed Security Services.)

Mr. Matt Jarratt, IT Manager, presented the request to approve the Purchase Contract with Waypoint Business Solutions, LLC, through the National Cooperative Purchasing Alliance Contract, for managed IT security services, pending Legal Department approval. Mr. Jarrett stated the estimated purchase amount was \$270,317, funded from the IT Department's Budget with reimbursement from the MWRD Enterprise Fund.

Mr. LaLance made a motion to approve the Purchase Contract with Waypoint Business Solutions, LLC, through the National Cooperative Purchasing Alliance Contract, for managed IT security services, pending Legal Department approval in the amount of \$270,317, funded from the IT Department's Budget with reimbursement from the MWRD Enterprise Fund. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

The following letter from the Chief of Police was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to Agreement for Police Department Gun Vaults for Vehicles.)

Mr. Michael Bowen, Chief of Police, presented the request to approve the purchase of 30 vehicle gun vaults with Trucker's Lighthouse, Inc. in the amount of \$39,270, funded by the CIP.

Mr. Wright made a motion to approve the purchase of 30 vehicle gun vaults with Trucker's Lighthouse, Inc. in the amount of \$39,270, funded by the CIP. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The following letter from the Public Safety IT Manager was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to Purchase of Data Storage Equipment.)

Mr. Bill Terry, Public Safety IT Manager, presented the request to approve the purchase of data storage equipment with Insight Public Sector, Inc. in the amount of \$53,243, funded by the CIP and the Department's Operating Budget.

Mr. LaLance made a motion to approve the purchase of data storage equipment with Insight Public Sector, Inc. in the amount of \$53,243, funded by the CIP and the Department's Operating Budget. Mr. Wright seconded the motion and all members of the Council present voted "Aye".

The following letter from the City Schools Director was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to purchase of two Chevy Cargo Vans.)

Dr. Trey Duke, City Schools Director, presented the request to approve the purchase of two Chevy cargo vans from Wilson County Motors, LLC, in the amount of \$55,000, funded by shared County Bond proceeds.

Mr. Shacklett made a motion to approve the purchase of two Chevy cargo vans from Wilson County Motors, LLC, in the amount of \$55,000, funded by shared County Bond proceeds. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

The following letter from the City Schools Director was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to replacement of Cooling Tower at Northfield Elementary School.)

Dr. Trey Duke, City Schools Director, presented the request to approve the Contract with Matrix Mechanical Solutions, LLC, in the amount of \$97,693, funded by shared County Bond proceeds, for the replacement of the cooling tower at Northfield Elementary School.

Vice-Mayor Scales Harris made a motion to approve the Contract with Matrix Mechanical Solutions, LLC, in the amount of \$97,693, funded by shared County Bond proceeds, for the replacement of the cooling tower at Northfield Elementary School. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The following letter from the Parks and Recreation Director was presented to the Council:

(Insert letter dated February 24, 2022 here with regards to Construction Contract for McFadden Outdoor Basketball Court.)

Mr. Nate Williams, Parks and Recreation Director, presented the request to approve the Agreement with Stubblefield Construction, LLC, in the amount of \$71,960, funded by a \$40,000 National Recreation and Park Association (NRPA) Grant with the remaining balance funded by the CIP, for Phase 1 of the McFadden Basketball Court Project.

Mr. LaLance made a motion to approve the Agreement with Stubblefield Construction, LLC, in the amount of \$71,960, funded by a \$40,000 NRPA Grant with the remaining balance funded by the CIP, for Phase 1 of the McFadden Basketball Court Project. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated February 24, 2022 here with regards to Beer Permit Applications for Lion Mart, 1646 Joe B Jackson Pkwy. and RaceTrac #2580, 1942 Broad St.)

Mr. Martin made a motion to approve the Beer Permits for Lion Mart, 1646 Joe B Jackson Parkway (New Location) and RaceTrac #2580, 1942 Broad Street (New Location),

pending Building and Codes approval. Mr. Wright seconded the motion and all members of the Council present voted "Aye".

Upon recommendation of Mayor McFarland, Mr. Martin made a motion to appoint Mr. Cannon Loughry III (term expires February 28, 2025) replacing Mr. Clay Cooke and appoint Mr. Shelby Hunton (term expires February 28, 2025) replacing Mr. John Polk to the Airport Commission. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director announced that there were no statements to consider.

Council Member Bill Shacklett invited everyone to attend a Tennessee Legacy Film Discussion event held at Patterson Park on February 26, 2022.

Mr. Shacklett also reminded everyone of the joint County/City School Board Meeting on March 3, 2022.

Mayor McFarland stated that the MTSU Men's Basketball team would be playing at the Murphy Center on February 26, 2022 and advised everyone to get tickets as it was anticipated that it would be a sold out game.

There being no further business, Mayor McFarland adjourned this meeting at 7:03 p.m.

ATTEST:

SHANE MCFARLAND – MAYOR

JENNIFER BROWN - CITY RECORDER

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: ProLogis and FedEx Public ROW License Agreement on Elam Farms Parkway

Department: Administration

Presented by: Sam A. Huddleston

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

Public ROW License Agreement for temporary private use of a portion of Elam Farms Parkway ROW.

Staff Recommendation

Approve the License Agreement.

Background Information

ProLogis, as owner of the buildings, and FedEx, as the tenant, operate in two buildings on opposite sides of the roadway at the east termination of Elam Farms Parkway. FedEx is expanding to add a regional ground hub in one of the facilities and currently operates a local delivery facility in the second. ProLogis and FedEx requested the use the existing public ROW which requires approval of Council at the east termination of Elam Farms Parkway as a direct driveway connection between the facilities. The private driveway connection will be in public ROW but will not connect to the public roadway as this portion of Elam Farms Parkway will not be constructed to the full extent of ROW at this time. It is in that unused portion of the ROW that the driveway connection is proposed. ProLogis and FedEx have agreed to certain driveway and access modifications which will improve access conflicts on Elam Farms Parkway.

The 2040 Major Transportation Plan includes a recommended improvement project to connect Elam Farms Parkway between Manchester Pike and the currently terminus at ProLogis and FedEx facilities as a 3-lane roadway. The current 1,600-foot, unbuilt portion has no timeframe on its completion, and ProLogis and FedEx have agreed to remove the temporary direct driveway connection when needed to accommodate the extension of Elam Farms to Manchester Pike. Upon removal of the temporary connection, ProLogis is responsible for extension of Elam Farms to the east to the extent of existing ROW and a surety for that future work will be provided.

Concurrence

The Planning Commission approved the matter as a Mandatory Referral during the March 16, 2022, meeting.

Council Priorities Served*Responsible budgeting*

The Agreement provides for a public-private partnership to fund and construct a portion of new roadway.

Improve economic development

The temporary use of the public ROW will allow FedEx improved operational efficiencies in the short term before the City needs to use the ROW.

Expand infrastructure

The current and future construction of Elam Farms Parkway as required by the agreement will expand an important industrial roadway.

Fiscal Impact

All costs associated with the License are being covered by Prologis.

Attachments

Temporary Land Use License Agreement with Exhibit

TEMPORARY LAND USE LICENSE AGREEMENT

This Temporary Land Use License Agreement (this “License” or “Agreement”) is made and entered into as of the Effective Date listed herein, by and between the **CITY OF MURFREESBORO** (the “City” or “Licensor”), a Tennessee Municipal Corporation; **PROLOGIS, L.P.** (“Prologis”), a Delaware Limited Partnership; and **FEDEX GROUND PACKAGE SYSTEM, INC.** (“FedEx”), a Delaware Corporation.

RECITALS:

WHEREAS, Prologis owns those certain parcels of land in Murfreesboro, Rutherford County, Tennessee, identified as Lots 2 and 3 on the plan of Elam Farms and described more fully in EX 2, attached hereto (the “Property”);

WHEREAS, FedEx has previously entered into a separate agreement with Prologis whereby FedEx conducts certain logistics, distribution, and delivery operations on the Property;

WHEREAS, the lots comprising the Property are separated by a portion of right-of-way owned by the City and which is to become part of the existing Elam Farms Parkway (the “City ROW”); and

WHEREAS, in order to temporarily facilitate FedEx’s operations and movement of equipment between the lots comprising the Property, the City is willing to grant to Prologis this License as part of Prologis’s development of the Property, for FedEx’s use, and commitment to extend a portion of Elam Farms Parkway (the “Project”), pursuant to the following terms and conditions.

NOW, THEREFORE, in consideration of the premises, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of License.** The City grants to Prologis, its engineers and contractors and employees, a temporary license, upon and subject to the terms, covenants, and conditions of this Agreement, to enter upon that portion of the City ROW marked “PROPOSED CONNECTOR DRIVE”, as shown on the site plan attached as EX 1 hereto and incorporated into this Agreement by reference (the “Licensed Premises”) in order to perform, install, erect, construct, maintain, repair, and/or remove (as the case may be) a private road (the “Access Drive”) and security fencing separating the Licensed Premises from the remainder of the City ROW and Elam Farms Parkway (the “Security Fencing”), as well as those other structures and/or infrastructure as agreed by the parties herein, for use by FedEx and FedEx’s employees, contractors, agents, licensees and invitees (collectively, “FedEx Representatives”). Effective upon completion of such Access Drive, the City hereby grants to FedEx a temporary license, upon and subject to the terms, covenants, and conditions of this Agreement, to privately utilize the Access Drive for ingress and egress by FedEx and the FedEx Representatives between portions of the Property across the City ROW.

2. **License Term.** This Agreement shall be effective upon its execution by all parties, the “Effective Date” being the date of the last party to sign. The term of this Agreement and grant of

License shall expire upon the earlier of: (a) written notice by Prologis of termination of this Agreement; or (b) upon written notice from the City, which shall be provided at least six (6) months prior to the noticed expiration date.

3. **Initial Construction of Improvements and Infrastructure.** Prologis shall, at Prologis' expense, construct (i) the Access Drive and Security Fencing, (ii) modify the existing entrance to 36' wide drive with sidewalks and motorized swing gate as shown on EX 1 and denoted as "Modify Existing 36' Wide Drive with proposed Sidewalks and Motorized Swing Gate", and (iii) demolish the existing drive as shown on EX 1 and denoted thereof on as "Existing Drive to be Demolished" (items ((i), (ii), and (iii) being collectively referred to herein as the Improvements"). Except as otherwise provided herein, said Improvements shall be built to the specification agreed to by Prologis and FedEx for the purpose of temporarily providing a private crossing over the City ROW between the northside and southside of Elam Farms Parkway for their daily operations with secured fencing. The following specifications shall apply:

- a. Curbs and curb cuts along and adjacent to the private roadway shall conform to City Street Specifications and shall be subject to approval by the City Engineer or her designee.
- b. Prologis shall construct a cul-de-sac on the remaining City ROW which shall connect with the existing roadway surface of Elam Farms Parkway. Said cul-de-sac shall be built substantially in accordance with the area marked "PROPOSED CUL-DE-SAC" on the site plan attached hereto as EX 1 and shall be further constructed to conform to City Street Specifications, subject to approval by the City Engineer or her designee.

4. **Final Construction of Improvements and Infrastructure.** The City and Prologis each represent that Prologis is currently under a future obligation to construct a portion of Elam Farms Parkway that will go on and over the City ROW. Except as provided herein, said construction obligation shall be deferred during the term of this Agreement. The following specifications shall apply:

- a. Concomitant with the expiration of this License, Prologis shall complete construction of the infrastructure and improvements for the portion of Elam Farms Parkway per Prologis's site plan approval, to include (without limitation) the design elements noted on the site plan attached hereto as EX 1, on a schedule to be reasonably agreed to by the City and Prologis in writing. Said construction shall conform to City Street Specifications and shall be subject to approval by the City Engineer or her designee.
- b. Any portion of the City ROW or the Property not used for infrastructure or improvements for Elam Farms Parkway or for a private driveway for the Property shall be returned, as close as reasonably practicable, to its original state or such state as shall support the design and function of Elam Farms Parkway.
- c. As an alternative to the final construction of infrastructure and improvements for Elam Farms Parkway, Prologis may pay to the City an amount of cash sufficient to cover the entire cost of said final construction, which act and amount of payment shall be approved in writing by the City and Prologis in an addendum to this Agreement. In any event, Prologis's obligation to complete the improvements and

design changes on its property as shown on the site plan attached hereto as EX 1 shall remain in full force and effect as the responsibility and obligation of Prologis.

5. **Representations and Warranties.** Prologis and FedEx each individually represent, warrant, and covenant to the City, as applicable, that:

- a. It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement has been duly and validly authorized and approved; and
- b. It shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms of this Agreement; and,
- c. It shall obtain, at its sole cost and expense, all respectively required licenses, agreements, permits, waivers, releases, registrations, approvals and/or authorizations required in connection with the Project; and,
- d. It will keep the Licensed Premises in good order, repair, and condition throughout the term of this Agreement and to promptly and adequately repair any damage to the Licensed Premises and/or City ROW caused by its use, or any successor, assign, contractor, or invitee of such party; and
- e. It will comply with all federal, state, and municipal laws, ordinances, orders, rules, and regulations applicable to both the Property and the Licensed Premises in relation to the Project as well as its particular use.

6. **Insurance.** Prior to Prologis' entry upon the Licensed Premises, Prologis and/or its contractors shall furnish Licensor with certificates evidencing liability insurance covering any and all liability of Prologis and its contractors with respect to claims for bodily injury, death and/or property damage on or about the Licensed Premises to the extent arising out of the construction of the Project. The liability limits of the foregoing insurance shall be not less than \$1 million per occurrence and excess liability in the amount of \$5 million dollars per occurrence/\$5 million aggregate, to be provided by a combination of primary commercial general liability and excess liability coverage. Prior to FedEx's entry upon the Licensed Premises, FedEx shall furnish Licensor with certificates evidencing liability insurance covering any and all liability of FedEx, and its licensees, invitees, and agents, with respect to claims for bodily injury, death and/or property damage on or about the Licensed Premises to the extent arising out of its use of the Licensed Premises. The liability limits of the foregoing insurance shall be not less than \$1 million per occurrence and excess liability in the amount of \$5 million dollars per occurrence/\$5 million aggregate, to be provided by a combination of primary commercial general liability and excess liability coverage.

7. **Indemnification.** Each of Prologis and FedEx, as applicable, shall indemnify and hold harmless Licensor from all claims, damages, liabilities and expenses attributable to bodily injury, death and/or property damage on or about the Licensed Premises to the extent arising out of its use of the Licensed Premises or any act or omission of such party or any person who is granted access through such party, provided the same is not caused, in whole or in part, by Licensor's willful acts and/or negligence. Licensor shall promptly notify FedEx and Prologis in writing using the addresses listed below in the signature blocks if any claim of damage to the Licensed Premises arises and provide the responsible party with the opportunity to cure the condition prior to taking any curative or legal actions in relation thereto.

8. **Assignment.** This Agreement may not be assigned without Licensor's consent which may be withheld for any reason. Notwithstanding the foregoing, Licensor shall not unreasonably withhold its consent to a whole or partial assignment to a transferee or lessee of all or a portion of the Property. Any assignee hereunder shall be bound by the terms of this Agreement and shall do so in a writing to be provided to Licensor.

9. **Amendment.** This Agreement may not be modified, amended, or discharged except by an instrument in writing signed by all parties. No waiver or consent may be enforced unless such waiver or consent shall be in writing and signed by the party against whom enforcement thereof is sought.

10. **Choice of Law and Venue.** This Agreement shall be interpreted under the law of the State of Tennessee. Venue for any action arising from this Agreement shall be in the courts of Rutherford County, Tennessee.

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, permitted assigns. Licensor further agrees that in the event that Licensor assigns, sells or otherwise transfers the License, any documents evidencing such assignment, transfer, and/or sale shall make reference to this Agreement and Licensor shall notify the assignee, transferee, future owner or purchaser of the existence of this Agreement and take whatever actions are necessary to assure that assignee, transferee, future owner or purchaser agrees to be bound by the terms herein.

12. **Invalidity.** The invalidity of any provision of this Agreement shall not impair nor affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Agreement.

13. **Counterpart Execution.** This Agreement may be executed in multiple counterparts and via facsimile or email (via pdf format), each of which shall be an original and all of which, together, shall constitute one agreement.

14. **Authorization.** The persons signing this Agreement below represent that they are duly authorized to execute this Agreement on behalf of either the City, Prologis, or FedEx respectively, and with full force and biding effect upon such party.

15. **Condition of Approval.** This Agreement shall become effective only after approval by the Murfreesboro City Council. If and when such approval is obtained, the parties shall affix a copy thereof at EX 3.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have set for their hands and seals as of the day and date listed for each party.

**CITY OF MURFREESBORO,
A Tennessee Municipal Corporation**

By: _____
Shane McFarland, Mayor

Date: _____

ATTEST:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

City of Murfreesboro

Attention: _____

**PROLOGIS, L.P.,
A Delaware Limited Partnership
By: Prologis, Inc., its general partner**

By: _____

Print: _____

Title: _____

Date: _____

Prologis, L.P.

Attention: _____

**FEDEX GROUND PACKAGE SYSTEM, INC.,
A Delaware Corporation**

By: _____

Print: _____

Title: _____

Date: _____

FedEx Ground Package System, Inc.
Attn: Managing Director, Real Estate Department- #0371
1000 FedEx Drive
Moon Township, Pennsylvania 15108
Phone: (412) 859-5016
FAX #: (412)859-2655

With a copy to:
FedEx Ground Package System, Inc.
Attn: Real Estate Department- #0371
1000 FedEx Drive
Moon Township, Pennsylvania 15108
Phone: (412) 859-5016
FAX #: 412-859-2655

STATE OF TENNESSEE)
 : ss
COUNTY OF RUTHERFORD)

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared **SHANE McFARLAND** and **JENNIFER BROWN**, with whom I am personally acquainted or who proved to me on the basis of satisfactory evidence, and who, upon their oath acknowledged themselves to be respectively the Mayor and City Recorder of the **CITY OF MURFREESBORO**, and that they as such Mayor and City Recorder, being authorized to do so, executed the within and foregoing instrument for the purposes therein contained, by signing thereto the name of said City, and by attesting said instrument, by themselves as such Mayor and City Recorder, respectively.

Witness my hand and seal, this ____ day of _____, 2022.

NOTARY PUBLIC

My Commission Expires: _____ (seal)

STATE OF _____)
 : ss
COUNTY OF _____)

Before me, the undersigned notary public, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged ____self to be the _____ of **PROLOGIS, L.P.**, the within named party, and that ___he as such _____, being fully authorized to do so, executed the foregoing instrument for the purposes therein contained by personally signing his / her name in such capacity as such officer.

Witness my hand and seal this ____ day of _____, 2022.

Notary Public

My Commission Expires: _____ (seal)

STATE/Commonwealth of _____)
COUNTY OF _____) : ss

Before me, the undersigned notary public, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged _____ self to be the _____ of **FEDEX GROUND PACKAGE SYSTEM, INC.,** the within named party, and that _____ he as such _____, being fully authorized to do so, executed the foregoing instrument for the purposes therein contained by personally signing his / her name in such capacity as such officer.

Witness my hand and seal this _____ day of _____, 2022.

Notary Public

My Commission Expires: _____ (seal)

EX 1

[Attached]

[Parties to Attach Final Depiction of Proposed Connector Drive]

EX 2

Lot 2:

Real estate situated and being in the County of Rutherford, State of Tennessee:

Lot 2, Re-Subdivision of Lot 2, Elam Farms Phase I, as shown on plat of record in Plat Book 34, Page 145, in the Register's Office of Rutherford County, Tennessee, to which plat reference is hereby made for a more particular description of said property.

Being the same property conveyed to PROLOGIS, L.P., a Delaware limited partnership, by Special Warranty Deed of record in Record Book 1229, Page 2905, in the Register's Office of Rutherford County, Tennessee.

Lot 3:

Real estate situated and being in the County of Rutherford, State of Tennessee:

Lot 3 on the Final Plate, Re-Subdivision of Lot 3, Elam Farms Phase I, as shown on plat of record in Plat Cabinet 37, Page 230, in the Register's Office of Rutherford County, Tennessee, to which plate reference is hereby made for a more particular description of the Property.

Being the same property conveyed to PROLOGIS, L.P., a Delaware limited partnership, by Special Warranty Deed of record in Record Book 1868, Page 3641, in the Register's Office of Rutherford County, Tennessee.

EX 3

[If and when obtained, attach Resolution of Murfreesboro City Council Approving this Agreement]



GreshamSmith.com

222 Second Avenue South
Suite 1400
Nashville, TN 37201

615.770.8100

Prologis - Elam Farms

Murfreesboro, Tennessee

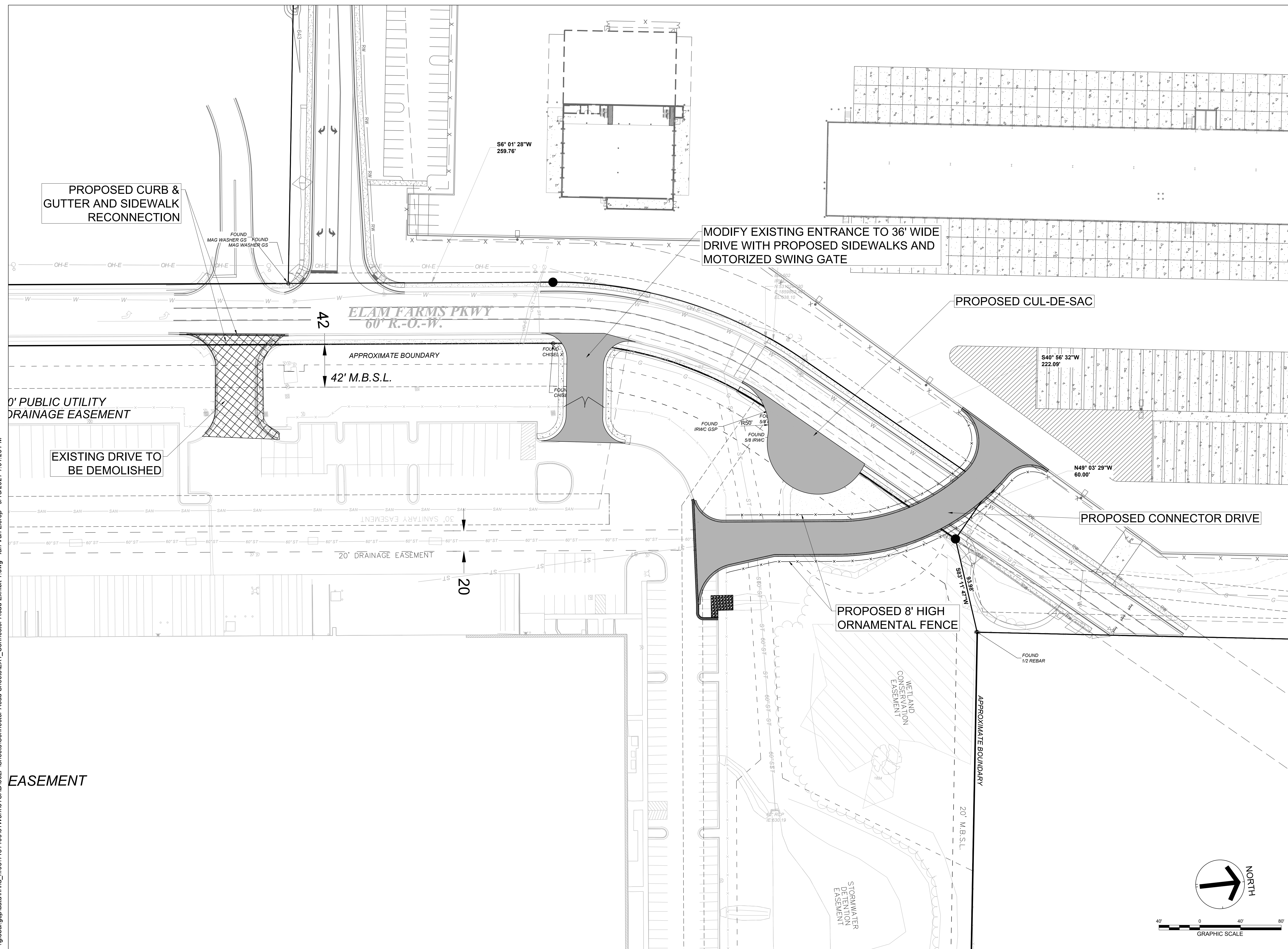
[illegible]

CONNECTOR ROAD
EXHIBIT

EX1

44314.00
September 13, 2021

This Line Is 3 Inches When Printed Full Size



COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Purchase of Property at 2140 N. Thompson Lane

Department: Administration

Presented by: Gary Whitaker

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 office building at 2140 N. Thompson Lane for Fire & Rescue Administration and Parks and Recreation Administration

Staff Recommendation

Approve purchase and authorize Mayor and City Manager to execute closing documents, subject to due diligence.

Background Information

The CIP includes construction of new buildings for Fire & Rescue Administration and for Parks and Recreation Administration, both of which are in need of expanded facilities. Due to the current cost escalations and construction uncertainty, staff has explored alternatives. Alternatives include an existing commercial office building that is for sale.

The City's real estate consultant located the building at 2140 N. Thompson Lane as available and suitable for the City's defined needs. The building is two stories totaling 17,200 square feet. It is constructed in a manner that permits two departments to comfortably share the building. The second floor of the building is only framed, which avoids the need for significant demolition to repurpose the building for the City's needs. The building's location, on Thompson Lane just north of Broad Street, permits the departments to reach other parts of the City in an efficient matter.

The building will supplant the need for construction of two offices, estimates for which are approximately \$12.5m. The current building is offered at \$2.35m and can be remodeled, completed with furniture and fixtures for less than an estimated \$1.5m. Minimal additional funds will be required to relocate the one tenant currently in the building under a short-term lease. Additionally, the City plans to construct a training center at the Doug Young Public Safety Training Center; however, this project will be deferred while construction pricing is monitored.

The proposed contract permits an appropriate amount of time for due diligence on the property. Upon approval, the City will retain the required engineering and

architectural services as part of the project costs. Project costs are estimated to be \$4,000,000. Inspections and design work may modify that projection.

Council Priorities Served

Responsible budgeting

Housing departments in suitable buildings is necessary to provide an efficient and orderly workspace for employees, which has a direct impact on productivity. Parks Administration and Fire & Rescue Administration are current housed in repurposed buildings that have outlived their usefulness. Because the costs of land and new construction have dramatically risen, repurposing an existing structure presents an attractive alternative with positive budgeting implications.

Fiscal Impact

The project cost, \$4,000,000, is funded from bond premiums of the FY21 CIP bond issuance and excess funds from the FY18 and 19 bond proceeds.

Attachments

1. Contract for Conveyance of Real Estate with Tennessee Builders Management Services, LLC.
2. Photo from the listing.

CONTRACT FOR CONVEYANCE OF REAL ESTATE

This Contract for Conveyance of Real Estate ("Contract") 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, Tennessee, ("City"), and TENNESSEE BUILDERS MANAGEMENT SERVICES, LLC ("Seller"), for themselves, and their successors and assigns.

For good and valuable mutual considerations, the receipt and sufficiency of all of which are hereby irrevocably acknowledged and confirmed, City agrees to purchase from Seller and Seller agrees to sell to City that certain real property located in Rutherford County, Tennessee, being of Tax Map 080 Parcel 010.00 according to the Assessor of Real Estate for Rutherford County, with a physical address of 2140 N. Thompson Lane, and containing approximately 1.2 acres and a 2-story office building (the "Property"), upon the following terms and conditions:

1. The purchase price shall be \$2,350,000 payable in good funds by the City at the Closing.

2. The Closing shall take place at the office of Rick Mansfield, attorney, or at such other place as City and Seller may agree, on or before thirty (30) days after the end of the Due Diligence Period, unless an extension is agreed upon in writing by the parties. At the Closing:

a. Seller shall deliver a Special Warranty Deed to the Property in form and substance acceptable to the City along with possession of the property.

b. Seller shall, at its cost, provide a Standard Owners policy of Title Insurance from a 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.

c. 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.

d. Real property taxes shall be pro-rated to the date of Closing; Seller shall be solely responsible for roll-back taxes, if any.

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 Special Warranty Deed.

g. A commission equal to 5% of the contract price shall be paid out of the Seller's proceeds as follows:

2.5% to Tiffany Williams, Swanson Realty, LLC, and
2.5% to Shelby Hunton, Parks Realty.

h. Other Closing costs will be paid in accord with usual commercial real estate practices. ~~Seller will pay transfer tax/fee.~~

BINDER AS.
i. Each party will deliver such other documents or certificates as may be necessary to effectuate the transaction

3. The City shall have sixty (60) days after the Effective Date to conduct Due Diligence with respect to the Property; any extension shall require the consent of Seller. Due Diligence shall include but shall not necessarily be limited to the following:

a. Within ten (10) days after the date of the last party to sign, City will order a Title Binder from a title company of City's choosing, along with copies of all documents that appear as exceptions or encumbrances ("Exceptions") to or upon the title. City shall have twenty (20) days after receipt of the Title Binder to object to any of the Exceptions. Seller agrees to settle monetary discrepancies. If the City objects to any such Exception, and if Seller cannot or elects not to cure same, the City may, at its sole option, terminate this Contract.

b. Within ten (10) days after the date of the last party to sign, City will order an ALTA survey (the "Survey") of the Property to be prepared as soon as reasonably practicable. City shall have twenty (20) days after receipt of the Survey to object to any encroachments or other conditions disclosed by the Survey. If the City objects to any such encroachment or other condition, and if Seller cannot or elects not to cure same, the City may, at its sole option, terminate this Contract.

c. The City, its agents, contractors and representatives shall have the right to enter the property during the due diligence period for appropriate testing and analysis including, but not limited to, the following:

- i. General site inspections;
- ii. Complete building inspections, including but not limited to plumbing, electrical, mechanical, and HVAC;
- iii. Suitability of second story for City purposes;
- iv. Boundary surveys;
- vi. Such other testing or inspection as the City may deem appropriate.

Any persons sent out by the City must be insured.

The City will be solely responsible for the costs of the above referenced inspections, tests and studies, and any other inspections, tests, or studies the City may elect to obtain, on or related to the Property. The seller does not permit any Phase II studies. The Seller will not be responsible or liable for any of such costs or for any injuries that might occur during the course of any such inspections, tests or studies. Each firm retained by the City shall be responsible for its own representatives.

4. In the event that the City discovers conditions or circumstances during the course of its due diligence which are unacceptable to the City ("Objections"), the City shall promptly notify Seller in writing. If the City gives notice of an Objection, and if Seller cannot or elects not to cure same, the City may, at its sole option, terminate this Contract.

5. The City shall be solely responsible for all surveying, engineering and design work, and all related platting and Site Planning necessary or desirable by the City for its purposes.

6. Seller represents that, to the best of its knowledge, information, and belief, there are and 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 leased, generated or allowed to escape from the property; nor are there underground storage tanks located 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.

7. 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 that the Property is suitable for use by the City for its intended purpose;
- c. Receipt by the City of a Boundary Survey, by a surveyor selected by the City, in form and content satisfactory to the City at its sole and absolute discretion, showing the boundaries, any easements or encroachments, and other characteristics of the Property;
- d. The present lease covering a portion of the Property being acceptable to the City; and
- e. All representations of Seller being true and accurate at the time of the Closing.

8. 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.

9. 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 W. 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:

Joe Swanson, Jr.
Tennessee Builders Management Services, LLC
1188 Park Avenue
Murfreesboro TN 37129

with a copy to:

Tiffany Williams, Swanson Realty, LLC
1188 Park Avenue
Murfreesboro TN 37129

10. City and Seller both represent and warrant that neither has retained any broker or other agent who will have a claim for a commission or other fee with respect to this transaction other than to the Brokers identified in Section 2.g., above. City and Seller shall indemnify each other from and against claims by or on behalf of any other person or entity claiming a commission or other fee through them with respect to this transaction.

11. 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.

12. This Contract shall in all things be governed by the laws of the State of Tennessee; venue for any dispute between the Parties shall be in the Circuit Courts of Rutherford County, Tennessee.

13. THIS CONTRACT SHALL BE OF NO FORCE OR EFFECT UNTIL APPROVED BY THE MURFREESBORO CITY COUNCIL.

IN WITNESS WHEREOF, City and Seller have set forth their hands and seals below.

signatures on following page

CITY OF MURFREESBORO:

By: _____
Shane McFarland, Mayor

Date: _____

ATTEST:

By: _____
Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

TENNESSEE BUILDERS
MANAGEMENT SERVICES, LLC

By:  3-14-22

11:30 AM

APPROVED BY PLANNING COMMISSION: _____

APPROVED BY CITY COUNCIL: _____

2140 N Thompson Ln Murfreesboro, TN 37129

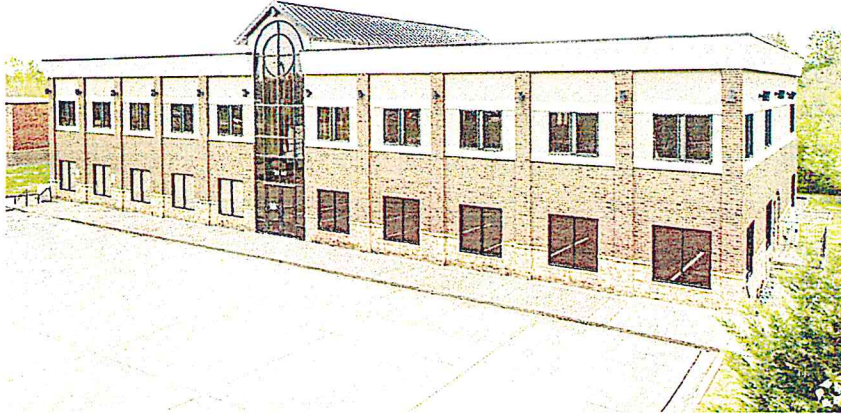
2140 N Thompson Lane - Office Property For Sale



Craig Tindall
craigdtindall@gmail.com



Craig Tindall
emailtindall@gmail.com



EXECUTIVE SUMMARY

Class A office building with 2 suites available from 3,272-3,528 square feet. There is ample parking with handicap accessibility. This property is ready for your custom build out. CAM charges are \$4.21 PSF. Utilities are separately metered to

include gas, electric & water. This building is very secure with an alarm system and surveillance cameras. Professional office space located less than 2 miles from Saint Thomas Rutherford.

COUNCIL COMMUNICATION

Meeting Date: 3/17/2022

Item Title: Presentation of Annual Audit Report

Department: Finance

Presented by: Jennifer Brown

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

Presentation of FY2021 Annual Comprehensive Financial Report (ACFR) report by Jobe, Hastings & Associates.

Staff Recommendation

Approve the FY2021 ACFR as submitted.

Background Information

Annually, the City is audited by an independent audit firm as required by the State of Tennessee. The audit opinion given for FY2021 is the financial statements present fairly, in all material respects, the financial position of the City of Murfreesboro, in accordance with accounting principles generally accepted in the US.

Council Priorities Served

Responsible budgeting

By maintaining focus on budgeting versus actual outcomes, as well as, proper presentation of financial information, the City can be proactive when change is necessary during a budget year.

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Rutherford Blvd Extension – Professional Services Agreement

Department: Engineering

Presented by: Chris Griffith, Executive 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

Design contract for the extension of West Rutherford Boulevard.

Staff Recommendation

Approval of the design contract with Neel Schaffer Inc. in the amount of.

Background Information

Staff requested a proposal from Neel Schaffer, Inc. for a preliminary and final design for the extension of West Rutherford Boulevard. This includes extending Rutherford Boulevard approximately 0.77 miles over I-24 and making a connection with Warrior Dr. This proposal also incorporates the design of approximately .25 miles of Rutledge Way extending north. A Functional Plan detailing the location of the roadways is attached for your review. This extension would be a three-lane curb and gutter section with a sidewalk and multi-use trail on each side, respectively. This project also incorporates a three-lane bridge overpass for Rutherford Blvd over I-24 which was outlined as a need in the 2040 Major Transportation Plan.

Council Priorities Served

Expand Infrastructure

Implementation of the 2040 Major Transportation Plan through the expansion of existing roadways.

Fiscal Impact

The cost of these services, \$716,739, are funded in the FY21 and FY22 CIP Budget.

Attachments

1. Professional Services Contract from Neel Schaffer, Inc.
2. Functional Plan.

March 3, 2022

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

**RE: Professional Engineering Services Agreement
Proposed W. Rutherford Blvd Extension – Design Services
W Rutherford Blvd from Near Southpointe Way to Warrior Dr**

Dear Chris:

Per your request, we respectfully submit this scope and fee proposal for engineering services related to the referenced project. The professional services agreement provides for development of construction plans and related deliverables as shown within the attached agreement exhibits.

Neel-Schaffer proposes to provide the City of Murfreesboro with the listed services as shown in the attached Scope of Work, including roadway design, structural (bridge) design, hydraulic, traffic engineering and coordination services. In addition, via subconsultant partners, environmental review (Gresham Smith) and survey, staking, right-of-way support services (Wiser) will be provided as described in the scope document. The Scope of Services further outlines tasks that are currently excluded from the professional services agreement.

Our agreement includes the following items:

1. Exhibit A – Scope of Services
2. Exhibit B – Fee Schedule Estimate
3. Exhibit C – General Terms & Conditions

Neel-Schaffer will provide these services on an hourly not-to-exceed basis. 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 incurred during the course of work.

Neel-Schaffer, Inc. will provide these engineering services in accordance with Exhibit C, General Terms and Conditions, which is attached and made a part of this Letter Agreement. At this time, our scope of work excludes geotechnical services, public meetings and other tasks as reflected in the Scope of Service summary.

This Letter consisting of two pages; Exhibit A consisting of six pages; Exhibit B consisting of fifteen 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.

March 3, 2022
Professional Engineering Services Agreement
Proposed W. Rutherford Blvd Extension
Page 2

Thank you for offering us the opportunity to work with you on the project. Please let us know if you should have any questions or need additional information.

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:

DocuSigned by:
BY: 
43A2035E51F9401... City Attorney

Date: 3/8/2022



Attachment A – Scope of Work

West Rutherford Boulevard

The proposed work will be for the development of an extension of West Rutherford Blvd. in Murfreesboro, Tennessee. The project is classified as an urban collector. The project will begin at Warrior Drive and extend east to a point just west of Southpoint Way along existing West Rutherford Blvd. Plans will be developed in conformance with functional plans developed by Huddleston-Steele in January 2021. The project will consist of the construction of a roadway section consisting of a three-lane curb and gutter section with two 12 ft. thru traffic lanes, a 12 ft. continuous left turn lane, 2 ft. curb and gutters, a 2 ft. grass strip on each side, a 12 ft. shared use path on the north side of the roadway, and a 5 ft. sidewalk on the south side of the roadway within a minimum 70 ft. right-of-way with slope and construction easements as required. The West Rutherford Blvd. bridge over I-24 will also include a 4 ft. shoulder on both sides of the roadway as shown on the functional plans typical bridge section. The design speed of West Rutherford Boulevard will be 40 mph.

In addition, a 1350 ft. (0.25 mile) section of Rutledge Way will be reconstructed using the alignment shown in the functional plans. The typical section will match the typical section of West Rutherford Blvd. typical section. The design speed of Rutledge Way will be 35 mph.

The project will cross I-24 between the existing SR-99 and US 231 interchanges. A girder bridge is proposed at the crossing spanning the interstate. Bridge design is included in the overall project scope. Neel-Schaffer will assist the City of Murfreesboro with coordination with TDOT and provide exhibits required by TDOT to obtain approval to cross TDOT right-of-way and obtain an excess lands license.

Roadway Design

Neel-Schaffer will use Geopak and Microstation for the development of roadway plans for this project using current TDOT Geopak and microstation standards.

Geotechnical reports for roadway and structural design will be contracted by the City of Murfreesboro. Neel-Schaffer will coordinate with the geotechnical engineer to integrate geotechnical recommendations into the project. Pavement design shown in the functional plans will be utilized for project design.

It is expected that a Traffic Management Plan (TMP) will be required for this project due to the impact of construction on I-24 traffic. It is expected that the project will be a significant project. Neel-Schaffer will develop a TMP in accordance with TDOT's TMP requirements.

Neel-Schaffer Plan Development Responsibilities:

- Provide survey for the project
- Development of preliminary plans
- Development of right-of-way plans
- Development of final roadway construction plans
- Drainage development
- EPSC plans development
- Traffic control plans development

- Development of a TMP
- Development of signing and marking plans
- Assistance with excess lands committee submittals
- Development of water quality permit drawings
- Plans to be developed in accordance with TDOT survey manual, current TDOT CADD standards, and TDOT Standard Specifications
- Attend and document all field reviews
- Attend regular progress meetings and other required meetings with the City of Murfreesboro

Structural Design

Preliminary and final structural design plans will be prepared for the new overpass crossing Interstate 24. The design will generally follow and conform to the functional structural layout and design prepared as part of the Transportation Planning Report. Design services will generally follow current TDOT Structural Design Guidelines.

Structural design services include:

- Project management and coordination with other design disciplines
- Develop preliminary bridge plans (girder, deck slab, abutments, bents, etc.)
- Preliminary quantity tabulation
- Develop final bridge plans (general/special notes, TDOT standard drawings, super-structure details, abutment design (2), bent design)
- Construction quantity tabulation
- QA/QC Review (Internal/External) and plan updates
- Coordination with TDOT (up to two review opportunities)

Hydraulics

Neel-Schaffer's Hydraulic Engineering personnel will first coordinate with personnel from the City of Murfreesboro Planning & Zoning Department to obtain site development plans for properties adjoining the potential wetland feature. This feature is planned to be impacted by the proposed project, according to the Transportation Planning Report.

Neel-Schaffer will also:

- Perform a field survey to inspect the potential wetland feature
 - This is to verify and document the condition of the feature and any adjoining stormwater infrastructure, as well as the adjacent vicinity, to determine if this feature serves as a stormwater management facility for surrounding properties.
- Coordinate with Gresham Smith to ascertain feature determination
- Coordinate with Wiser to specify locations where additional topographic survey data will be required outside of the project's right-of-way to facilitate a stormwater runoff and storage analysis, if required
- Perform a hydrologic analysis of the watersheds to determine the existing conditions stage/storage characteristics and to quantify the rate and volume of inflow and outflow to/from the wetland area for the 2-year through 100-year, 24-hour storm events
- Identify optimal location(s) for alternate stormwater storage feature(s) to replace the current potential wetland, if needed



- Perform proposed conditions hydrologic analysis to size the replacement stormwater storage feature, if required
- Prepare a Storm Water Management Report for the stormwater runoff and storage analysis/design
- Perform a floodplain analysis to quantify the potential floodplain impacts to the Zone AE Special Flood Hazard Area for West Fork Stones River
- Coordinate with the City of Murfreesboro to obtain the latest hydraulic model for West Fork Stones River
 - Coordinate with FEMA and request/obtain data via FEMA's External Data Library, if required
- Incorporate proposed roadway alignment and elevations into the hydraulic model
- Prepare technical memorandum describing the floodplain analysis methodologies and impacts to flood elevations

It should be noted that the roadway will be constructed within a backwater portion of this Zone AE floodplain, outside of the floodway boundaries; therefore, a "No-Rise" Certification is not anticipated to be required for this project.

Survey

Survey will be performed by Wiser as a subconsultant to Neel-Schaffer. The survey will be performed in accordance with the TDOT Survey Manual using Microstation and Geopak formats. Survey scope will include traditional ground survey methods along with mobile LiDAR to collect topographic and roadway features. The survey will pick up underground utilities and storm and sanitary inverts.

Services will also include ROW staking, geotechnical staking, and wetland delineation staking. Refer to Wiser's scope of work for complete details.

Environmental Documents & Permit Assessment

Environmental documentation; TDEC and US Army Corps permit assessment; aquatic resource identification and delimitation, hydraulic determination, & jurisdictional determination; protected species review; cultural resources survey; permit development; and compensatory mitigation assistance will be provided by Gresham Smith, and their subs, as a sub-consultant to Neel-Schaffer. Neel-Schaffer will provide Gresham Smith with any permit drawings needed to obtain permits. Refer to Gresham Smith scope of work for complete details.

Geotechnical

Geotechnical drilling and recommendations will be performed by a consultant under contract to the City of Murfreesboro. Neel-Schaffer will coordinate with the geotechnical consultant and incorporate geotechnical recommendations into the project design.



Traffic Signals

Scope of services includes development of preliminary design and final construction plans for proposed traffic signal at the intersection of W Rutherford Blvd Extended and Warrior Drive. Design services will follow current City of Murfreesboro and TDOT guidelines. The scope anticipates design of isolated traffic signal without interconnect to adjacent traffic signals. Traffic signal design assumes deployment of non-intrusive vehicle detection technology, will follow standard city traffic signal specifications and will be consistent with current TDOT-approved proprietary equipment list.

Right-of-Way Services

Right-of-Way services to be conducted by the City of Murfreesboro. Neel-Schaffer, through its survey consultant, will provide right-of-way exhibits and legal descriptions to the City of Murfreesboro detailing area to be acquired for each tract.

Utility Coordination

Plans will be distributed the utility companies identified during the survey phase of the project. Neel-Schaffer will work with these utilities to minimize utility conflict and relocations during the design phase. After “Notice to Proceed” is received from The City of Murfreesboro to proceed with the Utility Coordination, Neel-Schaffer will coordinate with identified utilities to address utility owner comments and coordinate relocation of affected utilities. No utility design is included in this scope of work.

Public Involvement

No public involvement is included in this scope-of-work.

Cost Estimates

Neel-Schaffer will provide the City of Murfreesboro with an estimate of construction cost at the Right-of-Way and Construction phases. Estimated construction cost will be based on current TDOT Average Unit Prices.

Proposal Contract, Bid Documents, Specifications, Letting Assistance, and Award Meeting

A proposal contract, bid documents, and specifications will be prepared using City of Murfreesboro standard specifications and special provisions.



Submittals

Neel-Schaffer will provide plan sets and distribution of plans to the City of Murfreesboro and other agencies for the following submittals. All plans will be submitted electronically in PDF format.

- Line and grade plans. Submit to the City of Murfreesboro (and TDOT, if required) for grade approval and the environmental consultant to begin permit assessment.
- Preliminary plans for review by the City of Murfreesboro. Once the review is held, plans will be provided to the geotechnical consultant for geotechnical drilling.
- Required submittals for excess lands license
- Required submittals and applications for permits
- Draft ROW/utilities only plans for field review and affected utilities
- Final ROW plans and preliminary estimate of quantities in Excel format.
- Draft construction plans to include proposal contract, bid documents, specifications for review
- Final construction plans and proposal contract, bid documents, and specifications package

Meetings

Meetings included in this initial scope of services are:

- Kickoff meeting with representatives from the City of Murfreesboro
- ROW and construction field reviews
- Status meetings with the City of Murfreesboro
- Utility coordination meeting
- Bid award meeting

Schedule

Upon acceptance of this proposal, Neel-Schaffer will meet with the City of Murfreesboro to establish a detailed schedule of deliverables.

City of Murfreesboro will Provide:

- Geotechnical
- Conduct field reviews
- Right-of-way acquisition

Not Included in this Scope of Work:

- Retaining wall design and drawings
- Mitigation services, fees and plan sheets
- Design of drainage structures over 500 cfs
- Natural stream design
- Special details
- Geotechnical services
- Lighting design/plans
- Utility relocation design



- ROW acquisition services
- Aerial photography
- CE&I services



EXHIBIT B

MANDAY ESTIMATE

DESCRIPTION: EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro
Consultant: Neel-Schaffer, Inc
Prepared By: Michael Agnew
Date Prepared: 1/17/2022
Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)



| Roadway Design | | | | | | | | |
|----------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|----------|-------------|--------|----------------|
| | | | Mandays | | | | | |
| TASK | | | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| | | | | | | | | |
| 1 | Geometric Design | Set alignment, profile, and other geometric design features of W. Rutherford Blvd. Extension, side roads, and driveways. | 1 | 5 | 7 | 2 | | 15 |
| 2 | Drainage Design | Drainage design of cross drains, side drains, and storm sewers system. | 1 | 8 | 15 | 8 | | 32 |
| 3 | ROW Design | Set right-of-way, easements, and calculated acquisition areas. Includes developing ROW exhibits. | | 2 | 3 | 4 | | 9 |
| 3 | EPSC Plans Preparation | EPSC plans will consist of 3 phases. Plans sets will be developed for ROW and Construction plans submittals. | 0.5 | 3 | 7 | 6 | | 16.5 |
| 4 | Permit Assessment Comments | Incorporate permit assessment comments into plans. Assume 2 reviews and 2 sets of comments. | | 2 | 2 | 3 | | 7 |
| 5 | Traffic Control Plan | Develop traffic control plan. Plan will be developed during construction plans development. | 0.25 | 3 | 3 | 4 | | 10.25 |
| 6 | Plans Preparation (ROW Plans Sheets) | Title Sheet, Typical Sections, Property Map, ROW/Util. Notes, Present Layouts, Proposed Layouts, Profiles, Drainage Map, Cross-sections. Incorporate geotechnical comments and recommendations into plans. | 1 | 8 | 14 | 18 | | 41 |
| 7 | Plans Preparation (Construction Plans Sheets) | All ROW/Utility sheets and Title Sheet, Index and Standards, Estimated Quantities, Typical Section & Pavement Schedule, Tabulated Quantities Sheets, General & Special Notes Sheets) | 1 | 6 | 12 | 16 | | 35 |
| 8 | Signing and Marking Plans Preparation | Develop signing and marking plan. Plan will be developed during construction plans development. | | 0.5 | 2 | 4 | | 6.5 |

MANDAY ESTIMATE

DESCRIPTION: EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro
Consultant: Neel-Schaffer, Inc
Prepared By: Michael Agnew
Date Prepared: 1/17/2022
Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)



| | | | | | | | | |
|-----------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|-----------|-----------|----------|---------------|
| 9 | TMP preparation (ROW and Construction) | TMPs developed for ROW Plans submittal and revised and updated for Construction Plans submittal. | | 1 | 2 | 2 | | 5 |
| 10 | Preliminary and Construction Estimated Quantities | Develop quantity estimate and estimate of costs. Estimates will be developed for ROW submittal and construction plans submittal. Includes quantity calculations. Unit prices will be based on TDOT average unit prices. | | 4 | 6 | 6 | | 16 |
| 11 | QC Plans | 4 Reviews - Utility Plans Field Review, Utility plans, Construction Plans Field Review, & Final Construction Plans. Includes time to address comments on plans. | 2 | 4 | | 4 | | 10 |
| 12 | Field Reviews (2), Field Review Reports (2) | ROW Field Review and Construction Field Review | 4 | 8 | | | | 12 |
| 13 | Meetings | Assume monthly status meetings. (12 meetings) | 4 | 4 | | | | 8 |
| 14 | Project Management | Submittals, Field Review Submittals, Utility & Const. Submittals, and Invoices | 10 | 6 | | | | 16 |
| | | | | | | | | |
| Subtotal Items | | | 24.75 | 64.5 | 73 | 77 | 0 | 239.25 |

MANDAY ESTIMATE

DESCRIPTION: EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro
Consultant: Neel-Schaffer, Inc
Prepared By: Michael Agnew
Date Prepared: 1/17/2022
Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)



| | Mandays | | | | | Total Per Task |
|---------------------------|-----------------|-----------------|-----------|-------------|----------|----------------|
| | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | |
| Sub-Total Mandays | 24.75 | 64.5 | 73 | 77 | 0 | 239.25 |
| TOTAL | 24.75 | 64.5 | 73 | 77 | 0 | 239.25 |
| % of Total Project | 10% | 27% | 31% | 32% | 0% | 100% |

| Roadway - Direct Labor | | | | | |
|--------------------------------|-------------|---------------|--|--------------------|----------------------------|
| PERSONNEL | MANDAY RATE | MANDAYS | | DIRECT LABOR COST | |
| Project Manager | \$547.00 | 24.75 | | \$13,538.25 | |
| Senior Engineer | \$488.00 | 64.5 | | \$31,476.00 | |
| Engineer | \$360.00 | 73 | | \$26,280.00 | |
| Senior Tech | \$212.00 | 77 | | \$16,324.00 | |
| Admin. | \$200.00 | 0 | | \$0.00 | |
| | | | | | Average Manday Cost |
| TOTAL NUMBER OF MANDAYS | | 239.25 | | \$87,618.25 | \$366.22 |

| FEE SUMMARY | | | | |
|---------------------------------------------|-----|--|--|---------------------|
| Roadway Plans Development Labor Cost | | | | \$87,618.25 |
| Markup | 3.0 | | | \$262,854.75 |
| Subtotal (Roadway Plans Development) | | | | \$262,854.75 |

**MANDAY
ESTIMATE**

DESCRIPTION: West Rutherford Blvd. Extension, City of Murfreesboro

Consultant: Neel-Schaffer, Inc

Prepared By: Brad Bivens

Date Prepared: 1/17/2022

Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way): Bridge over I-24

| Structural Design | | | | | | | | |
|-------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|----------|-------------|--------|----------------|
| | | | Mandays | | | | | |
| TASK | | | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| | | | | | | | | |
| 1 | Preliminary Design (Preliminary Sheets) | Preliminary Design of bridge, grade check, Layout Sheet, Cross-Section Sheet | | 2 | 4 | 10 | | 16 |
| 2 | Geotech Coordination | Coordinate geotechnical investigation with City of Murfreesboro Geotechnical consultant | | 1 | 2 | 2 | | 5 |
| 3 | Bridge Design | Design Layout, Welded Plate Girder Superstructure, Framing, Bearings, Deck Slab, Develop Bridge Screed, Pouring Sequence, Abutments, Bents | | 12 | 16 | 28 | | 56 |
| 3 | Plans Preparation | Layout, General Notes, Estimated Quantities, Foundation Data Sheets | | 2 | 8 | 20 | | 30 |
| 4 | Plans Preparation (Superstructure) | Superstructure, Superstructure Details (Girder Elevation, Framing Plan, Cross-Frames, Bearings, Bridge Screed, Slab) | | 5 | 8 | 15 | | 28 |
| 5 | Plans Preparation (Abutments) | Abutment 1, Abutment 1 Details, Abutment 2, Abutment 2 Details | | 1.5 | 5 | 10 | | 16.5 |
| 6 | Plans Preparation (Bents) | Bent 1, Bent 1 Details, Bent 2, Bent 2 Details | | 1.5 | 2 | 8 | | 11.5 |
| 7 | Plans Preparation (Final Foundation Data Sheet) | Final Foundationd Data sheet for abutments and bents | | 1 | 2 | 5 | | 8 |
| 8 | Plans Preparation (Bill of Steel) | Bill of steel sheets | | 1 | 1 | 5 | | 7 |

| | | | | | | | | |
|-----------------------|------------------------|------------------------------------------------------------------------|---|----|----|-------|---|-------|
| 9 | Coordination with TDOT | Coordination with TDOT structures for submittal and approval of bridge | | 3 | 1 | 0.5 | | 4.5 |
| 10 | Bidding/RFI | Answer Request for Information | | 2 | 2 | 1 | | 5 |
| 11 | QA/QC/IDR | QC and Independent Design Review | | 10 | 12 | 4 | | 26 |
| 12 | | | | | | | | 0 |
| 13 | | | | | | | | 0 |
| 14 | | | | | | | | 0 |
| 15 | | | | | | | | 0 |
| | | | | | | | | |
| Subtotal Items | | | 0 | 42 | 63 | 108.5 | 0 | 213.5 |

| | Mandays | | | | | |
|---------------------------|-----------------|-----------------|-----------|--------------|----------|----------------|
| | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| Sub-Total Mandays | 0 | 42 | 63 | 108.5 | 0 | 213.5 |
| | | | | | | |
| TOTAL | 0 | 42 | 63 | 108.5 | 0 | 213.5 |
| % of Total Project | 0% | 20% | 30% | 51% | 0% | 100% |

| Structural - Direct Labor | | | | | |
|--------------------------------|-------------|--------------|--|--------------------|----------------------------|
| PERSONNEL | MANDAY RATE | MANDAYS | | DIRECT LABOR COST | |
| Project Manager | \$547.00 | 0 | | \$0.00 | |
| Senior Engineer | \$488.00 | 42 | | \$20,496.00 | |
| Engineer | \$360.00 | 63 | | \$22,680.00 | |
| Senior Tech | \$212.00 | 108.5 | | \$23,002.00 | |
| Admin. | \$200.00 | 0 | | \$0.00 | |
| | | | | | Average Manday Cost |
| TOTAL NUMBER OF MANDAYS | | 213.5 | | \$66,178.00 | \$309.97 |

| FEE SUMMARY | | | | |
|------------------------------------------|-----|--|--|---------------------|
| Structural Plans Development Labor Cost | | | | \$66,178.00 |
| Markup | 3.0 | | | \$198,534.00 |
| | | | | |
| Subtotal (Structural Development) | | | | \$198,534.00 |

MANDAY ESTIMATE

DESCRIPTION: West Rutherford Blvd. Extension, City of Murfreesboro

Consultant: Neel-Schaffer, Inc

Prepared By: Mike Phillips

Date Prepared: 1/17/2022

Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)

| Hydraulic Studies | | | | | | | | |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|-------------|--------|----------------|
| | | | Mandays | | | | | |
| TASK | TASK NAME | TASK DESCRIPTION | Project Manager | Senior Engineer | Engineer Intern | Senior Tech | Admin. | Total Per Task |
| | | | | | | | | |
| 1 | Coordination with City Planning and Zoning Personnel | Coordinate with personnel from the City of Murfreesboro Planning & Zoning Department to obtain development plans for properties adjoining the potential wetland feature (if available). | 0.5 | 1 | 0 | 0 | 0 | 1.5 |
| 2 | Field Reconnaissance of Potential Wetland | Field Reconnaissance to inspect potential wetland (to be impacted), associated stormwater infrastructure, and adjacent vicinity to determine if wetland serves as regional detention feature to surrounding properties. | 0.5 | 2.0 | 0 | 0 | 0 | 2.5 |
| 3 | Coordinate with Environmental Subconsultant | Coordinate with project's Environmental Subconsultant to ascertain the actual feature determination (i.e., wetland, pond, etc.) for the potential wetland. Potential environmental permitting implications will also be determined. | 1.0 | 2.0 | 0 | 0 | 0 | 3 |
| 4 | Coordination Regarding Additional Required Topo Survey (if required) | Direct the surveyor regarding additional topographic survey data to collect off ROW for analysis of potential wetland area, if deemed to serve as regional detention feature. | 0.5 | 2.0 | 0 | 0 | 0 | 2.5 |
| 5 | Existing Conditions Hydrologic Analysis | Hydrologic analysis of watersheds currently draining to potential wetland area to determine existing conditions stage/storage relationship, wetland inflows and outflows, etc. - delineate sub-basins, calculate runoff parameters, build models, run existing conditions analysis. | 0.25 | 3.0 | 5 | 0 | 0 | 8.25 |
| 6 | Coordination with Roadway Designers Regarding Feasible Locations/Configuration of Proposed Stormwater Storage (if required) | Once existing conditions stage/storage relationship and wetland feature inflows/outflows have been determined, hydraulics personnel to work with roadway designers to determine optimal location and configuration for replacement/alternate stormwater storage feature. | 1 | 2 | 0 | 0 | 0 | 3 |
| 7 | Proposed Conditions Hydrologic Analysis | Hydrologic analysis of watersheds proposed to drain to new stormwater storage feature, to determine proposed conditions stage/storage relationship, pond inflows and outflows, etc. - delineate sub-basins, calculate runoff parameters, build models, run proposed conditions analysis. | 0.25 | 4 | 8 | 0 | 0 | 12.25 |

| | | | | | | | | |
|-----------------------|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------|-----------|----------|----------|-------------|
| 8 | Provide Conceptual Pond Design to Roadway Designers (if required) | Upon completion of proposed conditions hydrologic analysis, provide pond data to roadway designers for incorporation into the roadway plan set - to include pond footprint, depth, elevations, and side slopes; outlet control structure weir/orifice dimensions and elevations. Provide sketches, details, etc. | 0.5 | 2 | 3 | 0 | 0 | 5.5 |
| 9 | Develop Storm Water Management Report for Detention Analysis (if required) | Develop Storm Water Management Report for detention pond analysis to describe field reconnaissance findings, analysis methodologies utilized, and existing/proposed conditions findings/results. | 0.5 | 1 | 2 | 0 | 0 | 3.5 |
| 10 | Coordination with City Floodplain Administrator / FEMA to Obtain Latest Hydraulic Model | Coordinate with the City of Murfreesboro Floodplain Administrator to obtain the latest hydraulic model for West Fork Stones River. May also need to coordinate with FEMA and request/obtain the Effective Hydraulic model via the FEMA External Data Library. | 1 | 1.5 | 0 | 0 | 0 | 2.5 |
| 11 | Analyze Effective Floodplain to Determine the Project's Effect on Flood Elevations | Incorporate the Proposed Roadway alignment and elevations into the Effective FEMA model and determine the magnitude of flood elevation increases resulting from the project. | 0.5 | 2 | 4 | 0 | 0 | 6.5 |
| 12 | Prepare Technical Memorandum Describing Findings of Floodplain Analysis | Prepare a technical memorandum which describes the floodplain analysis methodologies and findings, and impacts to flood elevations due to implementation of the project. PLEASE NOTE - the project lies within a FEMA Zone AE floodplain; however, the roadway will be constructed in a backwater portion of the floodplain, outside of the floodway boundaries. Therefore, a "No-Rise" Certification is not anticipated to be required for this project. | 0.5 | 2 | 3 | 0 | 0 | 5.5 |
| 13 | | | | | | | | 0 |
| 14 | | | | | | | | 0 |
| 15 | | | | | | | | 0 |
| 16 | | | | | | | | 0 |
| 17 | | | | | | | | 0 |
| 18 | | | | | | | | 0 |
| | | | | | | | | |
| Subtotal Items | | | 7 | 24.5 | 25 | 0 | 0 | 56.5 |

| | Mandays | | | | | |
|---------------------------|-----------------|-----------------|-----------|-------------|----------|----------------|
| | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| Sub-Total Mandays | 7 | 24.5 | 25 | 0 | 0 | 56.5 |
| | | | | | | |
| TOTAL | 7 | 24.5 | 25 | 0 | 0 | 56.5 |
| % of Total Project | 12% | 43% | 44% | 0% | 0% | 100% |

| Hydraulic Studies - Direct Labor | | | | | |
|----------------------------------|-------------|-------------|--|--------------------|----------------------------|
| PERSONNEL | MANDAY RATE | MANDAYS | | DIRECT LABOR COST | |
| Project Manager | \$547.00 | 7 | | \$3,829.00 | |
| Senior Engineer | \$488.00 | 24.5 | | \$11,956.00 | |
| Engineer Intern | \$360.00 | 25 | | \$9,000.00 | |
| Senior Tech | \$212.00 | 0 | | \$0.00 | |
| Admin. | \$200.00 | 0 | | \$0.00 | |
| | | | | | Average Manday Cost |
| TOTAL NUMBER OF MANDAYS | | 56.5 | | \$24,785.00 | \$438.67 |

| FEE SUMMARY | | | | |
|-------------------------------------|--|--|--|--------------------|
| Hydraulic Studies Direct Labor Cost | | | | |
| TOTAL NUMBER OF MANDAYS | | | | 56.5 |
| | | | | |
| Subtotal (Hydraulic Studies) | | | | \$24,785.00 |

MANDAY ESTIMATE**DESCRIPTION:** West Rutherford Blvd. Extension, City of Murfreesboro**Consultant:** Neel-Schaffer, Inc**Prepared By:** Greg Judy**Date Prepared:** 1/17/2022**Project Length:** 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)

| Traffic-Signals Development | | | | | | | | |
|-----------------------------|-----------------------------------|-------------------------------------------------------------------------------------------------|-----------------|-----------------|----------|-------------|--------|----------------|
| | | | Mandays | | | | | |
| TASK | | | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| | | | | | | | | |
| 1 | Preliminary Traffic Signal Design | Prep base mapping/survey data, Signal pole locations & arrangement, cabinet, Draft layout sheet | 1.5 | | 3 | 4 | | 8.5 |
| 2 | Final Traffic Signal Design | Final layout sheet, traffic signal detail sheet | 0.5 | | 2 | 2 | | 4.5 |
| 3 | QA/QC Review Updates | Two iterations (preliminary and construction plan sets) | 1.5 | | 1 | 2 | | 4.5 |
| 3 | Estimated Quantities | Preliminary and Construction | 0.5 | | 1 | 1.5 | | 3 |
| 4 | Construction plan sheets | Standard drawings, General Notes, Special Notes | | | 1 | 3 | | 4 |
| 5 | Miscellaneous | Assist/Review TTC plans, Opinion of cost, Assist/Review signing & marking | 1 | | 2 | 4 | | 7 |
| 15 | | | | | | | | 0 |
| | | | | | | | | |
| Subtotal Items | | | 5.0 | 0 | 10.0 | 16.5 | 0 | 31.5 |

| | Mandays | | | | | |
|---------------------------|-----------------|-----------------|-----------|-------------|----------|----------------|
| | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| Sub-Total Mandays | 5 | 0 | 10 | 16.5 | 0 | 31.5 |
| | | | | | | |
| TOTAL | 5 | 0 | 10 | 16.5 | 0 | 31.5 |
| % of Total Project | 16% | 0% | 32% | 52% | 0% | 100% |

| Traffic-Signals - Direct Labor | | | | | |
|--------------------------------|-------------|-------------|--|-------------------|----------------------------|
| PERSONNEL | MANDAY RATE | MANDAYS | | DIRECT LABOR COST | |
| Project Manager | \$547.00 | 5 | | \$2,735.00 | |
| Senior Engineer | \$488.00 | 0 | | \$0.00 | |
| Engineer | \$360.00 | 10 | | \$3,600.00 | |
| Senior Tech | \$212.00 | 16.5 | | \$3,498.00 | |
| Admin. | \$200.00 | 0 | | \$0.00 | |
| | | | | | Average Manday Cost |
| TOTAL NUMBER OF MANDAYS | | 31.5 | | \$9,833.00 | \$312.16 |

| FEE SUMMARY | | | | |
|---------------------------------------------|-----|--|--|--------------------|
| Traffic-Signals Development Labor Cost | | | | \$9,833.00 |
| Markup | 3.0 | | | \$29,499.00 |
| | | | | |
| Subtotal (Roadway Plans Development) | | | | \$29,499.00 |

MANDAY ESTIMATE

DESCRIPTION: EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro
Consultant: Neel-Schaffer, Inc
Prepared By: Michael Agnew
Date Prepared: 1/17/2022
Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)

| Coordination and Letting Assistance Items | | | | | | | | |
|-------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|----------|-------------|--------|----------------|
| | | | Mandays | | | | | |
| TASK | | | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| | | | | | | | | |
| 1 | Assist the City with Obtaining Crossing Agreement for Bridge over I-24 | Assit City with obtaining crossing agreement. Includes development of exhibits needed for application. (included in structural discipline) | 2 | 2 | | | | 4 |
| 2 | Utility Coordination | Coordination with project utilities | 2 | 6 | 10 | | | 18 |
| 3 | Coordination with Geotechnical Consultant | Coordination with City of Murfreesboro's geotechnical consultant | 1 | 4 | | | | 5 |
| 3 | Proposal Book, Bid Documents, & Specifications | Preparation of proposal book, bid documents, and specifications | 2 | 5 | 5 | | | 12 |
| 4 | Letting Assistance & Award Meeting | Assist City of Murfreesboro with letting and award process. | 1 | 5 | 2 | | | 8 |
| | | | | | | | | 0 |
| | | | | | | | | |
| Subtotal Items | | | 8.0 | 22 | 17.0 | 0 | 0 | 47 |

| | Mandays | | | | | |
|---------------------------|-----------------|-----------------|-----------|-------------|----------|----------------|
| | Project Manager | Senior Engineer | Engineer | Senior Tech | Admin. | Total Per Task |
| Sub-Total Mandays | 8 | 22 | 17 | 0 | 0 | 47 |
| | | | | | | |
| TOTAL | 8 | 22 | 17 | 0 | 0 | 47 |
| % of Total Project | 17% | 47% | 36% | 0% | 0% | 100% |

| Coordination & Letting Assistance Direct Labor | | | | | |
|------------------------------------------------|-------------|-----------|--|--------------------|----------------------------|
| PERSONNEL | MANDAY RATE | MANDAYS | | DIRECT LABOR COST | |
| Project Manager | \$547.00 | 8 | | \$4,376.00 | |
| Senior Engineer | \$488.00 | 22 | | \$10,736.00 | |
| Engineer | \$360.00 | 17 | | \$6,120.00 | |
| Senior Tech | \$212.00 | 0 | | \$0.00 | |
| Admin. | \$200.00 | 0 | | \$0.00 | |
| | | | | | Average Manday Cost |
| TOTAL NUMBER OF MANDAYS | | 47 | | \$21,232.00 | \$451.74 |

| FEE SUMMARY | | | | |
|-------------------------------------------------------|-----|--|--|--------------------|
| Coordination and Letting Assistance Labor Cost | | | | \$21,232.00 |
| Markup | 3.0 | | | \$63,696.00 |
| Subtotal (Coordination and Letting Assistance) | | | | \$63,696.00 |

DESIGN DIRECT EXPENSES



DESCRIPTION: EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro
 Consultant: Neel-Schaffer, Inc
 Prepared By: Michael Agnew
 Date Prepared: 1/17/22
 Project Length: 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)

Reproduction Costs:

| Item Description | Number / Unit | Unit Price | | |
|------------------|---------------|------------|-----------|-----------|
| Photo-copies | 100 | \$ 0.20 | \$ 20.00 | |
| Full size bond | 100 | \$ 2.00 | \$ 200.00 | |
| Half size bond | 400 | \$ 1.00 | \$ 400.00 | |
| Full size vellum | | \$ 2.00 | \$ - | |
| Half size vellum | | \$ 1.00 | \$ - | |
| Full size mylar | | \$ 2.00 | \$ - | \$ 620.00 |

Travel:

| | Number of Trips | No. of Miles/No. of People | | |
|----------------|------------------|----------------------------|---------------------|------|
| Per Diem (75%) | | | \$ - | |
| Per Diem | | | \$ 30.00 Per Day | |
| Transportation | 5.00 Round Trips | X 0.00 Miles X | \$ 0.47 Per Mile | \$ - |
| Lodging | 0.00 Nights | X 0.00 People X | \$ 70.00 Per Person | \$ - |

* 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 | | |
|----------------------------------------------|---------------|--------------|--------------|---------------|
| Survey, Staking, Legal Desc & Exh(3) (Wiser) | 1 | \$ 98,600.00 | \$ 98,600.00 | |
| | 0 | \$ - | \$ - | |
| Environmental (GS&P) | 1 | \$ 38,150.00 | \$ 38,150.00 | |
| | 0 | \$ - | \$ - | |
| | 0 | \$ - | \$ - | |
| | 0 | \$ - | \$ - | |
| | 0 | \$ - | \$ - | \$ 136,750.00 |

TOTAL DIRECT EXPENSES**\$ 137,370.00**

**DESCRIPTION:**EXHIBIT B - West Rutherford Blvd. Extension, City of Murfreesboro**Consultant:** Neel-Schaffer, Inc**Prepared By:** Michael Agnew**Date Prepared:** 1/17/2022**Project Length:** 0.77 mile (West Rutherford) & 0.25 mile (Rutledge Way)

| FEE SUMMARY | | | |
|-------------|----------------------------------------------------|--|---------------------|
| 1 | Subtotal (Roadway Plans Development) | | \$262,854.75 |
| 2 | Subtotal (Structural Development) | | \$198,534.00 |
| 3 | Subtotal (Hydraulic Studies) | | \$24,785.00 |
| 4 | Subtotal (Traffic Signals/Traffic Eng Development) | | \$29,499.00 |
| 5 | Subtotal (Coordination and Letting Assistance) | | \$63,696.00 |
| 6 | Direct Expenses (Includes Sub-consultants) | | \$137,370.00 |
| | TOTAL (1+2+3+4+5+6) | | \$716,738.75 |

EXHIBIT C

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 whose jurisdiction includes and encompasses Rutherford County, Tennessee.
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.

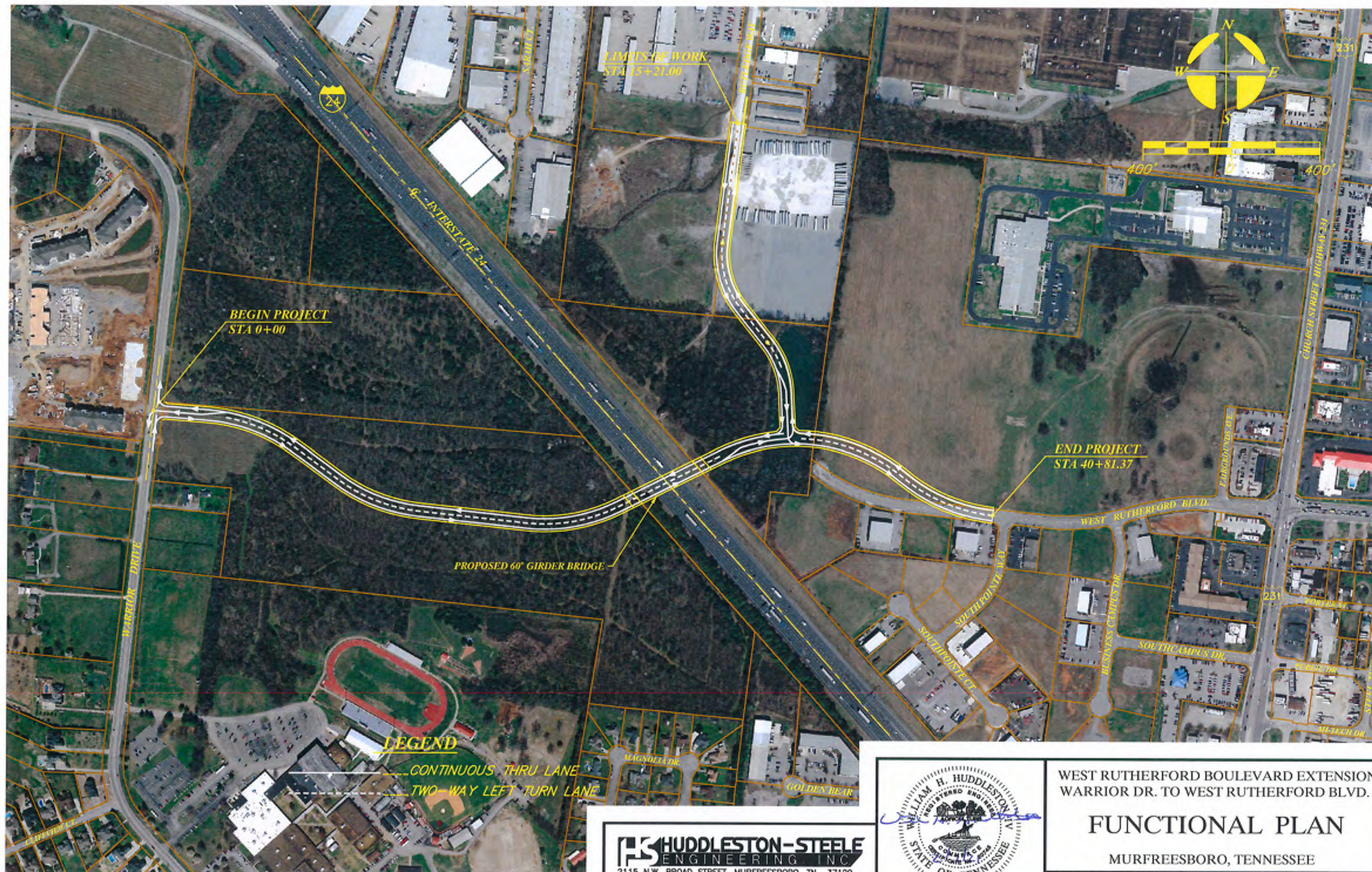
24. **Amendment.** This Agreement may only be amended in writing and where such amendment is executed by a duly authorized representatives of each party.
25. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party 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

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

of dealing between them and shall apply to this and all 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.~~

[The remainder of this page intentionally left blank]



HS HUDDLESTON-STEEL
ENGINEERING INC.
2115 N.W. BROAD STREET, MURFREESBORO, TN 37129
TELEPHONE : (615)893 - 4084, FAX: (615)893 - 0080



WEST RUTHERFORD BOULEVARD EXTENSION
WARRIOR DR. TO WEST RUTHERFORD BLVD.

FUNCTIONAL PLAN

MURFREESBORO, TENNESSEE

SCALE: 1"=400' DATE: MARCH, 2020 SHEET 10

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Final Change Order for Rucker Lane Phase 1 Project

Department: Engineering

Presented by: Chris Griffith - Executive 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

Final Change Order to reflect actual work performed and final contract amount.

Staff Recommendation

Approve the final change order with Charles Deweese Construction, Inc.

Background Information

The Rucker Lane Phase 1 project extends from Veterans Parkway to approximately 600 feet south of Muirwood Blvd and includes the realignment and widened of the existing Rucker Lane. Charles Deweese Construction submitted the low bid in the amount of \$2,299,947 and was awarded the contract in April 2021. During construction, it was determined that the project required less quantities of several items than originally specified. A detailed list of the decreased amounts is included in the Final Change Order.

Council Priorities Served

Expand infrastructure

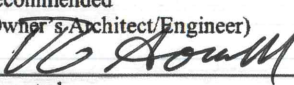
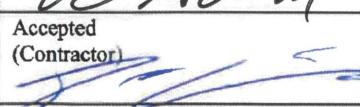
Improvements to City streets enhances the safety, traffic flow, and livability for motorists within the City.

Fiscal Impact

The construction cost decreased from \$2,299,947 to \$2,177,350, amounting to a \$122,597 change order. The funds for this project were allocated within the 2018 CIP Budget.

Attachments

Rucker Lane Phase 1 Final Summary Change Order.

| CONTRACT CHANGE ORDER | | Order No. Final |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------|
| Contract For: Rucker Lane Road Widening Phase 1 Murfreesboro, TN | | Date: 2/10/22 |
| | | State: Tennessee |
| | | County: Rutherford |
| Owner City of Murfreesboro | | |
| Contractor CHARLES DEWEESE CONSTRUCTION, INC. | | |
| Description of Changes | DECREASE In Contract Price | INCREASE In contract Price |
| ITEMS TO BE REMOVED (See Attached Detail) | \$ 305,962.11 | |
| ITEMS TO BE ADDED & OVERRIDDEN (See Attached Detail) | | \$ 183,365.08 |
| | | |
| Totals | \$ 305,962.11 | \$ 183,365.08 |
| Net Change In Contract Price | | \$ 122,597.03 |
| Justification: | | |
| 1. | | |
| Original Contract Amount: | | \$ 2,299,947.05 |
| The Amount of the Contract Will Be Changed by this Change Order: | | \$ 122,597.03 |
| Change by Previous Change Order No. 1: | | \$ 0.00 |
| The Contract Total Including this and Previous Change Orders Will be: | | \$ 2,177,350.02 |
| Notice to Proceed Date | | May 10, 2021 |
| Contract Start Date | | May 10, 2021 |
| Contracted Consecutive Calendar Days | | 274 |
| Original Contracted Completion Date | | February 8, 2022 |
| The Contract Period Provided for Completion Will be (Changed) by this change order by: Days | | 0 |
| Contract Period Changed by Previous Change Orders: (Days) | | 0 |
| Revised Contracted Date of Completion | | February 8, 2022 |
| This document will become a supplement to the contract and all provisions will apply hereto: | | |
| Requested (Owner) Chris Griffith – Exec. Dir. Of Public Works, City of Murfreesboro | | (Date) |
| Recommended (Owner's Architect/Engineer)  Uri Sowell, Energy Land & Infrastructure | | (Date) 2/11/22 |
| Accepted (Contractor)  Drew Akin, CHARLES DEWEESE CONSTRUCTION, INC | | (Date) 2/11/2022 |
| This information will be used as a record of any changes to the original construction contract | | |

Rucker Lane Road Widening Phase 1
ELI Project Number: 21-12-2101
City of Murfreesboro
Final Change Order Summary

| Item No. | Description | Units | Estimated Quantity | Unit Price | Total Quantity Used | Estimated Contract Cost | Actual Total Contract Cost | Difference between Final Cost and Estimated Cost | Additions | Deductions |
|-----------|-----------------------------------|-------|--------------------|--------------|---------------------|-------------------------|----------------------------|--------------------------------------------------|--------------|----------------|
| 105-01 | CONSTRUCTION STAKES, LINES AND | LS | 1 | \$ 12,500.00 | 1.00 | \$ 12,500.00 | \$12,500.00 | \$0.00 | \$ - | \$ - |
| 201-01 | CLEARING AND GRUBBING | LS | 1 | \$ 4,000.00 | 1.00 | \$ 4,000.00 | \$4,000.00 | \$0.00 | \$ - | \$ - |
| 202-03.01 | REMOVAL OF ASPHALT PAVEMENT | S.Y. | 1448 | \$ 4.50 | 1,448.00 | \$ 6,516.00 | \$6,516.00 | \$0.00 | \$ - | \$ - |
| 203-01 | ROAD & DRAINAGE EXCAVATION (UNC | C.Y. | 10951 | \$ 2.55 | 10,951.00 | \$ 27,925.05 | \$27,925.05 | \$0.00 | \$ - | \$ - |
| 203-03 | BORROW EXCAVATION (UNCLASSIFIED | C.Y. | 30040 | \$ 21.50 | 25,914.14 | \$ 645,860.00 | \$557,154.01 | -\$88,705.99 | \$ - | \$ (88,705.99) |
| 203-04 | PLACING AND SPREADING TOPSOIL | C.Y. | 2400 | \$ 3.50 | 2,400.00 | \$ 8,400.00 | \$8,400.00 | \$0.00 | \$ - | \$ - |
| 203-05 | UNDERCUTTING | C.Y. | 2800 | \$ 14.00 | 375.00 | \$ 39,200.00 | \$5,250.00 | -\$33,950.00 | \$ - | \$ (33,950.00) |
| 203-06 | WATER | M.G. | 197 | \$ 1.00 | 0.00 | \$ 197.00 | \$0.00 | -\$197.00 | \$ - | \$ (197.00) |
| 209-05 | SEDIMENT REMOVAL | C.Y. | 266 | \$ 1.00 | 0.00 | \$ 266.00 | \$0.00 | -\$266.00 | \$ - | \$ (266.00) |
| 209-08.03 | TEMPORARY SILT FENCE (WITHOUT B | L.F. | 10500 | \$ 1.82 | 9,500.00 | \$ 19,110.00 | \$17,290.00 | -\$1,820.00 | \$ - | \$ (1,820.00) |
| 209-08.08 | ENHANCED ROCK CHECK DAM | EACH | 8 | \$ 519.62 | 0.00 | \$ 4,156.96 | \$0.00 | -\$4,156.96 | \$ - | \$ (4,156.96) |
| 209-09.43 | CURB INLET PROTECTION (TYPE 4) | EACH | 42 | \$ 129.91 | 0.00 | \$ 5,456.22 | \$0.00 | -\$5,456.22 | \$ - | \$ (5,456.22) |
| 209-40.44 | CATCH BASIN FILTER ASSEMBLY (TY | EACH | 40 | \$ 415.70 | 0.00 | \$ 16,628.00 | \$0.00 | -\$16,628.00 | \$ - | \$ (16,628.00) |
| 303-01 | MINERAL AGGREGATE, TYPE A BASE, | TON | 10689 | \$ 20.25 | 9,242.40 | \$ 216,452.25 | \$187,158.60 | -\$29,293.65 | \$ - | \$ (29,293.65) |
| 303-10.01 | MINERAL AGGREGATE (SIZE 57) | TON | 27 | \$ 35.00 | 0.00 | \$ 945.00 | \$0.00 | -\$945.00 | \$ - | \$ (945.00) |
| 307-02.01 | ASPHALT CONCRETE MIX (PG70-22) (E | TON | 3072 | \$ 58.00 | 2,750.23 | \$ 178,176.00 | \$159,513.34 | -\$18,662.66 | \$ - | \$ (18,662.66) |
| 307-02.08 | ASPHALT CONCRETE MIX (PG70-22) (E | TON | 2031 | \$ 66.00 | 2,327.44 | \$ 134,046.00 | \$153,611.04 | \$19,565.04 | \$ 19,565.04 | \$ - |
| 402-01 | BITUMINOUS MATERIAL FOR PRIME CO | TON | 27 | \$ 650.00 | 0.00 | \$ 17,550.00 | \$0.00 | -\$17,550.00 | \$ - | \$ (17,550.00) |
| 402-02 | AGGREGATE FOR COVER MATERIAL (| TON | 92 | \$ 35.00 | 0.00 | \$ 3,220.00 | \$0.00 | -\$3,220.00 | \$ - | \$ (3,220.00) |
| 403-01 | BITUMINOUS MATERIAL FOR TACK CO | TON | 11 | \$ 525.00 | 3.72 | \$ 5,775.00 | \$1,953.00 | -\$3,822.00 | \$ - | \$ (3,822.00) |
| 411-02.10 | ACS MIX(PG70-22) GRADING D | TON | 1457 | \$ 92.20 | 1,432.46 | \$ 134,335.40 | \$132,072.81 | -\$2,262.59 | \$ - | \$ (2,262.59) |
| 415-01.02 | COLD PLANING BITUMINOUS PAVEME | S.Y. | 250 | \$ 5.00 | 250.00 | \$ 1,250.00 | \$1,250.00 | \$0.00 | \$ - | \$ - |
| 607-03.02 | 18" CONCRETE PIPE CULVERT (CLASS | L.F. | 3004 | \$ 57.00 | 3,169.00 | \$ 171,228.00 | \$180,633.00 | \$9,405.00 | \$ 9,405.00 | \$ - |
| 607-05.02 | 24" CONCRETE PIPE CULVERT (CLASS | L.F. | 72 | \$ 75.00 | 72.00 | \$ 5,400.00 | \$5,400.00 | \$0.00 | \$ - | \$ - |
| 607-16.04 | 38"X 24" HORIZONTAL OVAL CONCRET | L.F. | 56 | \$ 125.00 | 56.00 | \$ 7,000.00 | \$7,000.00 | \$0.00 | \$ - | \$ - |
| 607-39.02 | 18" PIPE CULVERT (SIDE DRAIN) | L.F. | 36 | \$ 90.00 | 36.00 | \$ 3,240.00 | \$3,240.00 | \$0.00 | \$ - | \$ - |
| 611-07.01 | CLASS A CONCRETE (PIPE ENDWALLS | C.Y. | 6 | \$ 450.00 | 6.00 | \$ 2,700.00 | \$2,700.00 | \$0.00 | \$ - | \$ - |
| 611-07.02 | STEEL BAR REINFORCEMENT (PIPE EN | LB. | 354 | \$ 1.95 | 354.00 | \$ 690.30 | \$690.30 | \$0.00 | \$ - | \$ - |
| 611-07.54 | 18IN ENDWALL (CROSS DRAIN) 3:1 | EACH | 2 | \$ 2,200.00 | 3.00 | \$ 4,400.00 | \$6,600.00 | \$2,200.00 | \$ 2,200.00 | \$ - |
| 611-07.57 | 24IN ENDWALL (CROSS DRAIN) 3:1 | EACH | 2 | \$ 3,100.00 | 2.00 | \$ 6,200.00 | \$6,200.00 | \$0.00 | \$ - | \$ - |
| 611-09.02 | REWORK CATCHBASIN | EACH | 1 | \$ 1,200.00 | 2.00 | \$ 1,200.00 | \$2,400.00 | \$1,200.00 | \$ 1,200.00 | \$ - |

Rucker Lane Road Widening Phase 1
ELI Project Number: 21-12-2101
City of Murfreesboro
Final Change Order Summary

| Item No. | Description | Units | Estimated Quantity | Unit Price | Total Quantity Used | Estimated Contract Cost | Actual Total Contract Cost | Difference between Final Cost and Estimated Cost | Additions | Deductions |
|-----------|---------------------------------------|-------|--------------------|--------------|---------------------|-------------------------|----------------------------|--------------------------------------------------|-------------|----------------|
| 611-12.01 | CATCH BASINS, TYPE 12, > 0' - 4' DEPT | EACH | 6 | \$ 1,595.00 | 8.50 | \$ 9,570.00 | \$13,557.50 | \$3,987.50 | \$ 3,987.50 | \$ - |
| 611-12.02 | CATCH BASINS, TYPE 12, > 4' - 8' DEPT | EACH | 7 | \$ 2,282.00 | 7.00 | \$ 15,974.00 | \$15,974.00 | \$0.00 | \$ - | \$ - |
| 611-14.01 | CATCH BASIN, TYPE 14, 0'-4' DEPTH | EACH | 16 | \$ 4,075.00 | 16.00 | \$ 65,200.00 | \$65,200.00 | \$0.00 | \$ - | \$ - |
| 611-14.02 | CATCH BASINS, TYPE 14, > 4' - 8' DEPT | EACH | 11 | \$ 4,230.00 | 11.00 | \$ 46,530.00 | \$46,530.00 | \$0.00 | \$ - | \$ - |
| 702-03 | CONCRETE COMBINED CURB & GUTTER | C.Y. | 583 | \$ 247.65 | 442.00 | \$ 144,379.95 | \$109,461.30 | -\$34,918.65 | \$ - | \$ (34,918.65) |
| 709-05.06 | MACHINED RIP-RAP (CLASS A-1) | TON | 138 | \$ 35.00 | 0.00 | \$ 4,830.00 | \$0.00 | -\$4,830.00 | \$ - | \$ (4,830.00) |
| 712-01 | TRAFFIC CONTROL | LS | 1 | \$ 5,500.00 | 1.00 | \$ 5,500.00 | \$5,500.00 | \$0.00 | \$ - | \$ - |
| 712-02.02 | INTERCONNECTED PORTABLE BARRIER | LF | 100 | \$ 35.00 | 0.00 | \$ 3,500.00 | \$0.00 | -\$3,500.00 | \$ - | \$ (3,500.00) |
| 712-04.01 | FLEXIBLE DRUMS (CHANNELIZING) | EACH | 50 | \$ 22.50 | 50.00 | \$ 1,125.00 | \$1,125.00 | \$0.00 | \$ - | \$ - |
| 712-05.03 | WARNING LIGHTS (TYPE C) | EACH | 12 | \$ 10.50 | 0.00 | \$ 126.00 | \$0.00 | -\$126.00 | \$ - | \$ (126.00) |
| 712-06 | SIGNS (CONSTRUCTION) | S.F. | 246 | \$ 6.50 | 246.00 | \$ 1,599.00 | \$1,599.00 | \$0.00 | \$ - | \$ - |
| 712-07.03 | TEMPORARY BARRICADES (TYPE III) | L.F. | 50 | \$ 17.50 | 50.00 | \$ 875.00 | \$875.00 | \$0.00 | \$ - | \$ - |
| 713-16.01 | CHANGEABLE MESSAGE SIGN UNIT | EACH | 2 | \$ 3,750.00 | 2.00 | \$ 7,500.00 | \$7,500.00 | \$0.00 | \$ - | \$ - |
| 713-16.20 | SIGNS (R1-1 STOP SIGN) | EACH | 2 | \$ 200.00 | 2.00 | \$ 400.00 | \$400.00 | \$0.00 | \$ - | \$ - |
| 713-16.21 | SIGNS (D3-1 STREET NAME) | EACH | 2 | \$ 200.00 | 4.00 | \$ 400.00 | \$800.00 | \$400.00 | \$ 400.00 | \$ - |
| 713-16.22 | SIGNS (R2-1 SPEED LIMIT 40 MPH) | EACH | 2 | \$ 200.00 | 2.00 | \$ 400.00 | \$400.00 | \$0.00 | \$ - | \$ - |
| 713-16.23 | SIGNS (W3-1 STOP AHEAD SYMBOL) | EACH | 1 | \$ 200.00 | 1.00 | \$ 200.00 | \$200.00 | \$0.00 | \$ - | \$ - |
| 716-02.04 | PLASTIC PAVEMENT MARKING(CHANN | S.Y. | 15 | \$ 20.78 | 6.89 | \$ 311.70 | \$143.15 | -\$168.55 | \$ - | \$ (168.55) |
| 716-02.05 | PLASTIC PAVEMENT MARKING (STOP | L.F. | 50 | \$ 20.78 | 46.00 | \$ 1,039.00 | \$955.88 | -\$83.12 | \$ - | \$ (83.12) |
| 716-02.06 | PLASTIC PAVEMENT MARKING (TURN | EACH | 3 | \$ 259.81 | 3.00 | \$ 779.43 | \$779.43 | \$0.00 | \$ - | \$ - |
| 716-05.01 | PAINTED PAVEMENT MARKING (4" LINE | L.M. | 2.75 | \$ 831.39 | 2.75 | \$ 2,286.32 | \$2,286.32 | \$0.00 | \$ - | \$ (0.00) |
| 716-05.05 | PAINTED PAVEMENT MARKING (STOP | L.F. | 50 | \$ 10.39 | 46.00 | \$ 519.50 | \$477.94 | -\$41.56 | \$ - | \$ (41.56) |
| 716-12.01 | ENHANCED FLATLINE THERMO PVM | L.M. | 2.25 | \$ 4,676.58 | 2.21 | \$ 10,522.31 | \$10,335.25 | -\$187.06 | \$ - | \$ (187.06) |
| 717-01 | MOBILIZATION | LS | 1 | \$ 17,500.00 | 1.00 | \$ 17,500.00 | \$17,500.00 | \$0.00 | \$ - | \$ - |
| 722-01.01 | FIELD OFFICE (TYPE 1) | LS | 1 | \$ 4,000.00 | 1.00 | \$ 4,000.00 | \$4,000.00 | \$0.00 | \$ - | \$ - |
| 740-10.03 | GEOTEXTILE (TYPE III)(EROSION CONT | S.Y. | 324 | \$ 2.00 | 162.00 | \$ 648.00 | \$324.00 | -\$324.00 | \$ - | \$ (324.00) |
| 801-01 | SEEDING (WITH MULCH) | UNIT | 162 | \$ 33.26 | 176.00 | \$ 5,388.12 | \$5,853.76 | \$465.64 | \$ 465.64 | \$ - |
| 801-02.08 | TEMPORARY SEEDING (WITHOUT MUL | UNIT | 82 | \$ 15.59 | 0.00 | \$ 1,278.38 | \$0.00 | -\$1,278.38 | \$ - | \$ (1,278.38) |
| 801-03 | WATER (SEEDING & SODDING) | M.G. | 26 | \$ 51.96 | 0.00 | \$ 1,350.96 | \$0.00 | -\$1,350.96 | \$ - | \$ (1,350.96) |
| 805-12.01 | EROSION CONTROL BLANKET (TYPE I) | S.Y. | 14402 | \$ 1.30 | 14,300.00 | \$ 18,722.60 | \$18,590.00 | -\$132.60 | \$ - | \$ (132.60) |
| 999-00 | LAND DISTURBANCE PERMIT | LS | 1.00 | \$ 500.00 | 1.00 | \$ 500.00 | \$500.00 | \$0.00 | \$ - | \$ - |

Rucker Lane Road Widening Phase 1
ELI Project Number: 21-12-2101
City of Murfreesboro
Final Change Order Summary

| Item No. | Description | Units | Estimated Quantity | Unit Price | Total Quantity Used | Estimated Contract Cost | Actual Total Contract Cost | Difference between Final Cost and Estimated Cost | Additions | Deductions |
|-----------|--------------------------------------|-------|--------------------|-------------|---------------------|-------------------------|----------------------------|--------------------------------------------------|-----------------------|------------------------|
| 795-01.14 | 16IN DIP SLIP JOINT WATER LINE | L.F. | 800 | \$122.20 | 800.00 | \$ 97,760.00 | \$97,760.00 | \$0.00 | \$ - | \$ - |
| 795-01.13 | 16IN DIP RESTRAINED JOINT WATER | L.F. | 100 | \$140.00 | 100.00 | \$ 14,000.00 | \$14,000.00 | \$0.00 | \$ - | \$ - |
| 795-01.06 | 8IN DIP SLIP JOINT WATER LINE | L.F. | 20 | \$84.18 | 8.00 | \$ 1,683.60 | \$673.44 | -\$1,010.16 | \$ - | \$ (1,010.16) |
| 795-15.07 | 24IN STEEL CASING PIPE OPEN CUT M | L.F. | 80 | \$225.00 | 80.00 | \$ 18,000.00 | \$18,000.00 | \$0.00 | \$ - | \$ - |
| 795-05.28 | HDD 3IN HDPE CASING PIPE-ROCK | L.F. | 250 | \$70.00 | 0.00 | \$ 17,500.00 | \$0.00 | -\$17,500.00 | \$ - | \$ (17,500.00) |
| 795-09.62 | 1IN PEX SERVICE PIPE | L.F. | 300 | \$30.00 | 20.00 | \$ 9,000.00 | \$600.00 | -\$8,400.00 | \$ - | \$ (8,400.00) |
| 795-07.61 | 20IN X 16IN TAPPING SLEEVE AND VAL | EACH | 1 | \$37,450.00 | 1.00 | \$ 37,450.00 | \$37,450.00 | \$0.00 | \$ - | \$ - |
| 795-07.62 | 16IN X 8IN TAPPING SLEEVE AND VAL | EACH | 1 | \$16,800.00 | 1.00 | \$ 16,800.00 | \$16,800.00 | \$0.00 | \$ - | \$ - |
| 795-08.14 | 16IN GATE VALVE ASSEMBLY | EACH | 1 | \$12,150.00 | 1.00 | \$ 12,150.00 | \$12,150.00 | \$0.00 | \$ - | \$ - |
| 795-13.01 | DI FITTINGS | LBS | 750 | \$5.00 | 750.00 | \$ 3,750.00 | \$3,750.00 | \$0.00 | \$ - | \$ - |
| 795-11.01 | BLOW-OFF ASSEMBLY | EACH | 1 | \$2,500.00 | 0.00 | \$ 2,500.00 | \$0.00 | -\$2,500.00 | \$ - | \$ (2,500.00) |
| 795-09.09 | RELOCATE/RECONNECT SERVICE ASS | EACH | 3 | \$1,250.00 | 2.00 | \$ 3,750.00 | \$2,500.00 | -\$1,250.00 | \$ - | \$ (1,250.00) |
| 795-06.09 | CONNECT TO 16IN WATER LINE | EACH | 1 | \$3,000.00 | 1.00 | \$ 3,000.00 | \$3,000.00 | \$0.00 | \$ - | \$ - |
| 795-14.02 | CLASS B CONCRETE | C.Y. | 8 | \$500.00 | 8.00 | \$ 4,000.00 | \$4,000.00 | \$0.00 | \$ - | \$ - |
| 795-14.10 | RESTORE GRAVEL | S.Y | 5 | \$100.00 | 2.00 | \$ 500.00 | \$200.00 | -\$300.00 | \$ - | \$ (300.00) |
| 795-14.08 | RESTORE ASPHALT | S.Y | 5 | \$225.00 | 0.00 | \$ 1,125.00 | \$0.00 | -\$1,125.00 | \$ - | \$ (1,125.00) |
| | | | | | | | | | | |
| 109-01.02 | BASIC BITUMINOUS MATERIAL INDEX ADJ. | LS | | | | | \$42,458.57 | \$42,458.57 | \$ 42,458.57 | \$ - |
| | RETAINAGE RELEASE | | | | | | \$103,683.33 | \$103,683.33 | \$ 103,683.33 | \$ - |
| | | | | | | | | | | |
| | TOTALS | | | | | \$ 2,299,947.05 | \$2,177,350.02 | | \$ 183,365.08 | \$ (305,962.11) |
| | Final Contract Price | | | | | \$2,177,350.02 | | | (\$122,597.03) | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

February 10, 2021

Chris Griffith
Executive Director of Public Works
111 West Vine Street
Murfreesboro, TN 37133

Re: **Rucker Lane
Payment Application #10 & Final Change Order**

Dear Mr. Griffith:

Enclosed are three (3) copies of the Application and Certification for Payment for the Rucker Lane project. The attached was submitted on February 3, 2022 for final payment. Also attached is the Final Change Order for this project. A summary of the Application and Certificatin for Payment is shown below:

| | | |
|---|------------------------------------|-----------------|
| 1 | Original Contract Amount | \$ 2,299,947.05 |
| 2 | Net Change by Change Orders | \$ 0.00 |
| 3 | Contract Sum to Date | \$ 2,299,947.05 |
| 4 | Total Completed and Stored to Date | \$ 2,073,666.69 |
| 5 | Retainage (5%) | \$ 0.00 |
| 6 | Amount Earned Less Retainage | \$ 2,073,666.69 |
| 7 | Less amount of previous payments | \$ 1,969,983.36 |
| 8 | Current Payment Due | \$ 103,683.33 |
| 9 | Balance Remaining | \$ 122,597.03 |

Energy Land & Infrastructure recommends payment to Deweese Construction in the amount listed above. If you have any questions, please feel free to give me a call.

Regards,

ENERGY LAND & INFRASTRUCTURE, LLC



Uri Sowell, PE

Attachments

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF 1 PAGES

Gen. Contr:

City of Murfreesboro
11 W. Vine St
Murfreesboro, TN 37130

PROJECT:

Rucker Lane Roadway Widening
Rucker Lane
Murfreesboro, TN 37130

APPLICATION NO 10

RETAINAGE Distribution to:

☐ OWNER

☐ ARCHITECT

☒ CONTRACTOR

☐ ENGINEER

PERIOD TO: 02/03/22

FROM: Charles Deweese Construction, Inc.

765 Industrial Bypass N, PO Box 504
Franklin, KY 42135

PROJECT NOS: CDCI 21-122

CONTRACT FOR:

CONTRACT DATE

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

| | |
|---------------------------------------------------------------------------|-----------------|
| 1. ORIGINAL CONTRACT SUM | \$ 2,299,947.05 |
| 2. Net change by Change Orders | \$ 0.00 |
| 3. CONTRACT SUM TO DATE (Line 1 ± 2) | \$ 2,299,947.05 |
| 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) | \$ 2,073,666.69 |
| 5. RETAINAGE: | |
| a. 5 % of Completed Work (Column D + E on G703) | \$ 0.00 |
| b. 0 % of Stored Material (Column F on G703) | \$ |
| Total Retainage (Lines 5a + 5b or Total in Column I of G703) | \$ 0.00 |
| 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) | \$ 2,073,666.69 |
| 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) | \$ 1,969,983.36 |
| 8. CURRENT PAYMENT DUE | \$ 103,683.33 |
| 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) | \$ 226,280.36 |

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|----------------------------------------------------|-----------|------------|
| Total changes approved in previous months by Owner | \$0.00 | |
| Total approved this Month | \$0.00 | |
| TOTALS | \$0.00 | \$0.00 |
| NET CHANGES by Change Order | | \$0.00 |

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Charles Deweese Construction, Inc.

By:  Tim Smith, Executive Vice President

State of: Kentucky

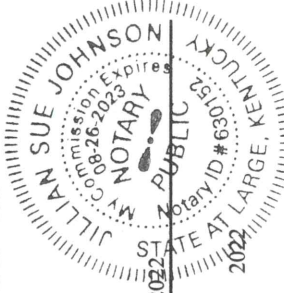
Subscribed and sworn to before me this 3rd day of February 2022

Notary Public:  Jillian Sue Johnson

My Commission expires: 08/26/2023

Date: 02 03 2022

County of: Simpson



ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 103,683.33

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)
ARCHITECT/ENGINEER:

By:  Date: 2/11/22

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

DOCUMENT G703

APPLICATION NO: 10

APPLICATION DATE: 2/3/2022

PERIOD TO: 2/3/2022

CDCT's Job #: 21-122

RETAIL PRICE

2/3/2022

2/3/2022

21-122

Rucker Lane Widening

| A ITEM NO. | B DESCRIPTION OF WORK | C CONTRACT QTY | D INSTALLED QTY THIS PERIOD | E PREVIOUS QTY THIS PERIOD | F INSTALLED QTY TO DATE | G UNIT RATE | H SCHEDULED VALUE | I WORK COMPLETED FROM PREVIOUS APPLICATION | J MATERIALS LABOR EQUIPMENT OTHER | K STORED MATERIALS (Not In D or E) | L TOTAL COMPLETED AND STORED (D+E+K) | M % (G+C) | N BALANCE TO FINISH (C-E) | O RETAINAGE (IF VARIABLE RATE) |
|------------------|--------------------------------------------|----------------------|-----------------------------------|----------------------------------|-------------------------------|----------------|-------------------------|-----------------------------------------------------|-----------------------------------------------|---------------------------------------------|--------------------------------------------------|-----------------|------------------------------------|-----------------------------------------|
| 109-01.02 | Basic Bituminous Material Index Adjustment | 0 | 0 | 0 | 0 | 0 | \$ - | \$ 42,458.57 | | | \$ 42,458.57 | 100% | \$ (42,458.57) | \$ 2,122.93 |
| 105-01 | Construction Stakes, Lines, Grades | 1 | 1 | 1 | 1 | 12,500 | \$ 12,500.00 | \$ 12,500.00 | | | \$ 12,500.00 | 100% | \$ - | \$ 625.00 |
| 201-01 | Clearing And Grubbing | 1 | 1 | 1 | 1 | 4,000 | \$ 4,000.00 | \$ 4,000.00 | | | \$ 4,000.00 | 100% | \$ - | \$ 200.00 |
| 202-03.01 | Removal of Asphalt Pavement | 1448 | 1448 | 1448 | 1448 | 4.5 | \$ 6,516.00 | \$ 6,516.00 | | | \$ 6,516.00 | 100% | \$ - | \$ 325.80 |
| 203-01 | Road and Drainage Ex. | 10951 | 10951 | 10951 | 10951 | 2.55 | \$ 27,925.05 | \$ 27,925.05 | | | \$ 27,925.05 | 100% | \$ - | \$ 1,396.25 |
| 203-03 | Borrow Excavation | 30040 | 30040 | 30040 | 30040 | 21.5 | \$ 645,860.00 | \$ 645,860.00 | | | \$ 645,860.00 | 100% | \$ - | \$ 32,293.00 |
| 203-04 | Placing and Spreading Topsoil | 2400 | 2400 | 2400 | 2400 | 3.5 | \$ 8,400.00 | \$ 8,400.00 | | | \$ 8,400.00 | 100% | \$ - | \$ 420.00 |
| 203-05 | Underdrain | 375 | 375 | 375 | 375 | 14 | \$ 39,300.00 | \$ 39,300.00 | | | \$ 39,300.00 | 100% | \$ - | \$ 1,965.00 |
| 203-06 | Water | 197 | 197 | 197 | 197 | 1 | \$ 197.00 | \$ 197.00 | | | \$ 197.00 | 100% | \$ - | \$ 9.85 |
| 209-05 | Sediment Removal | 266 | 266 | 266 | 266 | 1 | \$ 266.00 | \$ 266.00 | | | \$ 266.00 | 100% | \$ - | \$ 13.30 |
| 209-08.03 | Temp. Silt Fence (Without Backing) | 10500 | 10500 | 10500 | 10500 | 1.82 | \$ 19,110.00 | \$ 19,110.00 | | | \$ 19,110.00 | 100% | \$ - | \$ 955.50 |
| 209-08.08 | Enhanced Rock Check Dam | 8 | 8 | 8 | 8 | 519.62 | \$ 41,569.96 | \$ 41,569.96 | | | \$ 41,569.96 | 100% | \$ - | \$ 2,078.50 |
| 209-09.43 | Curb Inlet Protection | 42 | 42 | 42 | 42 | 129.91 | \$ 5,556.22 | \$ 5,556.22 | | | \$ 5,556.22 | 100% | \$ - | \$ 277.81 |
| 209-40.44 | Curb Basin Filter Assembly | 40 | 40 | 40 | 40 | 415.7 | \$ 16,628.00 | \$ 16,628.00 | | | \$ 16,628.00 | 100% | \$ - | \$ 831.40 |
| 303-10.01 | Mineral Aggregate Type A Base Grade D | 10689 | 10689 | 10689 | 10689 | 9242.4 | \$ 216,452.25 | \$ 216,452.25 | | | \$ 216,452.25 | 100% | \$ - | \$ 10,822.61 |
| 303-10.01 | Mineral Aggregate Type A Base Grade D | 27 | 27 | 27 | 27 | 3.5 | \$ 945.00 | \$ 945.00 | | | \$ 945.00 | 100% | \$ - | \$ 47.25 |
| 307-02.01 | Asphalt Grading A | 3072 | 3072 | 3072 | 3072 | 58 | \$ 178,176.00 | \$ 178,176.00 | | | \$ 178,176.00 | 100% | \$ - | \$ 8,908.80 |
| 307-02.08 | Asphalt Grading B-M2 | 2031 | 2031 | 2031 | 2031 | 66 | \$ 134,046.00 | \$ 134,046.00 | | | \$ 134,046.00 | 100% | \$ - | \$ 6,702.30 |
| 402-01 | Bituminous Material Prime Coat | 27 | 27 | 27 | 27 | 650 | \$ 17,550.00 | \$ 17,550.00 | | | \$ 17,550.00 | 100% | \$ - | \$ 877.50 |
| 402-02 | Aggregate For Cover Material | 92 | 92 | 92 | 92 | 35 | \$ 3,220.00 | \$ 3,220.00 | | | \$ 3,220.00 | 100% | \$ - | \$ 161.00 |
| 402-01 | Bituminous Material | 11 | 11 | 11 | 11 | 525 | \$ 5,775.00 | \$ 5,775.00 | | | \$ 5,775.00 | 100% | \$ - | \$ 288.75 |
| 411-02.10 | ACS Mix Grading D | 1457 | 1457 | 1457 | 1457 | 92.2 | \$ 134,335.40 | \$ 134,335.40 | | | \$ 134,335.40 | 100% | \$ - | \$ 6,716.77 |
| 415-01.02 | Cold Planing Bituminous Pavement | 250 | 250 | 250 | 250 | 5 | \$ 1,250.00 | \$ 1,250.00 | | | \$ 1,250.00 | 100% | \$ - | \$ 62.50 |
| 607-03.02 | 18" Concrete Pipe Culvert | 3169 | 3169 | 3169 | 3169 | 57 | \$ 171,228.00 | \$ 171,228.00 | | | \$ 171,228.00 | 100% | \$ - | \$ 8,561.40 |
| 607-05.02 | 24" Concrete Pipe Culvert | 72 | 72 | 72 | 72 | 75 | \$ 5,400.00 | \$ 5,400.00 | | | \$ 5,400.00 | 100% | \$ - | \$ 270.00 |
| 607-16.04 | 38"x24" Horizontal Oval Con. Pipe | 56 | 56 | 56 | 56 | 125 | \$ 7,000.00 | \$ 7,000.00 | | | \$ 7,000.00 | 100% | \$ - | \$ 350.00 |
| 607-39.02 | 18" Pipe Culvert (Side Drains) | 36 | 36 | 36 | 36 | 90 | \$ 3,240.00 | \$ 3,240.00 | | | \$ 3,240.00 | 100% | \$ - | \$ 162.00 |
| 611-07.01 | Class A Concrete (Pipe Endwalls) | 6 | 6 | 6 | 6 | 450 | \$ 2,700.00 | \$ 2,700.00 | | | \$ 2,700.00 | 100% | \$ - | \$ 135.00 |
| 611-07.02 | Steel Bar Reinforcement (Pipe Endwalls) | 354 | 354 | 354 | 354 | 1.95 | \$ 690.30 | \$ 690.30 | | | \$ 690.30 | 100% | \$ - | \$ 34.52 |
| 611-07.54 | 18" Endwall (Cross Drain) 3:1 | 3 | 3 | 3 | 3 | 2200 | \$ 6,600.00 | \$ 6,600.00 | | | \$ 6,600.00 | 100% | \$ - | \$ 330.00 |
| 611-07.57 | 24" Endwall (Cross Drain) 3:1 | 2 | 2 | 2 | 2 | 3100 | \$ 6,200.00 | \$ 6,200.00 | | | \$ 6,200.00 | 100% | \$ - | \$ 310.00 |
| 611-09.02 | Rework Cured Basins | 1 | 1 | 1 | 1 | 1200 | \$ 1,200.00 | \$ 1,200.00 | | | \$ 1,200.00 | 100% | \$ - | \$ 60.00 |
| 611-12.01 | Catch Basins Type 12 > 6'-4" Depth | 4 | 4 | 4 | 4 | 1595 | \$ 9,570.00 | \$ 9,570.00 | | | \$ 9,570.00 | 100% | \$ - | \$ 478.50 |
| 611-12.02 | Catch Basins Type 12 > 4'-8" Depth | 7 | 7 | 7 | 7 | 2282 | \$ 15,974.00 | \$ 15,974.00 | | | \$ 15,974.00 | 100% | \$ - | \$ 798.70 |
| 611-14.01 | Catch Basins Type 14 0'-4" Depth | 16 | 16 | 16 | 16 | 4075 | \$ 65,200.00 | \$ 65,200.00 | | | \$ 65,200.00 | 100% | \$ - | \$ 3,260.00 |
| 611-14.02 | Catch Basins Type 14 > 4'-8" Depth | 11 | 11 | 11 | 11 | 4230 | \$ 46,530.00 | \$ 46,530.00 | | | \$ 46,530.00 | 100% | \$ - | \$ 2,326.50 |
| 702-03 | Concrete Combined Curb & Gutter | 583 | 583 | 583 | 583 | 247.65 | \$ 144,379.95 | \$ 144,379.95 | | | \$ 144,379.95 | 100% | \$ - | \$ 7,218.99 |
| 709-05.06 | Machined Rip Rap | 138 | 138 | 138 | 138 | 35 | \$ 4,830.00 | \$ 4,830.00 | | | \$ 4,830.00 | 100% | \$ - | \$ 241.50 |
| 712-01 | Traffic Control | 1 | 1 | 1 | 1 | 5500 | \$ 5,500.00 | \$ 5,500.00 | | | \$ 5,500.00 | 100% | \$ - | \$ 275.00 |
| 712-02.02 | Interconnected Barrier Rail | 100 | 100 | 100 | 100 | 35 | \$ 3,500.00 | \$ 3,500.00 | | | \$ 3,500.00 | 100% | \$ - | \$ 175.00 |
| 712-04.01 | Flexible Drums (Channelizing) | 50 | 50 | 50 | 50 | 22.5 | \$ 1,125.00 | \$ 1,125.00 | | | \$ 1,125.00 | 100% | \$ - | \$ 56.25 |
| 712-05.03 | Warning Lights (Type C) | 12 | 12 | 12 | 12 | 10.5 | \$ 126.00 | \$ 126.00 | | | \$ 126.00 | 100% | \$ - | \$ 6.30 |
| 712-06 | Signs (Construction) | 246 | 246 | 246 | 246 | 6.5 | \$ 1,599.00 | \$ 1,599.00 | | | \$ 1,599.00 | 100% | \$ - | \$ 79.95 |
| 712-07.03 | Temp. Barricades (Type III) | 50 | 50 | 50 | 50 | 17.5 | \$ 875.00 | \$ 875.00 | | | \$ 875.00 | 100% | \$ - | \$ 43.75 |
| 713-16.21 | Changeable Message Sign Unit | 2 | 2 | 2 | 2 | 3750 | \$ 7,500.00 | \$ 7,500.00 | | | \$ 7,500.00 | 100% | \$ - | \$ 375.00 |
| 713-16.20 | Signs (R-1-1 Stop Sign) | 2 | 2 | 2 | 2 | 200 | \$ 400.00 | \$ 400.00 | | | \$ 400.00 | 100% | \$ - | \$ 20.00 |
| 713-16.21 | Signs (R2-1 Street Name) | 4 | 4 | 4 | 4 | 200 | \$ 400.00 | \$ 400.00 | | | \$ 400.00 | 100% | \$ - | \$ 20.00 |
| 713-16.22 | Signs (R2-1 Speed Limit 40 MPH) | 2 | 2 | 2 | 2 | 200 | \$ 400.00 | \$ 400.00 | | | \$ 400.00 | 100% | \$ - | \$ 20.00 |
| 713-16.23 | Signs (W3-1 Stop Ahead Symbol) | 1 | 1 | 1 | 1 | 200 | \$ 200.00 | \$ 200.00 | | | \$ 200.00 | 100% | \$ - | \$ 10.00 |
| 716-02.04 | Plastic Pavement Mark. Channelization | 15 | 15 | 15 | 15 | 6.889 | \$ 20.78 | \$ 20.78 | | | \$ 20.78 | 100% | \$ - | \$ 1.04 |
| 716-02.05 | Plastic Pavement Mark. Stop Line | 50 | 50 | 50 | 50 | 20.78 | \$ 1,039.00 | \$ 1,039.00 | | | \$ 1,039.00 | 100% | \$ - | \$ 51.95 |
| 716-02.06 | Plastic Pavement Mark. Turn Lane Arrow | 3 | 3 | 3 | 3 | 259.81 | \$ 779.43 | \$ 779.43 | | | \$ 779.43 | 100% | \$ - | \$ 38.97 |
| 716-05.01 | Painted Pavement Marking (4" Lane) | 2.75 | 2.75 | 2.75 | 2.75 | 831.39 | \$ 2,286.32 | \$ 2,286.32 | | | \$ 2,286.32 | 100% | \$ - | \$ 114.32 |
| 716-05.05 | Painted Pavement Marking Stop Line | 50 | 50 | 50 | 50 | 10.39 | \$ 519.50 | \$ 519.50 | | | \$ 519.50 | 100% | \$ - | \$ 25.98 |
| 716-12.01 | Enhanced Flatline Thermo Pavement Mark | 2.25 | 2.25 | 2.25 | 2.25 | 4678.58 | \$ 10,522.31 | \$ 10,522.31 | | | \$ 10,522.31 | 100% | \$ - | \$ 526.12 |
| 717-01 | Modification | 1 | 1 | 1 | 1 | 17500 | \$ 17,500.00 | \$ 17,500.00 | | | \$ 17,500.00 | 100% | \$ - | \$ 875.00 |
| 722-01.01 | Field Office (Type I) | 1 | 1 | 1 | 1 | 4000 | \$ 4,000.00 | \$ 4,000.00 | | | \$ 4,000.00 | 100% | \$ - | \$ 200.00 |
| 740-10.03 | Geotextile (Type III) | 324 | 324 | 324 | 324 | 2 | \$ 648.00 | \$ 648.00 | | | \$ 648.00 | 100% | \$ - | \$ 32.40 |
| 801-01.01 | Seeding (With Mulch) | 162 | 162 | 162 | 162 | 32.26 | \$ 5,283.12 | \$ 5,283.12 | | | \$ 5,283.12 | 100% | \$ - | \$ 264.16 |
| 801-02.08 | Temporary Seeding (Without Mulch) | 82 | 82 | 82 | 82 | 15.59 | \$ 1,278.38 | \$ 1,278.38 | | | \$ 1,278.38 | 100% | \$ - | \$ 63.92 |

[illegible]



Rucker Lane Widening Application for Payment

Detailed Payment

21-12-2101 Rucker Lane Widening Phase 1 Supplemental CEI

Description Rucker Lane Roadway Widening Phase 1

Payment Number 10

Pay Period 01/21/2022 to 02/10/2022

Prime Contractor Charles Deweese Construction, Inc.
P.O. Box 504
Franklin, KY 42135

Payment Status Approved

Awarded Project Amount \$2,299,947.05

Authorized Amount \$2,347,173.62

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|---------------------------------------|-----------|------|--------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| Section: 1 - Roadway | | | | | | | | | | |
| 0010 | 105-01 | LS | \$12,500.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$12,500.00 |
| CONSTRUCTION STAKES, LINES AND GRADES | | | | | | | | | | |
| 0020 | 201-01 | LS | \$4,000.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$4,000.00 |
| CLEARING AND GRUBBING | | | | | | | | | | |
| 0030 | 202-03.01 | S.Y. | \$4.500 | 1,448.000 | 0.000 | 1,448.000 | 1,448.000 | 1,448.000 | \$0.00 | \$6,516.00 |
| REMOVAL OF ASPHALT PAVEMENT | | | | | | | | | | |

Detailed Payment:

21-12-2101 Rucker Lane Widening Phase 1 Supplemental CEI

02/10/2022

Page 1 of 10

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|-------------------------------------------|-----------|------|------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0040 | 203-01 | C.Y. | \$2.550 | 10,951.000 | 0.000 | 10,951.000 | 10,951.000 | 10,951.000 | \$0.00 | \$27,925.05 |
| ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED) | | | | | | | | | | |
| 0050 | 203-03 | C.Y. | \$21.500 | 30,040.000 | 0.000 | 25,914.140 | 25,914.140 | 25,914.140 | \$0.00 | \$557,154.01 |
| BORROW EXCAVATION (UNCLASSIFIED) | | | | | | | | | | |
| 0060 | 203-04 | C.Y. | \$3.500 | 2,400.000 | 0.000 | 2,400.000 | 2,400.000 | 2,400.000 | \$0.00 | \$8,400.00 |
| PLACING AND SPREADING TOPSOIL | | | | | | | | | | |
| 0070 | 203-05 | C.Y. | \$14.000 | 2,800.000 | 0.000 | 375.000 | 375.000 | 375.000 | \$0.00 | \$5,250.00 |
| UNDERCUTTING | | | | | | | | | | |
| 0080 | 203-06 | M.G. | \$1.000 | 197.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| WATER | | | | | | | | | | |
| 0090 | 209-05 | C.Y. | \$1.000 | 266.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| SEDIMENT REMOVAL | | | | | | | | | | |
| 0100 | 209-08.03 | L.F. | \$1.820 | 10,500.000 | 0.000 | 9,500.000 | 9,500.000 | 9,500.000 | \$0.00 | \$17,290.00 |
| TEMPORARY SILT FENCE (WITHOUT BACKING) | | | | | | | | | | |
| 0110 | 209-08.08 | EACH | \$519.620 | 8.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| ENHANCED ROCK CHECK DAM | | | | | | | | | | |
| 0120 | 209-09.43 | EACH | \$129.910 | 42.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| CURB INLET PROTECTION (TYPE 4) | | | | | | | | | | |
| 0130 | 209-40.44 | EACH | \$415.700 | 40.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| CATCH BASIN FILTER ASSEMBLY (TYPE 4) | | | | | | | | | | |
| 0140 | 303-01 | TON | \$20.250 | 10,689.000 | 0.000 | 9,242.400 | 9,242.400 | 9,242.400 | \$0.00 | \$187,158.60 |
| MINERAL AGGREGATE, TYPE A BASE, GRADING D | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|-------------------------------------------------------|-----------|------|------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0150 | 303-10.01 | TON | \$35.000 | 27.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| MINERAL AGGREGATE (SIZE 57) | | | | | | | | | | |
| 0160 | 307-02.01 | TON | \$58.000 | 3,072.000 | 0.000 | 2,750.230 | 2,750.230 | 2,750.230 | \$0.00 | \$159,513.34 |
| ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING A | | | | | | | | | | |
| 0170 | 307-02.08 | TON | \$66.000 | 2,031.000 | 0.000 | 2,327.440 | 2,327.440 | 2,327.440 | \$0.00 | \$153,611.04 |
| ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING B-M2 | | | | | | | | | | |
| 0180 | 402-01 | TON | \$650.000 | 27.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| BITUMINOUS MATERIAL FOR PRIME COAT (PC) | | | | | | | | | | |
| 0190 | 402-02 | TON | \$35.000 | 92.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| AGGREGATE FOR COVER MATERIAL (PC) | | | | | | | | | | |
| 0200 | 403-01 | TON | \$525.000 | 11.000 | 0.000 | 3.720 | 3.720 | 3.720 | \$0.00 | \$1,953.00 |
| BITUMINOUS MATERIAL FOR TACK COAT (TC) | | | | | | | | | | |
| 0210 | 411-02.10 | TON | \$92.200 | 1,457.000 | 0.000 | 1,432.460 | 1,432.460 | 1,432.460 | \$0.00 | \$132,072.81 |
| ACS MIX(PG70-22) GRADING D | | | | | | | | | | |
| 0220 | 415-01.02 | S.Y. | \$5.000 | 250.000 | 0.000 | 250.000 | 250.000 | 250.000 | \$0.00 | \$1,250.00 |
| COLD PLANING BITUMINOUS PAVEMENT | | | | | | | | | | |
| 0230 | 607-03.02 | L.F. | \$57.000 | 3,028.000 | 0.000 | 3,169.000 | 3,169.000 | 3,169.000 | \$0.00 | \$180,633.00 |
| 18" CONCRETE PIPE CULVERT (CLASS III) | | | | | | | | | | |
| 0240 | 607-05.02 | L.F. | \$75.000 | 72.000 | 0.000 | 72.000 | 72.000 | 72.000 | \$0.00 | \$5,400.00 |
| 24" CONCRETE PIPE CULVERT (CLASS III) | | | | | | | | | | |
| 0250 | 607-16.04 | L.F. | \$125.000 | 56.000 | 0.000 | 56.000 | 56.000 | 56.000 | \$0.00 | \$7,000.00 |
| 38"X 24" HORIZONTAL OVAL CONCRETE PIPE CULVERT | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|-----------------------------------------|-----------|------|-------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0260 | 607-39.02 | L.F. | \$90.000 | 36.000 | 0.000 | 36.000 | 36.000 | 36.000 | \$0.00 | \$3,240.00 |
| 18" PIPE CULVERT (SIDE DRAIN) | | | | | | | | | | |
| 0270 | 611-07.01 | C.Y. | \$450.000 | 6.000 | 0.000 | 6.000 | 6.000 | 6.000 | \$0.00 | \$2,700.00 |
| CLASS A CONCRETE (PIPE ENDWALLS) | | | | | | | | | | |
| 0280 | 611-07.02 | LB. | \$1.950 | 354.000 | 0.000 | 354.000 | 354.000 | 354.000 | \$0.00 | \$690.30 |
| STEEL BAR REINFORCEMENT (PIPE ENDWALLS) | | | | | | | | | | |
| 0290 | 611-07.54 | EACH | \$2,200.000 | 3.000 | 0.000 | 3.000 | 3.000 | 3.000 | \$0.00 | \$6,600.00 |
| 18IN ENDWALL (CROSS DRAIN) 3:1 | | | | | | | | | | |
| 0300 | 611-07.57 | EACH | \$3,100.000 | 2.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$6,200.00 |
| 24IN ENDWALL (CROSS DRAIN) 3:1 | | | | | | | | | | |
| 0310 | 611-09.02 | EACH | \$1,200.000 | 2.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$2,400.00 |
| REWORK CATCHBASIN | | | | | | | | | | |
| 0320 | 611-12.01 | EACH | \$1,595.000 | 6.000 | 0.000 | 8.500 | 8.500 | 8.500 | \$0.00 | \$13,557.50 |
| CATCH BASINS, TYPE 12, > 0' - 4' DEPTH | | | | | | | | | | |
| 0330 | 611-12.02 | EACH | \$2,282.000 | 7.000 | 0.000 | 7.000 | 7.000 | 7.000 | \$0.00 | \$15,974.00 |
| CATCH BASINS, TYPE 12, > 4' - 8' DEPTH | | | | | | | | | | |
| 0340 | 611-14.01 | EACH | \$4,075.000 | 16.000 | 0.000 | 16.000 | 16.000 | 16.000 | \$0.00 | \$65,200.00 |
| CATCH BASIN, TYPE 14, 0'-4' DEPTH | | | | | | | | | | |
| 0350 | 611-14.02 | EACH | \$4,230.000 | 11.000 | 0.000 | 11.000 | 11.000 | 11.000 | \$0.00 | \$46,530.00 |
| CATCH BASINS, TYPE 14, > 4' - 8' DEPTH | | | | | | | | | | |
| 0360 | 702-03 | C.Y. | \$247.650 | 583.000 | 0.000 | 442.000 | 442.000 | 442.000 | \$0.00 | \$109,461.30 |
| CONCRETE COMBINED CURB & GUTTER | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|--------------------------------------|-----------|------|-------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0370 | 709-05.06 | TON | \$35.000 | 138.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| MACHINED RIP-RAP (CLASS A-1) | | | | | | | | | | |
| 0380 | 712-01 | LS | \$5,500.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$5,500.00 |
| TRAFFIC CONTROL | | | | | | | | | | |
| 0390 | 712-02.02 | LF | \$35.000 | 100.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| INTERCONNECTED PORTABLE BARRIER RAIL | | | | | | | | | | |
| 0400 | 712-04.01 | EACH | \$22.500 | 50.000 | 0.000 | 50.000 | 50.000 | 50.000 | \$0.00 | \$1,125.00 |
| FLEXIBLE DRUMS (CHANNELIZING) | | | | | | | | | | |
| 0410 | 712-05.03 | EACH | \$10.500 | 12.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| WARNING LIGHTS (TYPE C) | | | | | | | | | | |
| 0420 | 712-06 | S.F. | \$6.500 | 246.000 | 0.000 | 246.000 | 246.000 | 246.000 | \$0.00 | \$1,599.00 |
| SIGNS (CONSTRUCTION) | | | | | | | | | | |
| 0430 | 712-07.03 | L.F. | \$17.500 | 50.000 | 0.000 | 50.000 | 50.000 | 50.000 | \$0.00 | \$875.00 |
| TEMPORARY BARRICADES (TYPE III) | | | | | | | | | | |
| 0440 | 713-16.01 | EACH | \$3,750.000 | 2.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$7,500.00 |
| CHANGEABLE MESSAGE SIGN UNIT | | | | | | | | | | |
| 0450 | 713-16.20 | EACH | \$200.000 | 2.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$400.00 |
| SIGNS (R1-1 STOP SIGN) | | | | | | | | | | |
| 0460 | 713-16.21 | EACH | \$200.000 | 2.000 | 0.000 | 4.000 | 4.000 | 4.000 | \$0.00 | \$800.00 |
| SIGNS (D3-1 STREET NAME) | | | | | | | | | | |
| 0470 | 713-16.22 | EACH | \$200.000 | 2.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$400.00 |
| SIGNS (R2-1 SPEED LIMIT 40 MPH) | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|---------------------------------------------------|-----------|------|--------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0480 | 713-16.23 | EACH | \$200.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$200.00 |
| SIGNS (W3-1 STOP AHEAD SYMBOL) | | | | | | | | | | |
| 0490 | 716-02.04 | S.Y. | \$20.780 | 15.000 | 0.000 | 6.889 | 6.889 | 6.889 | \$0.00 | \$143.15 |
| PLASTIC PAVEMENT MARKING(CHANNELIZATION STRIPING) | | | | | | | | | | |
| 0500 | 716-02.05 | L.F. | \$20.780 | 50.000 | 0.000 | 46.000 | 46.000 | 46.000 | \$0.00 | \$955.88 |
| PLASTIC PAVEMENT MARKING (STOP LINE) | | | | | | | | | | |
| 0510 | 716-02.06 | EACH | \$259.810 | 3.000 | 0.000 | 3.000 | 3.000 | 3.000 | \$0.00 | \$779.43 |
| PLASTIC PAVEMENT MARKING (TURN LANE ARROW) | | | | | | | | | | |
| 0520 | 716-05.01 | L.M. | \$831.390 | 2.750 | 0.000 | 2.750 | 2.750 | 2.750 | \$0.00 | \$2,286.32 |
| PAINTED PAVEMENT MARKING (4" LINE) | | | | | | | | | | |
| 0530 | 716-05.05 | L.F. | \$10.390 | 50.000 | 0.000 | 46.000 | 46.000 | 46.000 | \$0.00 | \$477.94 |
| PAINTED PAVEMENT MARKING (STOP LINE) | | | | | | | | | | |
| 0540 | 716-12.01 | L.M. | \$4,676.580 | 2.250 | 0.000 | 2.210 | 2.210 | 2.210 | \$0.00 | \$10,335.25 |
| ENHANCED FLATLINE THERMO PVMT MRKNG (4IN LINE) | | | | | | | | | | |
| 0550 | 717-01 | LS | \$17,500.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$17,500.00 |
| MOBILIZATION | | | | | | | | | | |
| 0560 | 722-01.01 | LS | \$4,000.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$4,000.00 |
| FIELD OFFICE (TYPE 1) | | | | | | | | | | |
| 0570 | 740-10.03 | S.Y. | \$2.000 | 324.000 | 0.000 | 162.000 | 162.000 | 162.000 | \$0.00 | \$324.00 |
| GEOTEXTILE (TYPE IID)(EROSION CONTROL) | | | | | | | | | | |
| 0580 | 801-01 | UNIT | \$33.260 | 162.000 | 0.000 | 176.000 | 176.000 | 176.000 | \$0.00 | \$5,853.76 |
| SEEDING (WITH MULCH) | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|--------------------------------------------|-----------|------|--------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0590 | 801-02.08 | UNIT | \$15.590 | 82.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| TEMPORARY SEEDING (WITHOUT MULCH) | | | | | | | | | | |
| 0600 | 801-03 | M.G. | \$51.960 | 26.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| WATER (SEEDING & SODDING) | | | | | | | | | | |
| 0610 | 805-12.01 | S.Y. | \$1.300 | 14,402.000 | 0.000 | 14,300.000 | 14,300.000 | 14,300.000 | \$0.00 | \$18,590.00 |
| EROSION CONTROL BLANKET (TYPE I) | | | | | | | | | | |
| 0620 | 999-00.00 | LS | \$500.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$500.00 |
| LAND DISTURBANCE PERMIT | | | | | | | | | | |
| 0790 | 109-01.02 | LS | \$42,458.570 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$42,458.57 |
| Basic Bituminous Material Index Adjustment | | | | | | | | | | |
| Section: 2 - Utility | | | | | | | | | | |
| 0630 | 795-01.14 | L.F. | \$122.200 | 800.000 | 0.000 | 800.000 | 800.000 | 800.000 | \$0.00 | \$97,760.00 |
| 16IN DIP SLIP JOINT WATER LINE | | | | | | | | | | |
| 0640 | 795-01.13 | L.F. | \$140.000 | 100.000 | 0.000 | 100.000 | 100.000 | 100.000 | \$0.00 | \$14,000.00 |
| 16IN DIP RESTRAINED JOINT WATER LINE | | | | | | | | | | |
| 0650 | 795-01.06 | L.F. | \$84.180 | 20.000 | 0.000 | 8.000 | 8.000 | 8.000 | \$0.00 | \$673.44 |
| 8IN DIP SLIP JOINT WATER LINE | | | | | | | | | | |
| 0660 | 795-15.07 | L.F. | \$225.000 | 80.000 | 0.000 | 80.000 | 80.000 | 80.000 | \$0.00 | \$18,000.00 |
| 24IN STEEL CASING PIPE OPEN CUT METHOD | | | | | | | | | | |
| 0670 | 795-05.28 | L.F. | \$70.000 | 250.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| HDD 3IN HDPE CASING PIPE-ROCK | | | | | | | | | | |

Detailed Payment:

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|--------------------------------------|-----------|------|--------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| 0680 | 795-09.62 | L.F. | \$30.000 | 300.000 | 0.000 | 20.000 | 20.000 | 20.000 | \$0.00 | \$600.00 |
| 1IN PEX SERVICE PIPE | | | | | | | | | | |
| 0690 | 795-07.61 | EACH | \$37,450.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$37,450.00 |
| 20IN X 16IN TAPPING SLEEVE AND VALVE | | | | | | | | | | |
| 0700 | 795-07.62 | EACH | \$16,800.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$16,800.00 |
| 16IN X 8IN TAPPING SLEEVE AND VALVE | | | | | | | | | | |
| 0710 | 795-08.14 | EACH | \$12,150.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$12,150.00 |
| 16IN GATE VALVE ASSEMBLY | | | | | | | | | | |
| 0720 | 795-13.01 | LB. | \$5.000 | 750.000 | 0.000 | 750.000 | 750.000 | 750.000 | \$0.00 | \$3,750.00 |
| DI FITTINGS | | | | | | | | | | |
| 0730 | 795-11.01 | EACH | \$2,500.000 | 1.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| BLOW-OFF ASSEMBLY | | | | | | | | | | |
| 0740 | 795-09.09 | EACH | \$1,250.000 | 3.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$2,500.00 |
| RELOCATE/RECONNECT SERVICE ASSEMBLY | | | | | | | | | | |
| 0750 | 795-06.09 | EACH | \$3,000.000 | 1.000 | 0.000 | 1.000 | 1.000 | 1.000 | \$0.00 | \$3,000.00 |
| CONNECT TO 16IN WATER LINE | | | | | | | | | | |
| 0760 | 795-14.02 | C.Y. | \$500.000 | 8.000 | 0.000 | 8.000 | 8.000 | 8.000 | \$0.00 | \$4,000.00 |
| CLASS B CONCRETE | | | | | | | | | | |
| 0770 | 795-14.10 | S.Y. | \$100.000 | 5.000 | 0.000 | 2.000 | 2.000 | 2.000 | \$0.00 | \$200.00 |
| RESTORE GRAVEL | | | | | | | | | | |
| 0780 | 795-14.08 | S.Y. | \$225.000 | 5.000 | 0.000 | 0.000 | 0.000 | 0.000 | \$0.00 | \$0.00 |
| RESTORE ASPHALT | | | | | | | | | | |

Detailed Payment:

21-12-2101 Rucker Lane Widening Phase 1 Supplemental CEI

02/10/2022

Page 8 of 10

| Line Number | Item ID | Unit | Unit Price | Authorized Quantity | Current Paid Quantity | Previous Paid Quantity | Total Quantity Paid To Date | Total Quantity Placed To Date | Current Payment Amount | Total Amount Paid To Date |
|-------------|---------|------|------------|---------------------|-----------------------|------------------------|-----------------------------|-------------------------------|------------------------|---------------------------|
| | | | | | | | Section Totals: | | \$0.00 | \$210,883.44 |
| | | | | | | | Total Payments: | | \$0.00 | \$2,073,666.69 |

Time Charges

| Time Limit | Original Deadline | Authorized Deadline | Charges This Period | Damages This Period | Days Completed To Date | Days Remaining To Date | Damages To Date |
|------------------------|-------------------|---------------------|---------------------|---------------------|------------------------|------------------------|-----------------|
| Final Completion | 90.0 Days | 90.0 Days | 0.0 Days | \$0.00 | 0.0 Days | 90.0 Days | \$0.00 |
| Substantial Completion | 270.0 Days | 270.0 Days | 0.0 Days | \$0.00 | 0.0 Days | 270.0 Days | \$0.00 |
| Total Damages: | | | | | | | \$0.00 |

Stockpiles

| Stockpile | Current Advancements | Advancements To Date | Current Recoveries | Recoveries To Date |
|--------------------------------------------------|----------------------|----------------------|--------------------|--------------------|
| #1 - 795-01.14 16IN DIP SLIP JOINT WATER LINE | \$0.00 | \$8,889.19 | \$0.00 | \$8,889.19 |
| #2 - 795-13.01 DI FITTINGS | \$0.00 | \$2,135.74 | \$0.00 | \$2,135.74 |
| Totals: | \$0.00 | \$11,024.93 | \$0.00 | \$11,024.93 |

Detailed Payment:

21-12-2101 Rucker Lane Widening Phase 1 Supplemental CEI

02/10/2022

Page 9 of 10

Summary

| | | | |
|--------------------------------|--------------|--------------------------------|----------------|
| Current Approved Work: | \$0.00 | Approved Work To Date: | \$2,073,666.69 |
| Current Stockpile Advancement: | \$0.00 | Stockpile Advancement To Date: | \$11,024.93 |
| Current Stockpile Recovery: | \$0.00 | Stockpile Recovery To Date: | \$11,024.93 |
| Current Retainage: | \$0.00 | Retainage To Date: | \$103,683.33 |
| Current Retainage Released: | \$103,683.33 | Retainage Released To Date: | \$103,683.33 |
| Current Liquidated Damages: | \$0.00 | Liquidated Damages To Date: | \$0.00 |
| Current Adjustment: | \$0.00 | Adjustments To Date: | \$0.00 |
| Current Payment: | \$103,683.33 | Payments To Date: | \$2,073,666.69 |
| Previous Payment: | \$55,415.14 | Previous Payments To Date: | \$1,969,983.36 |

COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Professional Services Contract – Butler Drive Realignment

Department: Engineering

Presented by: Chris Griffith, Executive 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

Professional Services Contract for the realignment of Butler Drive.

Staff Recommendation

Approve contract with Kimley Horn Inc. for the Butler Drive realignment in the amount of \$92,100, subject to approval by City Attorney.

Background Information

Staff requested a proposal from Kimley Horn, Inc for the survey work and right of way acquisition services included in the realignment of Butler Dr. This design realigns Butler Dr. to the west and ties it into Joe B Jackson Parkway approximately 600 feet west of the current intersection. This design would be a three-lane curb and gutter section with a sidewalk on each side, as outlined as a committed project in the 2040 Major Transportation Plan. A map detailing the realignment is included within the proposal for your review. Kimley Horn's proposal is for \$92,100 to complete the scope of work assigned.

Council Priorities Served

Expand Infrastructure

Implementation of the 2040 Major Transportation Plan through the expansion of existing roadways.

Fiscal Impact

The cost of this work, \$92,100, funding is provided from excess captured from the FY16 and FY21 CIP Budgets.

Attachments

Professional Services Contract from Kimley Horn Inc.

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

THIS IS AN AGREEMENT made as of _____, 2022, between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and KIMLEY-HORN AND ASSOCIATES, INC. (ENGINEER).

OWNER intends to secure professional services to perform conceptual design and an environmental desktop review for the realignment of Butler Drive, (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.

The Specific Scope of Services for the Project are detailed in Exhibit A.

**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 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 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 Specifications 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 The 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 The OWNER has provided the information deemed necessary for the ENGINEER to carry out the services scoped in EXHIBIT A.

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.

3.6 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 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. 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 The services called for in the Tasks will be completed within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," after written authorization to proceed with the phase of services which will be given by OWNER within thirty days after ENGINEER has signed this Agreement.

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").

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".

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 rates provided in paragraph 8.4.

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 1.00. (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 \$1,920.00 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 ENGINEER's estimate of the proportion of the total services actually completed at the time of billing.~~ OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3 Other Provisions Concerning Payments

5.3.1 If OWNER fails to make any undisputed payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefor, the amounts due ENGINEER will be increased at the rate of 1 percent per month from said thirtieth day; and 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 charges.

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the completion 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 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.

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

5.4.1 Salary Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including but not limited to engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday and other group benefits. For the purposes of this Agreement, the principals of ENGINEER and their current hourly Salary Costs are defined in Section 8.4.

5.4.1.1 The hourly Salary Costs of principals of ENGINEER will be adjusted equitably to reflect changes in personnel and in ENGINEER's overall compensation procedures and practices.

5.4.1.2 The amount of customary and statutory benefits of all other personnel of ENGINEER will be considered equal to 35 percent of salaries and wages, subject to equitable adjustment to reflect changes in ENGINEER's overall compensation procedures and practices.

5.4.2 Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates. See Sections 8.3, 8.5, and 8.6.

SECTION 6 (RESERVED)

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.

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 may be suitable for reuse by OWNER or others on extensions of the Project. Any reuse without written verification or adaptation 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, to the extent currently permitted under state law, indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants 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 for four years from execution of

agreement. ENGINEER shall, at its own expense, procure and maintain throughout the term of this Agreement comprehensive general liability insurance at \$1,000,000 per occurrence and comprehensive automobile liability insurance at \$1,000,000 per occurrence.

7.4 Controlling Law

This Agreement is to be governed by the laws of Tennessee.

7.5 Successors and Assigns

7.5.1 OWNER and ENGINEER each is hereby bound; and the partners, successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 7.5.2, the assigns of OWNER and ENGINEER) 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 to all covenants, agreements, and obligations of this Agreement.

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, "Dispute Resolution," consisting of one page.

8.2 This Agreement (consisting of pages 1 through 11 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, the maximum billing rates shall be as follows:

| | |
|------------------------|------------|
| Principal | \$290/hour |
| Senior Professional | \$270/hour |
| Professional | \$200/hour |
| Production Team Member | \$160/hour |
| Clerical Staff | \$115/hour |

These hourly rates shall be valid for a period of at least twelve (12) months. Increases in the hourly rates may be necessary to reflect changes in salary,

benefits, or other statutory requirements which could affect the hourly rates established herein. Any changes in these billing rates will be submitted for review and discussion prior to effecting such changes.

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

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

By: _____
(Christopher D. Rhodes, P.E.)

Title: _____

Title: Vice President

Address for giving notice:

Engineering Department
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

Address for giving notice:

Kimley-Horn and Associates, Inc.
10 Lea Avenue, Suite 400
Nashville, Tennessee 37210
Phone: 615-564-2701

APPROVED AS TO FORM:

City Attorney, Adam Tucker

EXHIBIT A

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2022, between the City of Murfreesboro, Tennessee, (OWNER or City) and Kimley-Horn and Associates, Inc. (ENGINEER or Kimley-Horn), 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.

This exhibit details design services for the realignment of Butler Drive in Murfreesboro, TN. A detailed description of the ENGINEER's Project Understanding, Scope of Services, Schedule, and Fee are as follows:

Project Understanding

The realignment will generally follow the proposed alignment shown in Attachment A, approximately 0.87 miles in length. The proposed alignment will connect at Joe B. Jackson Parkway to the proposed realignment of Elam Road, which is to be designed and constructed by others. The proposed typical section of the realigned Butler Drive will have three 12-foot travel lanes, curb & gutter (6-24), 2-foot grass strips and 5-foot sidewalks. The minimum right-of-way width will be 60 feet. The design speed of the realigned Butler Drive will be 40 MPH.

Task 1 – Project Management

The scope of services for this task will be added at a later date.

Task 2 – Existing Conditions Survey

Task 2.1 – Field Survey

Through the use of a Sub-Consultant, a full engineering design survey will be performed along the proposed Butler Drive alignment from existing Butler Drive to Joe B. Jackson Parkway. The DTM width will be 300' centered on the proposed centerline. This will include approximately 3,800' along existing Butler Drive from the proposed Butler Drive alignment to Joe B. Jackson Parkway with a DTM width of 40' each side of the centerline. This will also include approximately 1,580' along Joe B. Jackson for 1,070' northeast and 510' southwest of the proposed Butler Drive alignment with a total DTM width of 150'. The proposed survey limits are shown in Attachment B.

A combination of traditional ground survey methods along with mobile lidar will be used to collect topographic and roadway features. Field survey services will be used to collect underground utilities, storm and sanitary inverts. Right of way lines will be resolved throughout the survey limits along with the resolution of 21 property tracts (see Attachment C for a detailed map with the tract count). Deliverables will include planimetrics, contours, digital terrain model and classified lidar data. CADD deliverables will be in MicroStation and Geopak formats per TDOT CADD standards.

Task 3 – Traffic Analysis

The scope of services for this task will be added at a later date.

Task 4 – Environmental Studies

The scope of services for this task will be added at a later date.

Task 5 – Preliminary Design Services

The scope of services for this task will be added at a later date.

Task 6 – Right-of-Way Design Services

The scope of services for this task will be added at a later date.

Task 7 – Right-of-Way Acquisition Services*Task 7.1 – Right-of-Way Exhibits and Legal Descriptions*

Through the use of a Sub-Consultant, tract surveys, right-of-way/easement exhibits, and legal descriptions will be provided for specified tracts. It is assumed that this will be needed for up to eight (8) tracts.

Task 7.2 – Right-of-Way Staking

Through the use of a Sub-Consultant, right-of-way/easement staking will be performed throughout the corridor. This will be a one-time staking of right-of-way and proposed easements.

Task 8 – Final Design Services

The scope of services for this task will be added at a later date.

Task 9 – Environmental Permitting

The scope of services for this task will be added at a later date.

Task 10 – Utility Coordination

The scope of services for this task will be added at a later date.

Task 11 – Utility Design Services

The scope of services for this task will be added at a later date.

Task 12 – Bid Phase Services

The scope of services for this task will be added at a later date.

Schedule

Given a notice to proceed and contract execution, Kimley-Horn is prepared to provide these services based upon a mutually agreed schedule.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 through 12 on a labor fee plus expenses basis with the maximum fee as summarized below.

| | |
|--------------------------------------------|----------|
| Task 1 – Project Management | TBD |
| Task 2 – Existing Conditions Survey | \$74,100 |
| Task 3 – Traffic Analysis | TBD |
| Task 4 – Environmental Studies | TBD |
| Task 5 – Preliminary Design Services | TBD |
| Task 6 – Right-of-Way Design Services | TBD |
| Task 7 – Right-of-Way Acquisition Services | \$18,000 |
| Task 8 – Final Design Services | TBD |
| Task 9 – Environmental Permitting | TBD |

| | |
|-------------------------------------------|-----------------|
| Task 10 – Utility Coordination | TBD |
| Task 11 – Utility Design Services | TBD |
| Task 12 – Bid Phase Services | TBD |
| Total Maximum Labor / Expense Fee: | \$92,100 |

Kimley-Horn will not exceed the total maximum labor/expense fee shown without authorization from the City of Murfreesboro. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. Hourly labor fees and expenses will be invoiced monthly as accrued.

Labor fee will be billed on an hourly basis according to our rates specified in this agreement attached hereto (Exhibit C). As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.00 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the OWNER.

EXHIBIT B

DISPUTE RESOLUTION

- 7.6.1 In the event a dispute arises between OWNER and ENGINEER relating to any obligation undertaken in this agreement, they agree to utilize the following procedure to resolve any such dispute.
- 7.6.2 OWNER and ENGINEER will attempt to resolve all disputes by first engaging in good faith negotiations between them as soon as possible after the dispute arises.
- 7.6.3 If negotiations are not successful, OWNER and ENGINEER will submit their dispute to a mutually acceptable mediator for nonbinding mediation.
- 7.6.4 If mediation is not successful, OWNER and ENGINEER will seek a resolution of their dispute through the normal legal process in a court of competent jurisdiction.
- 7.6.5 If a dispute is resolved through the procedure of paragraph 7.6.4, the prevailing party shall be entitled to recover from the other all court costs.
- 7.6.6 If the complete resolution of a dispute requires the joinder of a third party that does not agree to follow the procedure set out in paragraph 7.6, such dispute shall not be resolved between OWNER and ENGINEER in accordance with said paragraph. However, this paragraph 7.6.6 shall have no application unless formal written notice of objection is given by the party wishing to utilize this subsection to avoid the procedure set forth in paragraph 7.6 within 30 days of formal notice of the dispute invoking paragraph 7.6.

EXHIBIT C

Kimley-Horn and Associates, Inc.

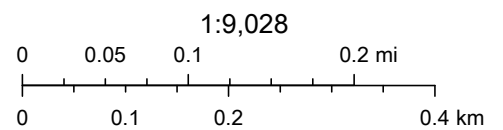
Hourly Labor Rate Schedule

To be added at a later date

Butler Drive Realignment



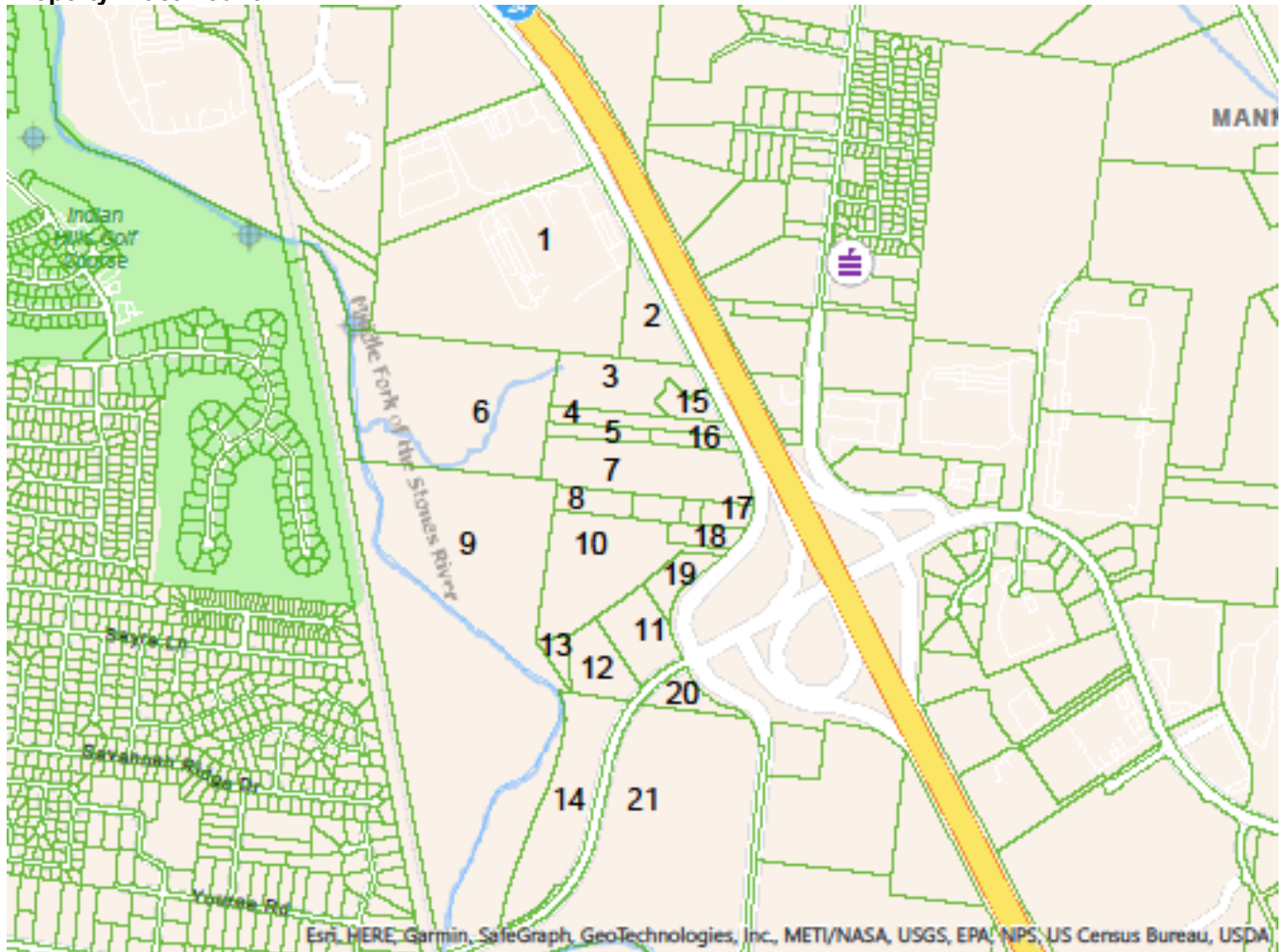
November 15, 2021



Survey Limits



Property Tract Count



COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: Reroofing Contracts
Department: Administration
Presented by: Scott Elliott, Project Manager
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

Contracts for Phase I and Phase II reroofing projects at four elementary schools and adjustment architectural fees.

Staff Recommendation

Approve the contract with Porter Roofing Contractors, Inc. for Phase I of the reroofing project at Mitchell Neilson and Reeves-Rogers Elementary Schools.

Approve the contract with Marion and Green Roofing 0 for Phase II of the reroofing project at Hobgood and Bradley Elementary Schools.

Approve the updated architectural contract with Johnson + Bailey Architects.

Background Information

Roofs on four City Schools buildings are in need of replacement. The reroofing projects were publicly advertised and competitively bid. Porter Roofing was award Phase I for \$1,989,798. Marion and Green Roofing Phase II was awarded Phase II for \$847,080. The total cost of the reroofing project is \$2,900,536.

The City is required by statute to retain architectural services on school roofing projects. In April 2021, Council approved an agreement with Johnson + Bailey for architectural services based on estimated scope and project costs for \$51,041. This contract provided for fees to be determined as a percentage of the project amount using a state formula. The work has resulted in increases scope in the architectural work. However, increasing material costs skew the formula result. Therefore, the City requested J+B recalculate their fee and agree to a reduction of the fee that would have result from the original contract. The reduced fee is \$63,659.

Council Priorities Served

Responsible Budgeting

Maintaining City buildings in an effective manner is the most responsible means for

protecting the City's most significant investments.

Fiscal Impact

Total project cost, \$2,900,536, is funded from proceeds as required by statute to be shared with City Schools from County school bond proceeds.

Attachments

1. Contract for Phase I Roofing Project at Mitchell Neilson Elementary and Reeves Rogers Elementary Schools
2. Contract for Phase II Roofing Project at Hobgood and Bradley Elementary Schools
3. Johnson + Bailey Architects P.C. letter dated March 9, 2022

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 2nd day of February in the year 2022
(In words, indicate day, month and year.)

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

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, Tennessee 37130

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

Porter Roofing Contractors, Inc.
9057 Manchester Highway
Morrison, TN 37357

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

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 1
J+B No. 2105-P1

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

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

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

| | |
|---|-------------------------------------------------|
| 1 | THE CONTRACT DOCUMENTS |
| 2 | THE WORK OF THIS CONTRACT |
| 3 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM |
| 5 | PAYMENTS |
| 6 | DISPUTE RESOLUTION |
| 7 | TERMINATION OR SUSPENSION |
| 8 | MISCELLANEOUS PROVISIONS |
| 9 | ENUMERATION OF CONTRACT DOCUMENTS |

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than sixty (60) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

Init.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Nine Hundred Eighty Nine Thousand Seven Hundred Ninety Eight Dollars and No Cents (\$ 1,989,798.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item | Price |
|------|-------|
| None | |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| None | | |

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

| Item | Quantity |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Removal of damaged existing wood roof edge nailers, and replacement with new wood nailers. | 200 Board Feet |
| Removal of deteriorated existing gypsum deck at Mitchell-Neilson Elementary School and replacement with new metal deck as shown on Detail 2/A4.3 and Detail 3/S1.0 | 300 Square Feet |

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| .1 For removal of damaged existing wood roof edge nailers, and replacement with new wood nailers. | Board Feet | \$7.00 |
| .2 For removal of deteriorated existing gypsum deck at Mitchell-Neilson Elementary School and Replacement with new metal deck as shown on Detail 2/A4.3 and Detail 3/S1.0 | Square Feet | \$15.00 |

§ 4.5 Liquidated Damages

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$300.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

Init.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2

(Paragraphs deleted)

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;

- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 [Intentionally omitted.]

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

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect;

- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the

(Paragraphs deleted)

daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B,
Dispute Resolution Procedures

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Craig Tindall, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Tel: (615) 849-2629
Email: ctindall@murfreesborotn.gov

or his designee as indicated in writing from time to time

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Eric Cason, President
Porter Roofing Contractors, Inc.
9057 Manchester Highway
Morrison, TN 37357
Tel: (931)688-2298
Email: ericcason@porter-roofing.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A, Contractor's Insurance and Bonds Requirements
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
- .4 [Intentionally Omitted]

Init.

.5 Drawings

| Section | Title | Date |
|----------|---------------|------------------|
| 00 01 15 | Drawing Index | December 3, 2021 |

.6 Specifications

| Section | Title | Date | Pages |
|----------|-------------------|------------------|-------|
| 00 01 10 | Table of Contents | December 3, 2021 | 1 |

.7 Addenda, if any:

| Number | Date | Pages |
|--------|------------------|---------|
| One | January 10, 2022 | One (1) |
| Two | January 25, 2022 | One (1) |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

☐ Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Section 00 11 13, Advertisement for Bids, December 3, 2021 (2 pages)
Section 00 21 13, Instructions to Bidders, December 3, 2021 (8 pages)
Section 00 22 13, Supplementary Instructions to Bidders, December 3, 2021 (2 pages)
Section 00 31 13, Bid Form December 3, 2021 (2 pages)

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

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:50:41 ET on 02/08/2022 under Order No.2705956690 which expires on 02/12/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

(1819619173)

OWNER *(Signature)*

Shane McFarland, Mayor
(Printed name and title)

CONTRACTOR *(Signature)*

Eric Cason President
(Printed name and title)

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

Init.

/

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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 09:50:41 ET on 02/08/2022.

PAGE 1

AGREEMENT made as of the 2nd day of February in the year 2022

...

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, Tennessee 37130

...

Porter Roofing Contractors, Inc.
9057 Manchester Highway
Morrison, TN 37357

...

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 1
J+B No. 2105-P1

...

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

PAGE 2

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

...

[] Not later than sixty (60) calendar days from the date of commencement of the Work.
PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Nine Hundred Eighty Nine Thousand Seven Hundred Ninety Eight Dollars and No Cents (\$ 1,989,798.00), subject to additions and deductions as provided in the Contract Documents.

...

None

...

None

...

| <u>Item</u> | <u>Price</u> | <u>Quantity</u> |
|---------------------------------------------------------------------------------------------------|--------------|-------------------|
| <u>Removal of damaged existing wood roof edge nailers, and replacement with new wood nailers.</u> | <u>200</u> | <u>Board Feet</u> |

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------|
| <u>Removal of deteriorated existing gypsum deck at Mitchell-Neilson Elementary School and replacement with new metal deck as shown on Detail 2/A4.3 and Detail 3/S1.0</u> | <u>300</u> | <u>Square Feet</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------|

...

| | | |
|----------------------------------------------------------------------------------------------------------|-------------------|---------------|
| <u>.1 For removal of damaged existing wood roof edge nailers, and replacement with new wood nailers.</u> | <u>Board Feet</u> | <u>\$7.00</u> |
|----------------------------------------------------------------------------------------------------------|-------------------|---------------|

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------|
| <u>.2 For removal of deteriorated existing gypsum deck at Mitchell-Neilson Elementary School and Replacement with new metal deck as shown on Detail 2/A4.3 and Detail 3/S1.0</u> | <u>Square Feet</u> | <u>\$15.00</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------|

§ 4.5 Liquidated damages, if any: Damages

(Insert terms and conditions for liquidated damages, if any.) **§ 4.5.1** Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$300.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to

terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

PAGE 4

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

...

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

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided that an the Application for Payment and all required supporting documentation is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment. fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

PAGE 5

five percent (5%)

...

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017. [Intentionally omitted.]

...

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect; the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

PAGE 6

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

—%—daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

...

[☒] Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B,
Dispute Resolution Procedures

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

PAGE 7

Craig Tindall, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Tel: (615) 849-2629
Email: ctindall@murfreesborotn.gov

or his designee as indicated in writing from time to time

...

Eric Cason, President
Porter Roofing Contractors, Inc.
9057 Manchester Highway
Morrison, TN 37357
Tel: (931) 688-2298
Email: ericcason@porter-roofing.com

...

§ 8.5.1 ~~The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~

§ 8.5.2 ~~The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.~~

...

- .2 ~~AIA Document A101™~~ 2017, Exhibit A, Contractor's Insurance and Bonds Requirements
- .3 ~~AIA Document A201™~~ 2017, General Conditions of the Contract for ~~Construction~~ Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
- .4 ~~AIA Document E203™~~ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)[Intentionally Omitted]

PAGE 8

| <u>Number</u> | <u>Section</u> | <u>Title</u> | <u>Date</u> |
|--------------------------------------------------------------------------------------------|----------------|--------------------------|---------------------------|
| 00 01 15 | | <u>Drawing Index</u> | <u>December 3, 2021</u> |
| ... | | | |
| 00 01 10 | | <u>Table of Contents</u> | <u>December 3, 2021</u> 1 |
| ... | | | |
| One | | <u>January 10, 2022</u> | <u>One (1)</u> |
| Two | | <u>January 25, 2022</u> | <u>One (1)</u> |
| ... | | | |
| <u>Section 00 11 13, Advertisement for Bids, December 3, 2021 (2 pages)</u> | | | |
| <u>Section 00 21 13, Instructions to Bidders, December 3, 2021 (8 pages)</u> | | | |
| <u>Section 00 22 13, Supplementary Instructions to Bidders, December 3, 2021 (2 pages)</u> | | | |
| <u>Section 00 31 13, Bid Form December 3, 2021 (2 pages)</u> | | | |

PAGE 9

Shane McFarland, Mayor _____ Eric Cason, President _____

...

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:50:41 ET on 02/08/2022 under Order No. 2705956690 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT A

CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Contractor must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.

5. **Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.

6. **Umbrella Coverage.** Contractor must secure, pay for, and maintain umbrella coverage in the amount of not less than \$2,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.

7. **Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.

8. **Builder's Risk.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.

9. **Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.

10. **Term of Coverage**

- 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").
- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
 - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

12. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;

- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

13. Certificates and Endorsements

- 13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 13.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

14. Reduction in Coverage. Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

15. Suppliers and Materialmen Coverages

- 15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

16. Condition Precedent to Starting Work

- 16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;
- 16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

17. Additional Proofs of Insurance. Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

18. Indemnity. The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

19. Interpretation. In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

20. Performance Bond and Payment Bond.

20.1 The Contractor shall provide surety bonds as follows:

| Type | Penal Sum (\$0.00) |
|---------------------------------|----------------------|
| Performance Bond | 100% of Contract Sum |
| Labor and Material Payment Bond | 100% of Contract Sum |

20.2 Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

20.3 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the Owner, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.

20.4 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the

original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.

- 20.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 1
J+B No. 2105-P1

THE OWNER:

(Name, legal status and address)

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, TN 37130

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

| | |
|----|--------------------------------------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

/

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND **9**

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors
and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,
9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,
11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,
12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5
Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.2

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY 10

Regulations and Laws

**1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4**

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

**Review of Contractor's Submittals by Owner and
Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and Samples
by Contractor**

3.12

Rights and Remedies

**1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4**

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

**1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7**

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

**3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3**

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3

Substances, Hazardous

10.3

Substantial Completion

**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
15.1.2**

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms

in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in

Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 [Intentionally Deleted]

§ 2.2 Evidence of the Owner's Financial Arrangements

[Intentionally Deleted.]

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner

to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract

Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction

Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

- b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;
- c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- .4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to

correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the Owner or Architect to

reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the notice to proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's

sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of

the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in

accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor

shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in

Section 13.2.2 or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegatee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

(Paragraph deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 persistently refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the sum of the costs of finishing the Work and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility

to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

(Paragraph deleted)

Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation

within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation

[Intentionally Omitted]

(Paragraphs deleted)

§ 15.4 Arbitration

All disputes shall be addressed in accordance with Addendum B.

ADDENDUM A

City of Murfreesboro Agreement Between Owner and Contractor

[Cover page – See attached]

Init.

/

ADDENDUM B

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 Contractor 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 attempt to resolve all Disputes timely, equitably and in a good faith manner and provide each other with reasonable access during normal business hours to 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 Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

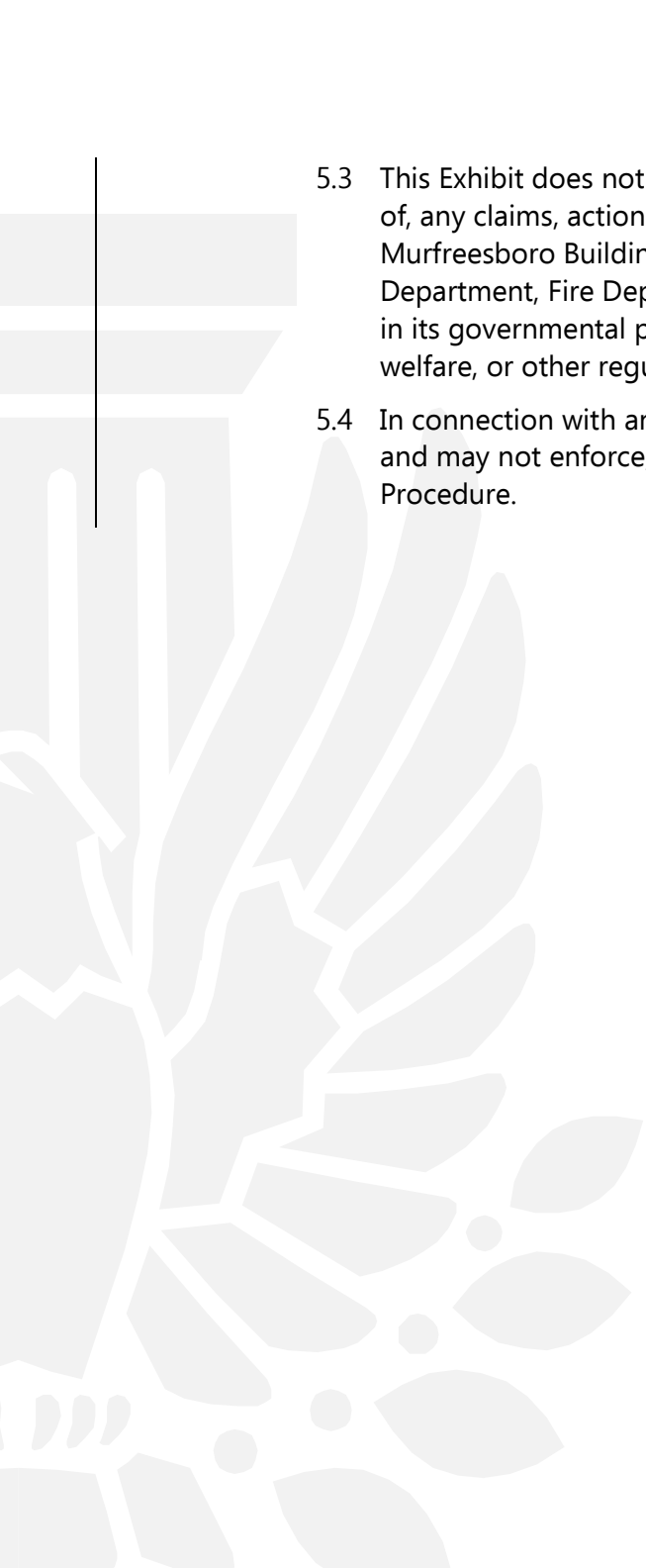
- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")
- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
 - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
 - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
 - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
 - b. The two arbitrators then each select a third arbitrator.

- c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to 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.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 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.
- 4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor 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 Contractor in accordance with the Contractor Agreement.
- 5. **Exceptions**
 - 5.1 Neither the Owner nor Contractor are 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 Contractor.
 - 5.2 The Owner or Contractor 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.

- 
- 5.3 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 City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4 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.

Additions and Deletions Report for

AIA® Document A201® – 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 12:35:58 ET on 02/07/2022.

PAGE 1

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 1
J+B No. 2105-P1

...

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, TN 37130
PAGE 10

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

PAGE 11

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

...

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

PAGE 12

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. **§ 1.4.1** In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service, following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

PAGE 13

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

PAGE 14

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. [Intentionally Deleted]

...

[Intentionally Deleted.]

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

...

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

...

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

PAGE 15

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period-five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

PAGE 16

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of

code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

PAGE 17

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

PAGE 18

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

PAGE 19

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- .4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

PAGE 20

§ 3.10.1 The Contractor, promptly after being awarded the Contract, Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes

for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

...

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

PAGE 23

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

PAGE 24

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

PAGE 25

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them Owner and Owner's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

...

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the ~~Owner, Contractor,~~ Owner and Architect. Consent shall not be unreasonably withheld.

PAGE 26

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during ~~construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.~~ construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

...

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

PAGE 27

§ 4.2.13 The Architect's decisions on ~~matters-matter~~ relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

...

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including-~~ No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect (4)-has reasonable objection to any such proposed person or entity or (2) requires persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the Architect to provide notice within Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

PAGE 28

~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract~~

Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed

Sub-subcontractors. § 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

...

§ 5.4.2 ~~Upon such assignment, if the Work~~ If the Work in connection with a subcontract has been suspended for more than 30 days, days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for ~~increases in cost resulting from any increase in direct costs incurred by such Subcontractor as a result of the suspension.~~

PAGE 29

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

...

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

PAGE 30

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect ~~alone~~ as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and

Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

...

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

PAGE 31

- .2** ~~Unit~~ The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3** Cost to be determined in a manner agreed upon by the parties and a ~~mutually acceptable fixed or percentage fee;~~ percentage fee as provided in Section 7.3.13; or

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, ~~the Architect shall determine the adjustment method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

- .2** Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;

PAGE 32

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

...

§ 8.1.2 The date of commencement of the Work is the date established in the ~~Agreement~~ notice to proceed.
PAGE 33

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any

adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

PAGE 34

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. § 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the

requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

PAGE 35

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

...

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

...

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

PAGE 39

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

...

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's

names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

PAGE 40

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

PAGE 41

- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~ payment;
- or
- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

...

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

...

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2 2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

PAGE 42

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

...

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

PAGE 44

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

...

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

PAGE 45

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the

Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

PAGE 46

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.2.3 ~~The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~ Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in ~~Section 13.2.2, Section 13.2.2~~ or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender ~~providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents, or other entity providing construction financing or credit enhancement for the Project.~~ The Contractor shall execute all consents reasonably required to facilitate the assignment.

PAGE 47

§ 13.3.1 ~~Duties~~ Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

PAGE 48

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

PAGE 49

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30-60~~ consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; stopped.
- ~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has ~~repeatedly~~ persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- ~~.1 repeatedly~~ persistently refuses or fails to supply enough properly skilled workers or proper materials;

...

- ~~.3 repeatedly~~ persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and sum of the costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, exceed the unpaid balance of the Contract Sum,~~ the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Initial Decision Maker,~~ Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

PAGE 50

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

PAGE 51

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by

weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

PAGE 52

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, ~~an initial a~~ decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 53

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

[Intentionally Omitted]

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

All disputes shall be addressed in accordance with Addendum B.

ADDENDUM A

City of Murfreesboro Agreement Between Owner and Contractor

[Cover page – See attached]

ADDENDUM B

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 Contractor 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 attempt to resolve all Disputes timely, equitably and in a good faith manner and provide each other with reasonable access during normal business hours to 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 Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")
- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
- a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
- b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
- a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
- b. The two arbitrators then each select a third arbitrator.

- c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to 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.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 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.
4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor 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 Contractor in accordance with the Contractor Agreement.
5. **Exceptions**
- 5.1 Neither the Owner nor Contractor are 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 Contractor.
- 5.2 The Owner or Contractor 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.

5.3 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 City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

5.4 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. § 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:35:58 ET on 02/07/2022 under Order No. 2705956690 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 3rd day of February in the year 2022
(In words, indicate day, month and year.)

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

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, Tennessee 37130

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

Marion & Green Roofing a Tennessee Corporation
6851 East Old Murfreesboro Road
Lebanon, TN 37090

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

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 2
J+B No. 2105-P2

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

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

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

| | |
|---|-------------------------------------------------|
| 1 | THE CONTRACT DOCUMENTS |
| 2 | THE WORK OF THIS CONTRACT |
| 3 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM |
| 5 | PAYMENTS |
| 6 | DISPUTE RESOLUTION |
| 7 | TERMINATION OR SUSPENSION |
| 8 | MISCELLANEOUS PROVISIONS |
| 9 | ENUMERATION OF CONTRACT DOCUMENTS |

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than sixty (60) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

Init.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Hundred Forty Seven Thousand Eighty Dollars And No Cents (\$847,080.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item | Price |
|------|-------|
| None | |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| None | | |

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

| Item | Quantity |
|-------------------------------------------------------------------------------------------|----------------|
| Removal of damaged existing wood roof edge nailers, and replacement with new wood nailers | 200 Board Feet |

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Square Foot (\$0.00) |
|--------------------------------------------------------------------------------------------------|-----------------------|--------------------------------|
| .1 For removal of damaged existing wood roof edge nailers and replacement with new wood nailers. | Board Foot | \$19.00 |

§ 4.5 Liquidated Damages

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$300.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

§ 4.6 Other:

Init.

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2

(Paragraphs deleted)

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 [Intentionally omitted.]

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

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the

Init.

(Paragraphs deleted)

daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Craig Tindall, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Tel: (615) 849-2629
Email: ctindall@murfreesborotn.gov

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:27:29 ET on 02/08/2022 under Order No.2705956690 which expires on 02/12/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

(1414024532)

or his designee as indicated in writing from time to time.

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Kelly Neff
Marion & Green Roofing
6851 East Old Murfreesboro Road
Lebanon, TN 37090
Tel: (615)443-3244
Email: roofing@marionandgreen.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A, Contractor's Insurance and Bonds Requirements
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
- .4 [Intentionally Omitted]
- .5 Drawings

| Section | Title | Date |
|----------|---------------|------------------|
| 00 01 15 | Drawing Index | December 3, 2021 |

- .6 Specifications

| Section | Title | Date | Pages |
|----------|-------------------|------------------|-------|
| 00 01 10 | Table of Contents | December 3, 2021 | 1 |

Init.

.7 Addenda, if any:

| Number | Date | Pages |
|--------|------------------|---------|
| One | January 10, 2022 | One (1) |
| Two | January 25, 2022 | One (1) |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

☐ Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Section 00 11 13, Invitation to Bidders, December 3, 2021 (2 pages)

Section 00 21 13, Instructions to Bidders, December 3, 2021 (8 pages)

Section 00 22 13, Supplementary Instructions to Bidders, December 3, 2021 (2 pages)

Bid Form December 3, 2021 (2 pages)

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

OWNER *(Signature)*

Shane McFarland, Mayor
(Printed name and title)

CONTRACTOR *(Signature)*

Mark Vincent Vice President
(Printed name and title)

APPROVED AS TO FORM:

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:27:29 ET on 02/08/2022 under Order No.2705956690 which expires on 02/12/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes:

(1414024532)



Init.

/

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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 17:27:29 ET on 02/08/2022.

PAGE 1

AGREEMENT made as of the 3rd day of February in the year 2022

...

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, Tennessee 37130

...

Marion & Green Roofing a Tennessee Corporation
6851 East Old Murfreesboro Road
Lebanon, TN 37090

...

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 2
J+B No. 2105-P2

...

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

PAGE 2

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

...

[] Not later than sixty (60) calendar days from the date of commencement of the Work.
PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Hundred Forty Seven Thousand Eighty Dollars And No Cents (\$847,080.00), subject to additions and deductions as provided in the Contract Documents.

...

None

...

None

...

| <u>Item</u> | <u>Price</u> <u>Quantity</u> |
|--------------------------------------------------------------------------------------------------|------------------------------|
| <u>Removal of damaged existing wood roof edge nailers, and replacement with new wood nailers</u> | <u>200 Board Feet</u> |

...

| <u>Item</u> | <u>Units and Limitations</u> | <u>Price per Unit</u> <u>Square</u> <u>Foot (\$0.00)</u> |
|---------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------------------------------|
| <u>.1 For removal of damaged existing wood roof edge nailers and replacement with new wood nailers.</u> | <u>Board Foot</u> | <u>\$19.00</u> |

§ 4.5 Liquidated damages, if any: Damages

~~(Insert terms and conditions for liquidated damages, if any.)~~ § 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$300.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

PAGE 4

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause

shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

...

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

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 ~~Provided that an the Application for Payment and all required supporting documentation is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment. fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.~~

PAGE 5

five percent (5%)

...

§ 5.1.8 ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017. [Intentionally omitted.]~~

...

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect; the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

...

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)~~

~~—%—daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.~~

PAGE 6

[☒] Other (Specify)

AIA Document A201™-2017, General Conditions of the Contract for Construction Addendum B,
Dispute Resolution Procedures

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

~~§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

...

Craig Tindall, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Tel: (615) 849-2629
Email: ctindall@murfreesborotn.gov

or his designee as indicated in writing from time to time.

PAGE 7

Kelly Neff
Marion & Green Roofing
6851 East Old Murfreesboro Road
Lebanon, TN 37090
Tel: (615)443-3244
Email: roofing@marionandgreen.com

...

§ 8.5.1 ~~The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~

§ 8.5.2 The Contractor shall provide bonds as set forth in ~~AIA Document A101™-2017~~ Exhibit A, and elsewhere in the Contract Documents.

...

- ~~2~~ ~~AIA Document A101™-2017, Exhibit A, Contractor's Insurance and Bonds Requirements~~
- ~~3~~ ~~AIA Document A201™-2017, General Conditions of the Contract for Construction~~Construction,
including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute
Resolution Procedures
- ~~4~~ ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as~~
~~indicated below:~~
~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~[Intentionally Omitted]

...

NumberSection
00 01 15

Title
Drawing Index

Date
December 3, 2021

...

00 01 10

Table of Contents

December 3, 2021 1

PAGE 8

One
Two

January 10, 2022
January 25, 2022

One (1)
One (1)

...

Section 00 11 13, Invitation to Bidders, December 3, 2021 (2 pages)
Section 00 21 13, Instructions to Bidders, December 3, 2021 (8 pages)
Section 00 22 13, Supplementary Instructions to Bidders, December 3, 2021 (2 pages)
Bid Form December 3, 2021 (2 pages)

...

Shane McFarland, Mayor

Mark Vincent Vice President

...

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:27:29 ET on 02/08/2022 under Order No. 2705956690 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT A

CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Contractor must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.

5. **Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.

6. **Umbrella Coverage.** Contractor must secure, pay for, and maintain umbrella coverage in the amount of not less than \$2,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.

7. **Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.

8. **Builder's Risk.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.

9. **Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.

10. **Term of Coverage**

- 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").
- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
 - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

12. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;

- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

13. Certificates and Endorsements

- 13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 13.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

14. Reduction in Coverage. Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

15. Suppliers and Materialmen Coverages

- 15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

16. Condition Precedent to Starting Work

- 16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;
- 16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

17. Additional Proofs of Insurance. Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

18. Indemnity. The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

19. Interpretation. In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

20. Performance Bond and Payment Bond.

20.1 The Contractor shall provide surety bonds as follows:

| Type | Penal Sum (\$0.00) |
|---------------------------------|----------------------|
| Performance Bond | 100% of Contract Sum |
| Labor and Material Payment Bond | 100% of Contract Sum |

20.2 Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

20.3 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the Owner, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.

20.4 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the

original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.

- 20.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 2
J+B No. 2105-P2

THE OWNER:

(Name, legal status and address)

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, TN 37130

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

| | |
|----|--------------------------------------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

/

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.2

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY 10

Regulations and Laws

**1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4**

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

**Review of Contractor's Submittals by Owner and
Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and Samples
by Contractor**

3.12

Rights and Remedies

**1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4**

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

**1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7**

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

**3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3**

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3

Substances, Hazardous

10.3

Substantial Completion

**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
15.1.2**

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME
8

Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,
15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work
12.1

Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms

in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in

Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 [Intentionally Deleted]

§ 2.2 Evidence of the Owner's Financial Arrangements

[Intentionally Deleted.]

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner

to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract

Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction

Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

- b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;
- c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- .4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to

correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the Owner or Architect to

reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in Section 7.3.13.. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the notice to proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's

sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of

the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2.2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in

accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor

shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in

Section 13.2.2 or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor,

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegatee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

(Paragraph deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 persistently refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the sum of the costs of finishing the Work and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility

to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

(Paragraph deleted)

Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation

within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation

[Intentionally Omitted]

(Paragraphs deleted)

§ 15.4 Arbitration

All disputes shall be addressed in accordance with Addendum B.

ADDENDUM A

City of Murfreesboro Agreement Between Owner and Contractor

[Cover page – See attached]

Init.

/

ADDENDUM B

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 Contractor 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 attempt to resolve all Disputes timely, equitably and in a good faith manner and provide each other with reasonable access during normal business hours to 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 Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

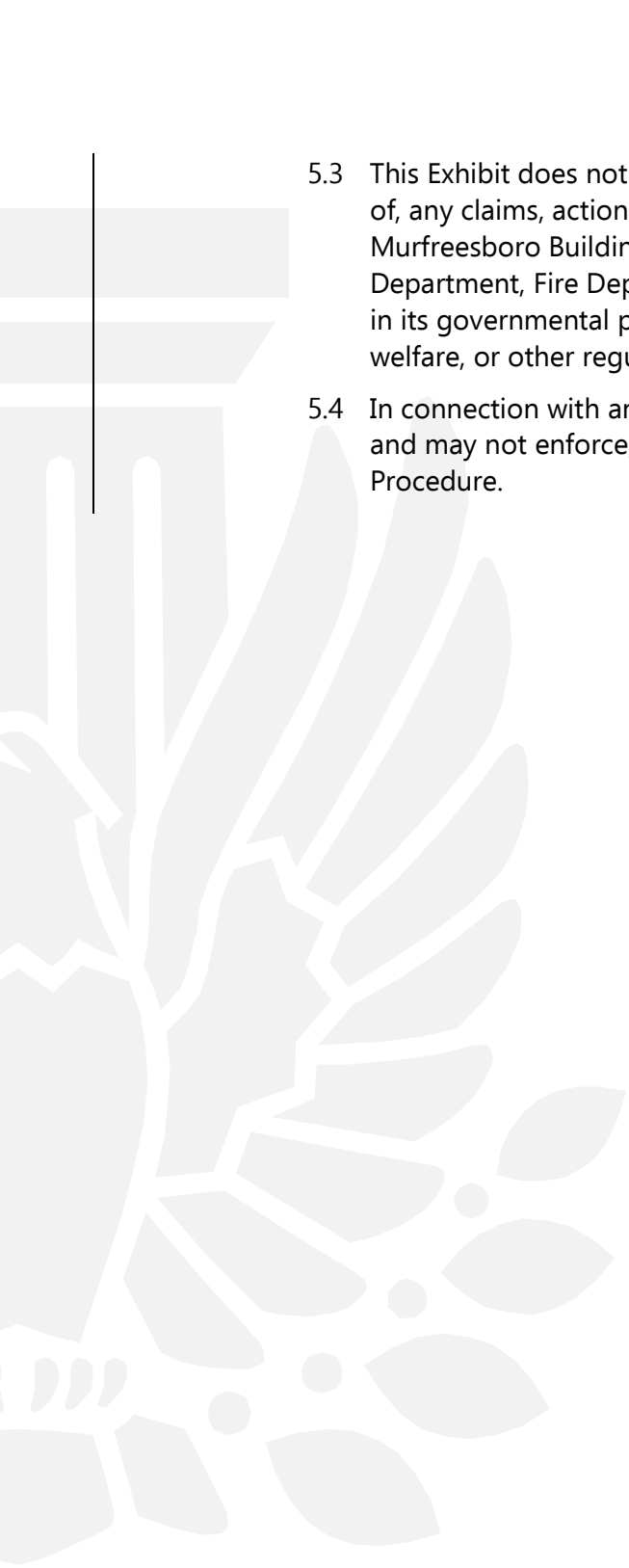
- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")
- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
 - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
 - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
 - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
 - b. The two arbitrators then each select a third arbitrator.

- c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to 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.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 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.
- 4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor 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 Contractor in accordance with the Contractor Agreement.
- 5. **Exceptions**
 - 5.1 Neither the Owner nor Contractor are 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 Contractor.
 - 5.2 The Owner or Contractor 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.

- 
- 5.3 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 City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4 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.

Additions and Deletions Report for

AIA® Document A201® – 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 17:33:17 ET on 02/04/2022.

PAGE 1

Reroofing at Four Elementary Schools
Murfreesboro City Schools
Phase 2
J+B No. 2105-P2

...

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, TN 37130
PAGE 10

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Owner Disclaimer of Warranty

The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

PAGE 11

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

...

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for an adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.3.2 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

§ 1.2.4 Inconsistencies in Contract Documents

§ 1.2.4.1 Except as otherwise provided in Sections 1.2.4.2 and 1.2.4.3, in the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) the addenda issued by the Architect; (3) the Agreement; (4) the General Conditions of the Contract; (5) the Drawings; and (6) the Specifications.

§ 1.2.4.2 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances or within or between parts of the Contract Documents that cannot reasonably be resolved as provided in Section 1.2.4.1, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.4.2 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, unless Contractor knew or should have known of inconsistencies, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

§ 1.2.4.3 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

PAGE 12

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 All personal pronouns used in the Contract Documents, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 1.4.3 The use in the Contract Documents of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Owner's ownership interest.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service, following notice: "Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee." Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

PAGE 13

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

PAGE 14

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative refers to the City of Murfreesboro, a Tennessee municipal corporation. The City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. [Intentionally Deleted]

...

[Intentionally Deleted.]

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

...

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data.

...

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.

§ 2.3.7 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.

PAGE 15

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period-five business days after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Extent of Owner's Rights.

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner, and, therefore, the Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 3.2.2.2 In all cases of interconnection of the Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

PAGE 16

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of

code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

PAGE 17

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

.1 By making requests for substitutions in accordance with this Section, the Contractor:

a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;

c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

PAGE 18

§ 3.5.2 All material, equipment, labor, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor further agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.5.3 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports assigned to Contractor, and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

PAGE 19

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- .4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect, unless otherwise directed by the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing. If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

PAGE 20

§ 3.10.1 The Contractor, promptly after being awarded the Contract, Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. Project and include a graphic depiction of the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes

for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

...

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5.1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.

§ 3.12.5.2 Five copies of the shop drawings and brochures shall be submitted, unless electronic documents are requested. Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

§ 3.12.5.3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

§ 3.12.5.4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- .1 Identification as to pertinent Specification Division
- .2 Item(s) involved.
- .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
- .4 Scheduled date of delivery of pertinent item to the Project.

§ 3.12.5.5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

§ 3.12.5.6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

§ 3.12.5.7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

§ 3.12.6.1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked "Reviewed," "Reviewed as Noted" or "Not Approved."

§ 3.12.6.2 Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.

§ 3.12.6.3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

PAGE 23

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

PAGE 24

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.13.4.2 The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

PAGE 25

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them Owner and Owner's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

...

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the ~~Owner, Contractor,~~ Owner and Architect. Consent shall not be unreasonably withheld.

PAGE 26

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during ~~construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.~~ construction, until payment is due, and (with the owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2.

...

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

PAGE 27

§ 4.2.13 The Architect's decisions on ~~matters-matter~~ relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

...

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including-~~ No later than 20 days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor design) and, where applicable, the name of the installing Subcontractor. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect (4)-has reasonable objection to any such proposed person or entity or (2) requires persons or entities; or (3) that the Owner has granted Architect additional time for review. Failure of the Architect to provide notice within Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection. No work shall be commenced until Subcontractors have been approved in writing by the Owner.

PAGE 28

~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract~~

Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed

Sub-subcontractors. § 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

...

§ 5.4.2 ~~Upon such assignment, if the Work~~ If the Work in connection with a subcontract has been suspended for more than 30 days, days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for ~~increases in cost resulting from any increase in direct costs incurred by such Subcontractor as a result of the suspension.~~

PAGE 29

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

...

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

PAGE 30

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect ~~alone~~ as provided in Section 7.4.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and

Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

...

§ 7.2.2 All Change Orders must be on the form designated by Owner.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All Construction Change Directives must be on the form designated by Owner.

PAGE 31

- .2** ~~Unit~~ The not-to-exceed unit prices stated in the Contract Documents or other unit prices subsequently agreed upon;
- .3** Cost to be determined in a manner agreed upon by the parties and a ~~mutually acceptable fixed or percentage fee;~~ percentage fee as provided in Section 7.3.13; or

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, ~~the Architect shall determine the adjustment method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ the stipulated allowance for overhead and profit as stated in Section 7.3.13. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

- .2** Costs of materials, supplies, and equipment, including sales tax and cost of transportation, whether incorporated or consumed;

PAGE 32

§ 7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.

§ 7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

§ 7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 15 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 5 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.3.13 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor's or Subcontractors' overhead and profit.

...

§ 8.1.2 The date of commencement of the Work is the date established in the ~~Agreement~~ notice to proceed.

PAGE 33

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended ~~for such reasonable time as the Architect may determine~~ by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

§ 8.3.3.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any

adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period.

§ 8.3.3.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

§ 8.3.3.3 Extended overhead profit or damages will not be allowed, including those relating to weather delays. If the Contractor neglects, fails, or refuses to complete the work within the time herein specified, the Contractor must, as a part consideration for the awarding of this Contract, to pay liquidated damages to the Owner.

§ 8.3.3.4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

PAGE 34

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. § 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the

requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility..

PAGE 35

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

...

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.5 In the event the Contract causes the Architect to perform Additional Services and incur expenses concerning Change Order, interpretations of the Documents, or defect/deficiency in the Work, the Contract Amount will be reduced by the amount of compensation due the Architect and Owner will set off that amount from the next Payment to the Contractor.

§ 9.5.6 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

...

§ 9.6.4.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

§ 9.6.4.2 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

PAGE 39

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Architect will make only one inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

...

§ 9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner: Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's

names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

PAGE 40

§ 9.10.1.1 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.

§ 9.10.1.2 The Architect will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be provided by the Contractor.

PAGE 41

- .3 terms of special warranties required by the Contract Documents; ~~or~~
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~ payment;
- or
- .5 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

...

§ 9.11 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquated damages are recognized as a reasonable estimation of damages the Owner will incurred and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

...

§ 10.1.1 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.2 2 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Contractor shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat, including, without limitation, at the end of each day's work, covering new work likely to be damaged, and if low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect;
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.;
- .4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

PAGE 42

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

...

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, including the Tennessee Governmental Tort Liability Act, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

PAGE 44

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

...

The Owner shall maintain the Owner's usual liability insurance; provided, however, that unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. Contractor hereby releases and discharges the Owner from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment, or other property, however caused. Contractor's policies of insurance shall not prohibit this waiver of subrogation, and the Contractor shall cause its Contractor's risk and property insurance company to issue a waiver of subrogation consistent with this provision. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

PAGE 45

§11.6 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the

Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

PAGE 46

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.2.3 ~~The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~ Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in ~~Section 13.2.2, Section 13.2.2~~ or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender ~~providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents, or other entity providing construction financing or credit enhancement for the Project.~~ The Contractor shall execute all consents reasonably required to facilitate the assignment.

PAGE 47

§ 13.3.1 ~~Duties~~ Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

PAGE 48

§ 13.6 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7 Duty of Good Faith

Each party hereto agrees to act in good faith with respect to the Project and Work and to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8 Applicability to Subcontractors

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of Owner. No "constructive" changes are permitted and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents. Other than the City Manager, or his written delegee, no person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.10 Notices Regarding Liens

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

§ 13.11 Executed Non-Collusion Affidavit of Subcontractor

The Contractor shall require each of the Subcontractors to execute the attached Non-Collusion Affidavit of Subcontractor.

§ 13.12 Pre-Blast Survey

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

§ 13.12 Utility Service

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain at Contractor's own expense any water, electric, or other utility service necessary for the performance of the Work.

PAGE 49

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30-60~~ consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; ~~stopped.~~
- .3 ~~Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has ~~repeatedly~~ persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- .1 ~~repeatedly~~ persistently refuses or fails to supply enough properly skilled workers or proper materials;

...

- .3 ~~repeatedly~~ persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and sum of the costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, exceed the unpaid balance of the Contract Sum,~~ the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Initial Decision Maker,~~ Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and
- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2. If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.

PAGE 50

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

PAGE 51

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by

weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

PAGE 52

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 53

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

[Intentionally Omitted]

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

All disputes shall be addressed in accordance with Addendum B.

ADDENDUM A

City of Murfreesboro Agreement Between Owner and Contractor

[Cover page – See attached]

ADDENDUM B

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 Contractor 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 attempt to resolve all Disputes timely, equitably and in a good faith manner and provide each other with reasonable access during normal business hours to 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 Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")
- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days' additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
- a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
- b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
- a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
- b. The two arbitrators then each select a third arbitrator.

- c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to 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.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 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.
- 4. Continuing Work.** Unless otherwise agreed to in writing, Contractor 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 Contractor in accordance with the Contractor Agreement.
- 5. Exceptions**
- 5.1 Neither the Owner nor Contractor are 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 Contractor.
- 5.2 The Owner or Contractor 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.

5.3 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 City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

5.4 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. § 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:33:17 ET on 02/04/2022 under Order No. 2705956690 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Johnson + Bailey Architects P.C.

City Center • Suite 700
100 East Vine Street
Murfreesboro, Tennessee 37130
615 890 4560 • FAX 615 890 4564



March 9, 2022

Ms. Cathy Smith
Director, Purchasing Department
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Re: Reroofing at Four
Elementary Schools
Murfreesboro City Schools
J+B No. 2105-P1

Dear Cathy,

Johnson + Bailey Architects (J+B) presents the following data concerning the construction cost for the above referenced project:

- | | |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/07/2014 | Reroofing of 6,513 square feet of Hobgood Elementary School was bid. The low bid was from Porter Roofing at a unit price of \$8.58 per square foot. |
| 02/10/2021 | J+B prepared a preliminary cost estimate for reroofing of 95,000 square feet at four elementary schools at a unit cost of \$10.42 per square foot. |
| 04/26/2021 | As preparation of detailed construction drawings progressed, it became apparent that additional work ancillary to the reroofing would be required at Reeves Rogers Elementary School and at Mitchell-Neilson Elementary School. Refer to letter from J+B to Murfreesboro City Schools dated 04/26/2021 (copy attached) for details. The work was therefore divided into two projects, and J+B revised the preliminary cost estimate to \$12.25 per square foot. |
| 02/01/2022 | Two bidders submitted bids for Phase 1 work (Reeves Rogers & Mitchell-Neilson). The low bid was from Porter Roofing at a unit price of \$35.53 per square foot. |
| 02/01/2022 | Four bidders submitted bids for Phase 2 work (Hobgood & Bradley). The low bid was from Marion & Green Roofing at a unit price of \$21.72 per square foot. |

We are disturbed by the high construction cost of this project. The current cost of roofing materials, specifically rigid roof insulation and fasteners, is unstable. Refer to Industry Issue Update from the National Roofing Contractors Association dated September 2021 (copy attached). The bidding documents require bidders to honor their bid for 45 calendar days, but roofing materials suppliers are providing pricing for shorter periods. Additionally, suppliers are currently unable to commit to providing materials on a timely basis. With this information, you can see that it is uncertain if reroofing costs will increase or decrease in the future.

The bids were publically advertised and competitively bid. J+B has experience with both Porter Roofing and Marion & Green Roofing, and found them to be excellent contractors.



Ms. Cathy Smith
Reroofing at Four
Elementary Schools
March 9, 2022
Page 2

Based on the above information, it is the Architect's recommendation that the low bids from Porter Roofing and Marion & Green Roofing be accepted.

If you have any questions concerning the above, please advise. We await your instructions on how to proceed.

Sincerely,

JOHNSON + BAILEY ARCHITECTS P.C.

A handwritten signature in blue ink, appearing to read 'R. Lyle Lynch', written over a horizontal line.

R. Lyle Lynch, AIA

cc: Gary Whitaker
Megan Strode

encl: Johnson +Bailey Architects letter to Murfreesboro City Schools dated 04/26/2021
Industry Issue Update from the National Roofing Contractors Association
dated September 2021



April 26, 2021

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

Re: Reroofing at Four
Elementary Schools
Murfreesboro City Schools
J+B No. 2105

Dear Mr. Willeford:

In keeping with the current Project Schedule for the referenced project noted in Lyle Lynch letter dated April 21, 2021, Johnson + Bailey Architects is in the progress of preparing construction documents, including performing field observations, at each of the four (4) school building roofs. The proposed reroofing at areas of Hobgood Elementary School and areas of Bradley Academy are fairly straightforward. However, field observations at Mitchell-Neilson Elementary School and at Reeves Rogers Elementary School have revealed additional work required not included in the original budget of \$990,489.22 noted in Lyle Lynch letter dated February 10, 2021. Additional work discovered to date includes the following:

Mitchell-Neilson Elementary School

- 1) Replacement of an unknown quantity of deteriorated existing gypsum roof deck and replacement with new 1 ½" thick corrugated metal deck. We will have an estimate of the quantity needed after MCS Maintenance Department completes thermal imaging of the roof.
- 2) Removal of existing asbestos containing corrugated metal siding at clerestory windows, and replacement with new thermal insulation and horizontal metal siding. We will have a better understanding of the quantity needed after MCS Maintenance Department completes testing of the existing siding. An area of approximately 2,500 square feet should be replaced if the tests confirm asbestos at all panels.

Reeves Rogers Elementary School

- 1) Removal of existing asbestos containing corrugated metal siding at cafeteria walls, and replacement with new thermal insulation and horizontal metal siding. We will have a better understanding of the quantity needed after MCS Maintenance Department completes testing of the existing siding.
- 2) At cafeteria roof, removal of one existing undersized roof drain and piping, installation of new pre-tapered roof insulation, and installation of new gutters and downspouts at all roof edges.
- 3) Installation of new manufactured roof curb and equipment supports at existing kitchen hood make-up unit, evaluate existing structure for new dead load, and installation of new steel structural supports as determined.
- 4) Installation of new manufactured equipment supports at existing VRF units to replace existing rotting 4X4's.
- 5) At low roof areas around gymnasium (structural concrete planks), remove existing roof drains and installation of new roof drains and at areas to allow use of pre-tapered insulation. Depending on structural analysis of the planks, a secondary roof drain system may be required.



Mr. Larry Willeford
Reroofing at Four
Elementary Schools
April 26, 2021
Page 2

- 6) The roof over the main east-west corridor (office area to gymnasium) is divided up into several drainage areas by existing raised roof expansion joints. These areas will require new roof drains and piping, and a secondary roof drainage system.

We will know more concerning these issues as design work progresses. I provide this information to advise that we will most likely not have contract documents completed and ready for distribution to bidders on the previously scheduled date of May 10, 2021, and that the work at Mitchell-Neilson Elementary School and Reeves Rogers Elementary School will cost more than previously estimated.

We are currently proceeding with design work, and are available to discuss the above with you at your convenience.

Sincerely,

JOHNSON + BAILEY ARCHITECTS P.C.

A handwritten signature in blue ink, appearing to read 'R. Lyle Lynch', with a stylized flourish at the end.

R. Lyle Lynch, AIA



Roofing material shortages and price volatility

September 2021

The U.S. roofing industry is experiencing unprecedented shortages of roofing materials and products and significant price volatility. NRCA is providing this Industry Issue Update to help its members with building owners, facility managers, general contractors and construction managers involved in roof purchasing decisions.

Although this information is intended to apply specifically to the U.S. roofing market, based on NRCA's communications with its affiliates and partners in Canada, Mexico and elsewhere worldwide, shortages of roofing materials and products and price volatility appear to be global issues.

BACKGROUND

Compared with other industries, the U.S. roofing industry is domestic in nature. With few exceptions, a vast majority of roofing products and materials used are manufactured in the U.S. from U.S.-sourced raw materials, delivered by U.S. suppliers and distributors, and installed by U.S. roofing contractor companies. Although the global economy has some effect on many purchasing decisions, the U.S. roofing industry is largely driven by the U.S. economy, interest rates and consumer sentiment.

During the past decade, the U.S. roofing industry has experienced a period of consistent, moderate growth. The roofing materials and products supply chain has expanded in capacity and roofing contractors have added field personnel and capability to fill this growing need. In many regions of the U.S., additional roofing industry growth has been limited by a lack of adequately trained field personnel.

At the same time, energy code requirements and sustainability incentive programs have resulted in a demand for more energy-efficient roof systems. For example, when reroofing a building, it is not unusual to replace an existing, aged roof system having an R-10 insulation value with a new roof system with an energy code mandated minimum R-20, R-25, R-30 or R-35 insulation value. Such increases in

insulation value necessitate using greater amounts of and thicker insulation, usually in multiple layers, longer fasteners, more layers of insulation adhesive and additional material handling and installation labor.

THE CURRENT SITUATION

The U.S. roofing industry responded and adapted to the onset of the COVID-19 pandemic remarkably well. The U.S. roofing industry quickly was considered "essential," and at the start of the pandemic, the roofing materials and products supply chain functioned with only minimal interruptions. Roofing contractors adapted to additional safe work practices necessary to perform work on occupied buildings during the pandemic.

By many measures, 2020 was a productive year for the U.S. roofing industry. For example, 2020 was a near historic record level year for asphalt shingle installations. Homeowners invested in reroofing and maintaining their homes during the pandemic, spurred in part by low interest rates and the availability of stimulus funding, and the roofing industry responded to several weather events involving high winds and hail. The institutional and industrial segments of the U.S. roofing industry also experienced similar levels of activity.

However, one noticeable change is the level of roofing material and product in inventory shrunk considerably. Roofing material suppliers and distributors reduced their material and product inventories. Since the start of the pandemic, far more roofing materials and products are being shipped on a job-specific basis. This especially is the case with roof insulation and roof covering products and certain specialty products, such as fasteners and adhesives. A few years ago, many roofing jobs often could be carried out with roofing materials and products held in inventory, but manufacturers now are shipping roofing materials and products on a job-specific basis with fewer roofing materials and products being stocked in inventory.

The level of roofing material and product in inventory shrunk considerably

At the end of the 2020, there was a degree of uncertainty in the U.S. economy and within the roofing industry. During this period, most U.S. suppliers, distributors and roofing contractors placed only minimal orders for roofing materials and products to build their inventories in anticipation of the 2021 roofing season. Because of this reduced demand, many manufacturers scaled back their off-season production. As a result, at the start of the 2021 roofing season, roofing material and product inventories were uncharacteristically low.

In February, unseasonably cold temperatures and power outages in Texas and other Gulf Coast states resulted in a weeks-long interruption in the production of methylene diphenyl diisocyanate. Significant shortages of MDI were already occurring, and this production interruption only exacerbated a stressed supply situation. MDI is used in the manufacturing of rigid board and spray polyurethane foam insulation, as well as some adhesives commonly used in the roofing industry.

By late February, the demand for roofing had quickly rebounded in many areas of the U.S., and roofing contractors' backlogs of work under contract were growing significantly. This demand was spurred by continued low interest rates, the availability of stimulus funding and improving consumer sentiment in the U.S. economy.

By mid-March, reports of roofing material and product shortages were common. The demand for roof insulation, insulation and membrane fasteners, roofing nails, some membrane products and roof accessory products began to exceed the available inventory and production capability. Also, prices for roofing materials and products were increasing significantly, and these prices continue to increase.

Currently, demand for roofing services is high. For example, 2021 will likely be a record year for asphalt shingle production and installations. The institutional, industrial and commercial segments of the U.S. roofing industry also are experiencing high levels of activity through much of the U.S. Roofing contractors in many regions are reporting significant backlogs of work under contract through the end of the year and some well into 2022. Also, manufacturers are reporting similarly high demand for roofing material and products with production already being fully committed well into 2022.

Although demand for roofing is high, roofing contractors are facing increasing challenges of shortages and long lead times for roofing material and products. For example, roof insulation, insulation and membrane fasteners, some membrane products and roof accessory products continue to be in short supply. Manufacturers are reporting anticipated lead times for fulfilling newly placed orders for some roofing

materials and products of four months or more with some large orders having lead times as long as 12 months.

Shortages of roofing materials and products have gotten to the point where availability is limiting the ability to perform roofing work rather than a lack of adequately trained field personnel.

Also, price increases from roofing material and product manufacturers continue, often with little or no advance warning to roofing contractors. In some cases, the timing for determining the price roofing contractors pay for roofing materials and products also has changed. Traditionally, pricing was established at the time a roofing contractor placed an order. In some instances, manufacturers quoted project-specific pricing and honored that price for a defined period. But recently, several manufacturers have instituted

new policies basing pricing at the time of shipment instead of at the time the order is placed. This puts roofing contractors in the position of not having actual material and product pricing at the time of offering a proposal or bid and entering into a contract with a building owner. The likely potential for still further roofing material and product price increases presents obvious problems for roofing contractors and building owners.

NRCA is aware of a number of situations, including some recently in the aftermath of Hurricane Ida, where roofing manufacturers have been faced with declarations for force

majeure regarding supply contracts and shipments from raw material providers. These include MDI, steel rods used in the manufacturing of fasteners, glass mats used in asphalt shingles and some roof membranes, and some specialty chemicals used in a variety of roofing products. These often cause raw material delivery slowdowns. In some cases, manufacturers need to find alternative raw material sources, resulting in stoppages in material and product manufacturing, which only further exacerbates the supply situation. These interruptions in raw material supply also likely have a notable effect on roofing material and product pricing.

The roofing industry, similar to other industries, continues to feel the effects of shortages of, delays in and high pricing for transporting roofing materials and products from roofing manufacturers to suppliers and distributors, roofing contractors' warehouses and job sites. This situation likely will only become more acute and continue indefinitely.

Based on NRCA's discussions with key players in all segments of the U.S. roofing industry and its affiliates and partners worldwide, NRCA expects the current situation of roofing material and product shortages, long lead times and significant price volatility to continue through 2022.

Roofing material and product shortages, long lead times and significant price volatility will continue through 2022

NRCA'S RECOMMENDATIONS

NRCA remains committed to keeping its members informed of further developments.

NRCA features a supply chain shortage information section on its website, nrca.net. This section provides up-to-date news about additional developments and what you can expect to see in the coming months, suggested contract language addressing unforeseen price increases and access to recordings of NRCA's supply chain webinar with industry leaders and a live action alert describing the change. This can be accessed directly at www.nrca.net/resources/supply-chain-shortage.

NRCA encourages you to share this information with your building owner clients, as well as building managers, general contractors and construction managers involved in roof purchasing decisions.

NRCA encourages building owners to plan their roofing work well in advance and recognize long roofing material and product delivery lead times may affect the start and completion of roofing work. Also, provisions in contracts with roofing contractors for roofing work are needed to address unforeseen, changing roofing material and product pricing.

NRCA would welcome hearing your specific experiences and you can direct any questions to NRCA's Technical Services Section at (847) 299-9070, Option 4, or at nrcatechnical@nrca.net.



COUNCIL COMMUNICATION

Meeting Date: 03/17/2022

Item Title: HVAC Unit Replacement

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

Scheduled HVAC system replacement for FY22 as approved by the Facilities Management Department city-wide analysis.

Staff Recommendation

Approve the purchase of the Trane units in accordance with Co-op Contract USC 15-JLP-023.

Background Information

The units needing replacement use R-22 refrigerant and as of December 31, 2019, R-22 is no longer being produced. As a result, it will become more and more difficult to find parts and refrigerant for these older units. There is \$134,783 remaining in the budget for replacement at the water treatment plant during FY22.

Trane has provided a requested proposal for replacing several units using Co-op Contract Number is USC 15-JLP-023. The complete scope of their work is located on the attached proposal. The proposal and contract were reviewed by Purchasing and Legal prior to submission to the Board.

Units to be replaced:

3 – Air Handling Units (AHUs)

1 – Heater Unit (Currently out of service)

1 – Pump House Wall Unit

1 – Computer Room Unit (Currently out of service)

Council Priorities Served

Responsible budgeting

Utilizing an existing cooperative contract allows the Department to reduce the administrative burden of purchasing and expedites the purchasing process.

Fiscal Impact

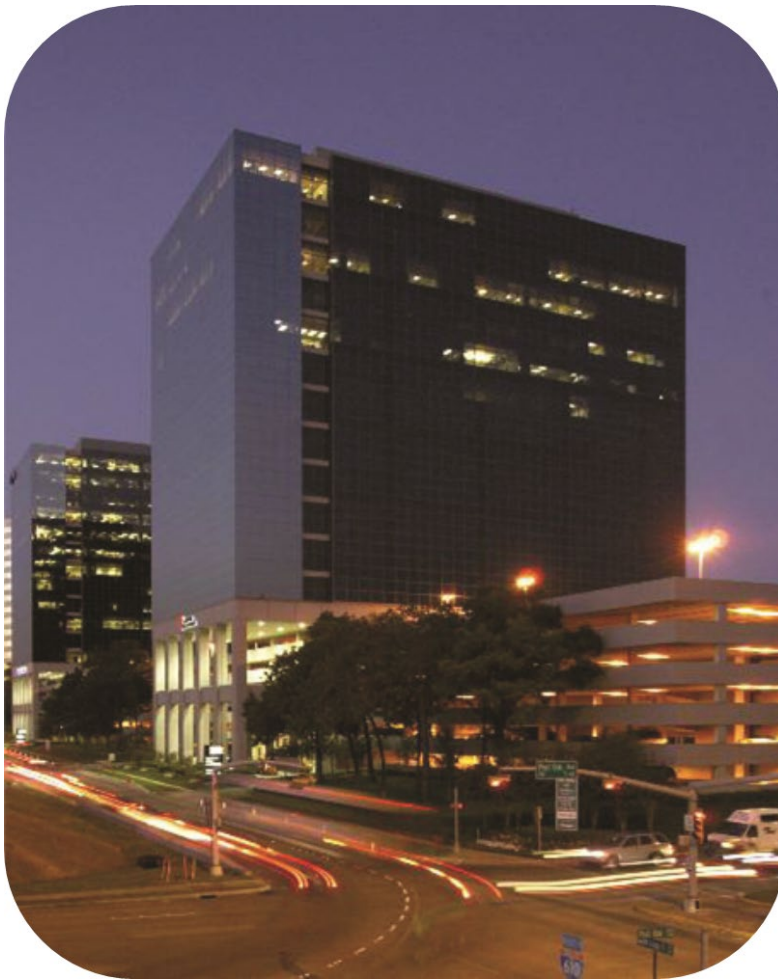
The cost to replace the specified HVAC units is \$120,150 and the total remaining in the FY22 budget for HVAC replacement is \$134,783. If approved, funding will come from the FY22 capital budget.

Attachments

SRWTP HVAC Unit Replacements



Trane Turnkey Proposal



Turnkey Proposal For:

Alan Cranford
City of Murfreesboro, Water & Sewer
5528 Sam Jared Drive
Murfreesboro, TN 37130

Local Trane Office:

Trane U.S. Inc. dba Trane
601 Grassmere Park Drive, Suite 10
Nashville, TN 37211-3659

Local Trane Representative:

Michael Sharp
Brian Bolin
Account Manager
Office: (615) 242-0311

Proposal ID: 3143977

Omnia Partners Quote #:

13-296144-21-002

Date: January 21, 2022

**Prepared For:**

Alan Cranford

Date:

January 21, 2022

Job Name:

Murfreesboro Water Multiple Projects 2021

Omnia Partners Quote #:

13-296144-21-002

Delivery Terms:

Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:

Net 30

State Contractor License Number:**Proposal Expiration Date:**

30 Days

Scope of Work

“Scope of Work” and notations within are based on the following negotiated scope of work with Steven Toler. The new Electric Heaters have Stainless Steel Elements to resist corrosion.

AHU Electric Heater Replacement

Mechanical Equipment

Tag Data – Electric Duct Heaters (Qty: 3)

| Item | Tag(s) | Qty | Description | Model Number |
|------|-------------|-----|------------------------------|--------------|
| A1 | EH-1 thru 3 | 3 | Brasch Electric duct Heaters | TFKU |

Product Data – Electric Duct Heaters

Item: A1 Qty: 3 Tag(s): EH-1 thru 3

Contractor-Magnetic Disconnecting
 SCR Controller w/ Input 0-10 VDC
 Fuses-Minimum NEC
 Extended Cold Section
Stainless Steel Elements
 Terminal Box Overhang
 Manual Thermal Cutout
 Disconnect
 Negative Airflow Switch
 Fused Control Circuit Transformer
 Automatic Cutouts

Mechanical Installation

- Demolition Existing Electrical Heater in air handler units.
- Install electric heaters in identical locations as existing unit.
- Furnish and Install new electrical heaters in existing equipment.
- Reconnect Electrical Power Wiring to the heaters from the existing electrical service to the new heaters.



Pump House Wall Unit Replacement

Mechanical Equipment

Tag Data – Electric Duct Heaters (Qty: 3)

| Item | Tag(s) | Qty | Description | Model Number |
|------|------------|-----|-------------------------|--------------|
| C1 | Unit-1 & 2 | 2 | Marvair Wall Mount Unit | MAA1042AD |

Product Data – Marvair Wall Mount Unit

Item: C1 Qty: 2 Tag(s): Unit-1 & 2

R-410A
 Fixed Speed Compressor
 Nominal 42,000BTU
 Air Conditioner
 460/3/60
 No Heat
 Barometric Damper w/ 15%OA
 Low Ambient w/ FCC
 2" Pleated Media Filter
 Cabinet Color Marvair Beige
 One (1) year parts and labor warranty
 Five (5) year Compressor Parts Warranty

Mechanical Installation

- Provide Bom Truck for Removal and Installation of Two (2) Units
- Demolition and Disposal of Existing Units
- Install of Two (2) Marv-Aire Units (Marv Aire Units to be Furnished by Trane)
- Provide Articulating Rough Terrain Boom Lift
- Furnish and Install Supply/Return Ductwork Connections to New Equipment with final connections to the existing Supply/Return Ductwork
- Furnish and Install Electrical Power Wiring to the New Unit from the existing service to the existing equipment
- Furnish and Install Low Voltage Control Wiring to the New Unit from the existing low voltage service to the existing equipment
- Provide Commissioning Service for New Equipment



Computer Room Unit Replacement

Mechanical Equipment

Tag Data – Electric Duct Heaters (Qty: 3)

| Item | Tag(s) | Qty | Description | Model Number |
|------|--------|-----|--------------------|--------------------|
| D1 | CRAC-1 | 1 | Computer room Unit | StulzTR-OHS-040-AR |

Product Data – Computer Room Unit

Item: D1 Qty: 1 Tag(s): CRAC-1

CeilAir Overhead Cooling System
 R407C Refrigerant
 208-230 3 phase
 Direct Driven Evaporator Blower
 Non Fused Disconnect for Evaporator Section
 Standard outdoor Condenser
 E² Controller – Wall Mount
 Unit Mounted Return Air Sensor
 Remote unit Start/Stop
 Std Kw SCR Modulation Reheat
 No Humidifier
 Snap Acting Hot Gas Bypass
 Single Circuit
 Outdoor Condenser 208-230 Single Phase

Mechanical Installation

- Demolition and Disposal of Existing Units & Existing Drain Pan. Removal of Refrigerant from Units before Disposal. Air Handler Unit will be abandoned.
- Install of One (1) Computer Room Split System Unit. Condensers will be installed on existing concrete housekeeping pad. Air Handlers will be relocated to adjacent office due to limited space above ceiling and within the IT Room. New Ductwork will be routed to accommodate the relocation
- Furnish and Install final connections of refrigerant piping for new equipment. Furnish and Install new 3/4" Arm-a-Flex insulation on the Suction Piping of new piping. We include in the piping scope of work connection of new piping to new equipment and existing piping routed from the condenser unit to the second floor
- Furnish and Install Flush/Cleaning of existing Refrigerant Pipe before final connections to new equipment
- Furnish and Install 410-A Refrigerant as required for each system.
- Furnish and Install Ductwork Connections to New Equipment from Existing Ductwork System within IT Room. The Supply Ductwork will connect to the existing Supply Ductwork that routes down a chase to serve the raised floor system in the IT Room. The Return Ductwork will connect to the existing Return Grille located overhead of the Server Rack.
- Furnish and Install Electrical Power Wiring to the New Unit from existing electrical disconnect. We will install New Electrical Whip from existing disconnect to New Unit.
- Furnish and Install Low Voltage Control Wiring to the New Unit from the existing low voltage service to the existing equipment
- Furnish and Install Condensate Drainpipe to the New Unit from existing pipe serving existing equipment
- Install Existing Drain Pan w/ Shut Down Switch underneath New Equipment and make connection to low voltage wiring with Shut Down Switch
- Provide Commissioning Service for New Equipment including Pressure Test of Refrigerant Line Set, Vacuum of Refrigerant Line Set, Proper Refrigerant Charge to New Equipment, Start Up and Proper Operation of Equipment.

**Proposal Notes/ Clarifications**

- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Proposal does not include "Premium Time" or Price Contingency therefor
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract and credit approval
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Asbestos or hazardous material abatement removal shall be performed by customer
- Engineered drawings are not included
- Glycol is not included
- Concrete work or modifications to the pad are not included.

Respectfully submitted,

Michael Sharp
Brian Bolin
Account Manager
Trane U.S. Inc. dba Trane
(615) 242-0311



Pricing and Acceptance

Alan Cranford
City of Murfreesboro, Water & Sewer
5528 Sam Jared Drive
Murfreesboro, TN 37130

Price

Three (3) AHU (MAU-2-1,3-1,3-2) Heater Replacement Total Net Price.....\$39,556.00
Add for Heater in MAU-1-1.....\$14,370.00

Pump House Wall Unit Replacement Total Net Price.....\$24,775.00

Computer Room Unit Replacement Total Net Price.....\$41,449.00

Total if all projects and adds are accepted.....\$120,150.00
This represents a \$ 20,447 dollar discount over standard pricing.

Financial items not included

- Bid Bond
- Payment and Performance Bond
- Guarantee of any energy, operational, or other savings

ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

| | |
|----------------------------------------------------|------------------------------------------------------------------------|
| Submitted By: Michael Sharp & Brian Bolin | Office: (615) 242-0311 Proposal Date: January 21, 2022 |
| CUSTOMER ACCEPTANCE City of Murfreesboro | TRANE ACCEPTANCE DocuSigned by: Trane U.S. Inc. dba Trane |
| Authorized Representative | <i>Michael Sharp</i> 1FC9D783DE934EE... |
| Printed Name | Authorized Representative Michael Sharp |
| Title | Printed Name Account Manager |
| Purchase Order | Title 2/8/2022 |
| Acceptance Date: | Signature Date License Number: |



COVID-19 NATIONAL EMERGENCY CLAUSE

The parties agree that they are entering into this Agreement while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on Trane's performance under this Agreement. Consequently, the parties agree as follows:

1. Each party shall use commercially reasonable efforts to perform its obligations under the Agreement and to meet the schedule and completion dates, subject to provisions below;
2. Each party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Agreement and each shall have the sole discretion in determining the appropriate and responsible actions such party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers;
3. Each party shall use commercially reasonable efforts to keep the other party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and
4. If Trane's performance is delayed or suspended as a result of the Covid-19 Pandemic, Trane shall be entitled to an equitable adjustment to the project schedule and/or the contract price.



TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

“Company” shall mean Trane U.S. Inc. dba Trane.

1. Acceptance; Agreement. These terms and conditions are an integral part of Company’s offer and form the basis of any agreement (the “Agreement”) resulting from Company’s proposal (the “Proposal”) for the commercial goods and/or services described (the “Work”). **COMPANY’S TERMS AND CONDITIONS AND EQUIPMENT PRICES ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. Prices in the Proposal are subject to change at any time upon notice to Customer. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer’s order shall be deemed acceptance of the Proposal subject to Company’s terms and conditions. If Customer’s order is expressly conditioned upon Company’s acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company’s terms and conditions attached or referenced serves as Company’s notice of objection to Customer’s terms and as Company’s counteroffer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company’s counteroffer will be deemed accepted. Notwithstanding anything to the contrary herein, Customer’s acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company’s terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer’s obligation to pay for Work rendered by Company to the date of cancellation.

2. Connected Services. In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. Title and Risk of Loss. All Equipment sales with destinations to Canada or the U.S. shall be made as follows: FOB Company’s U.S. manufacturing facility or warehouse (full freight allowed). Title and risk of loss or damage to Equipment will pass to Customer upon tender of delivery of such to carrier at Company’s U.S. manufacturing facility or warehouse.

4. Pricing and Taxes. Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer’s tax-exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Within thirty (30) days following Customer acceptance of the Proposal without addition of any other terms and conditions of sale or any modification, Customer shall provide notification of release for immediate production at Company’s factory. Prices for Work are subject to change at any time prior to shipment to reflect any cost increases related to the manufacture, supply, and shipping of goods. This includes, but is not limited to, cost increases in raw materials, supplier components, labor, utilities freight, logistics, wages and benefits, regulatory compliance, or any other event beyond Company’s control. If such release is not received within 6 months after date of order receipt, Company reserves the right to cancel any order. If shipment is delayed due to Customer’s actions, Company may also charge Customer storage fees. Company shall be entitled to equitable adjustments in the contract price to reflect any cost increases as set forth above and will provide notice to Customer prior to the date for which the increased price is to be in effect for the applicable customer contract. In no event will prices be decreased.

5. Exclusions from Work. Company’s obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

6. Performance. Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer’s expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

7. Payment. Customer shall pay Company’s invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

8. Time for Completion. Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so. Delivery dates are approximate and not guaranteed. Company will use commercially reasonable efforts to deliver the Equipment on or before the estimated delivery date, will notify Customer if the estimated delivery dates cannot be honored, and will deliver the Equipment and services as soon as practicable thereafter. In no event will Company be liable for any damages or expenses caused by delays in delivery.

9. Access. Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site’ owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company’s access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer’s building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer’s request.

10. Completion. Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company’s representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer’s failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

11. Permits and Governmental Fees. Company shall secure (with Customer’s assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company’s subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.



12. Utilities During Construction. Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.

13. Concealed or Unknown Conditions. In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

14. Pre-Existing Conditions. Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

15. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

16. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

17. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company.

18. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

19. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, INCLUDING CONTAMINANTS LIABILITIES, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). Except for the indemnity obligation stated herein, in no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the greater of (i) One Hundred Thousand Dollars (\$100,000.00) or (ii) two-times (2x) the entire amount paid to Company by Customer under this Agreement.

20. CONTAMINANTS LIABILITY

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGE TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION, MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANT LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANTS LIABILITIES.**

21. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

22. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto,



labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Product(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.**

23. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

| | |
|------------------------------|----------------------------|
| Commercial General Liability | \$2,000,000 per occurrence |
| Automobile Liability | \$2,000,000 CSL |
| Workers Compensation | Statutory Limits |

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

24. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

25. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

26. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

27. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions in effect as of the date of this subcontract: 52.203-19; 52.204-21; 52.204-23; 52.219-8; 52.222-21; 52.222-26; 52.222-35; 52.222-36; 52.222-50; 52.225-26; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

28. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this



Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.251-10(1221)
Supersedes 1-26.251-10(0821)