

MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
May 19, 2022

PRAYER

Mr. Rick LaLance

PLEDGE OF ALLEGIANCE

Ceremonial Items

Proclamation: MTCS Lady Cougars Basketball Team

STARS Award: Officer Connor Gavlick and Sergeant Tim Higgins

Consent Agenda

1. New Form Hangar Lease Agreement (Airport)
2. Taxiway A and Apron Pavement Rehabilitation Final Design Grant (Airport)
3. City Paving Contract Renewal (Engineering)
4. City Specialty Paving Contract Renewal – Hawkins Asphalt Paving, LLC. (Engineering)
5. City Concrete and Storm Drainage Annual Contract Renewal (Engineering)
6. Acquisition of ROW and Easements for Chaffin Place Improvements (Engineering)
7. Community Investment Program Funds Transfer (Finance)
8. Purchase Equipment for Five Apparatus (Fire Rescue)
9. McFadden Outdoor Court Lighting (Parks)
10. Mandatory Referral for Abandonment of Drainage Easement Along Medical Center Parkway (Planning)
11. Mandatory Referral for Abandonment of Drainage Easements along South Church Street (Planning)
12. Use of Competitive Sealed Proposals for Various City Departments (Purchasing)

Old Business

13. Ordinance 22-O-09 FY23 Recommended Water Rate Increase (2nd and final reading) (Water Resources)

Land Use Matters

14. Ordinance 22-OZ-08 Zoning for property along Northwest Broad Street Amending Ordinance 22-OZ-08 (2nd and final reading) (Planning)
15. Ordinance 22-O-06 Amending the Zoning Ordinance Regarding Industrial Accessory Structures, Recreation Field Lighting, and Floodplain Regulations (2nd and final reading) (Planning)

New Business

Resolution

16. Resolution 22-R-12 Unclaimed Property Request (Finance)
17. Resolution 22-R-13 Schools Budget Amendment #9 Childcare Stabilization Grant (Schools)

Land Use Matters

18. Planning Commission Recommendations for Public Hearing (Planning)

On Motion

19. Professional Services Contract for Renovations of 2140 N Thompson Lane (Administration)
20. Professional Services Contract – Butler Drive Realignment (Engineering)
21. Rutherford Blvd and SE Broad St. Intersection Improvements – Professional Services Agreement (Engineering)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

CITY COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: New Proposed Hangar Lease Agreement

Department: Airport

Presented by: Chad L. Gehrke, Airport 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

Proposed form Lease Agreement for Airport hangars

Staff Recommendation

Approve new form Hangar Lease Agreement

Background Information

The Airport proposes to utilize a new form lease agreement for letting hangars. The Airport Commission provided input on a new Hangar Lease Agreement. Rental of hangar at the Airport is done on a yearly basis. Many tenants have rented space at the Airport for some time and the Airport maintains a waiting list of interested potential tenants. The new form lease agreement will be instrumental to the Airport future plans to address the aviation community's growing interest in the Airport's services.

The form lease agreement will be used for standard leasing of hangars. Substantive amendments to the form will be brought to the Commission for approval, or if the obligations amendments are significant, to Council.

Council Priorities Served

Responsible Budgeting

A commercially viable but strong lease agreement for City facilities assist with maintaining and budgeting sources of City revenue.

Fiscal Impact

None.

Attachments

Proposed for Hangar Lease Agreement

HANGAR LEASE AGREEMENT

This Hangar Lease Agreement ("Agreement") made this ____ day of _____, _____ ("Effective Date") by and between the City of Murfreesboro, Tennessee ("City") and _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("Tenant").

Primary Tenant authorized representative: _____

Contact Information:

Address: _____

Email: _____

Tenant Aircraft information (the "Aircraft"):

T-Number: _____

Make: _____

Model: _____

1. Premises

The City rents to Tenant on terms and conditions set forth herein hangar space at the Murfreesboro Municipal Airport ("Airport"), which space is designated as _____ ("Premises").

2. Term

This Agreement commences as of the Effective Date and terminates on the following June 30th unless terminated as set forth herein.

3. Rent

3.1 Monthly rent of \$_____ is due in advance on the first day of each month payable to "City of Murfreesboro" and mailed to the City address for notice stated above or hand delivered to the Airport Director or Airport Manager during business hours.

3.2 Proration

- a. Rent for a term commencing on other than the first day of a month will be prorated on a daily basis.
- b. In the event of termination of this Agreement by the City for other than for an event of default, rent paid for the month will be prorated and returned to Tenant within a reasonable time.

3.3 Tenant will deposit with the City an amount equal to one full month's rent before the Effective Date, which will be returned upon termination of this Agreement provided all rent and other assessment due has been paid in full and the hangar is returned clean in good and acceptable condition as determined by Airport Director.

3.4 The City may charge as additional rent excessive use of electricity or other utilities by Tenant.

4. Use of Premises

4.1 Airworthy Aircraft. Premises are to be used for the storage of Airworthy Aircraft.

- a. Tenant must have purchased or leasing an airworthy aircraft within 9 months of signing this Agreement.
- b. Aircraft stored on the Premises must be airworthy, actively used, and meet all the requirements for regular flight as established by the Federal Aviation Administration and unable to sustain, safe manned-aerial flight (“Airworthy Aircraft”).
- c. Tenant must provide the Airport Director a copy of the Aircraft’s current annual inspection report by the Effective Date and no later than 10 days after any renewal of this Agreement.
- d. Tenant must provide written notice to the Airport Director within 30 days if the Aircraft fails to meet the criteria of an Airworthy Aircraft and, at the Airport Director’s discretion, Tenant may be required to demonstrate the Aircraft is an Airworthy Aircraft.
- e. Ultralight Vehicles as Tenant Aircraft.
 - (1) Upon request of the owner, a special exception for an ultralight vehicle to be stored in a T-hangar may be granted and considered a Tenant Aircraft.
 - (2) Aircraft identified as an ultralight vehicle is subject to all requirements stated in this section unless not required under Code of Federal Regulations, Title 14 FAR, Part 103 – Ultralight Vehicles.

4.2 Aircraft Maintenance or Construction.

- a. The Airport Director may allow the Premises to be used to build a kit-aircraft, experimental aircraft, or to refurbish an aircraft.
- b. Tenant will submit to Airport Director for approval a reasonable timeline to complete the project (including a schedule of periodic progress reports) (“Maintenance Schedule”) to ensure the project is progressing in a timely manner and the Aircraft is returned to an Airworthy Aircraft with a reasonable amount of time.
- c. The failure of Tenant to file a Maintenance Schedule with the Airport Director will render the Aircraft Inoperable and subject this Agreement to termination as set forth herein.
- d. If the Airport Director determines the work is not progressing, the Tenant must demonstrate active work on the aircraft in accord with the timeline and may grant an extension to the period before which the Aircraft must be airworthy up to 150 days.

4.3 Commercial Activity. Premises may be used solely for the purpose housing the Aircraft for Tenant’s personal business or pleasure provided; however, Tenant may not use the Hangar or aircraft housed therein for commercial activity, as defined by City Ordinance, without the prior approval as a Commercial Operator from the Airport Commission.

4.4 Miscellaneous Items.

- a. Personal Items not related to the aircraft (ex.: furniture) may be placed within the Premises for use provided the items do not impede ingress and egress of the aircraft or restrict the inspection, maintenance, or work on the Premises.
- b. Automobiles used to travel to and from the Airport may be stored in the hangar while the aircraft is being flown. No other storage of automobiles or trailers are permitted inside or outside the Premises unless approved by the Airport Director.

5. Securing the Premises

- 5.1 Tenant acknowledge that the City has access to the Premises at any and all times and waives any and all rights with respect to enter or inspection of the Premises and personal property therein or thereupon.
- 5.2 Tenant is responsible for securing the Premises and must provide the Airport Director access to, including any codes for security systems approved by the Airport Director prior to installation. If the City provides a lock to the Premises, Tenant may not replace or add additional locks to the Premises. It is a breach of the Lease should the City be unable to enter the Premises at any time.
- 5.3 Under no circumstances is the City is not liable to the Tenant for theft, vandalism, for damage to Tenant's property as are result of Tenant's failure to secure the Premises.

6. Maintenance of Premises.

- 6.1 Tenant must maintain the interior and exterior of the Premises in a good, clean, safe, and orderly condition, ordinary wear and tear excepted, and Tenant is solely responsible for reasonable cost of repairing or replacing portions of the hangar damaged by Tenant and Tenant's agents or invitees.
- 6.2 Tenant may not alter the hangar without the prior written approval of the Airport Director.
- 6.3 Tenant may not post signs at the Airport or on the Premises without approval of the Airport Director.
- 6.4 Tenant must cooperate, without reduction in rent, with the City's efforts to improve airport facilities.

7. Sublease or Assignment.

- 7.1 Tenant cannot sublease, assign, transfer, loan, or rent hangar space without approval of the City.
- 7.2 Additional Tenants may be added as a party with joint and several liability under this Agreement upon receipt by the Airport Director of a written request to the Airport Director stating the reason for the additional and the provision of any requested documentation.
- 7.3 Approved subleases must be approved by the City, upon execution of the Sublease Agreement with the City, and continuing responsibility of the Tenant.
- 7.4 If Tenant does not own or lease an airworthy aircraft when signing this Agreement, the Airport Director will:

- a. first attempt to Sublease the hangar to a person on the Waiting List or an existing Tie-down Tenant,
- b. if no one on the Waiting List or Tie-down Tenant agrees to Sublease the Hangar, the Tenant is allowed to recommend to the Airport Director a person who owns or leases an airworthy aircraft to sign the Sublease Agreement with for a term of no more than 9 months, and
- c. if neither of those options are successful the Tenant will be responsible for the rent for no more than nine months or when an airworthy aircraft is purchased or leased, or the Airport Director will terminate the Agreement and the next person on the Hangar Waiting List will be contacted and offered the hangar.

8. Appeal of Airport Director Decisions.

- 8.1 Tenant may appeal a decision or action of the Airport Director set forth herein to the Murfreesboro Airport Commission by making a written request to the Chair of the Commission within 30 days of receiving the final decision or action of the Airport Director. The request must be accompanied by any relevant correspondence or documentation. The Chair of the Commission may refuse the appeal if it is not a decision directly related to matters set forth herein.
- 8.2 The written appeal will be presented to the Commission at its next scheduled meeting. Consideration will be upon the written appeal and relevant documents; provided, however, Tenant may be requested to answer questions at the discretion of the Chair., provided that the Commission may defer the decision to the next following meeting if it determines that additional information is required.
- 8.3 The Commission may dismiss the appeal as addressing a matter laying outside this Agreement or consider the appeal and make a recommendation to the Airport Director. The Airport Director retains full authority to manage the Airport and accept or reject the Commission's recommendation.

9. Insurance

- 9.1 By the Effective Date, Tenant will secure and maintain during the Term insurance coverage from a company licensed to provide insurance in Tennessee and acceptable to the City and such coverage will provide a minimum of \$1,000,000 combined single limit including a minimum of \$100,000 per passenger.
- 9.2 Tenant must provide an endorsement to the required policy listing the "City of Murfreesboro" and "Murfreesboro Municipal Airport" as an additional insured, to the Airport Director within 30 days after the execution of this Agreement evidencing the required insurance coverage.

Insurance endorsements listing the “City of Murfreesboro” and the “Murfreesboro Municipal Airport” as additional insured may be mailed to the following address:

Murfreesboro Municipal Airport
P. O Box 4145
Murfreesboro, TN 37133-4145

- 9.3 Required insurance coverages must remain in effect during the Term of this Agreement and proof of renewal coverage and the endorsement of the City as an Additional Insured, must be provided to the Airport Director within five business days after renewal.

10. Indemnification

Tenant will indemnify and hold harmless the City, its officers, agents, and employees from (a) any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tenant, its officers employees, agents, or invitees, and (b) any claims damages, penalties, costs and attorney fees arising from any failure of Tenant, its officers, employees, agents, or invitees to observe applicable laws including, but not limited to, labor laws and minimum wage laws.

11. Termination

11.1 For Cause

- a. Either party may terminate this Agreement for cause by providing written notice to the other party of a breach of the Agreement and detailing the breach and permitting a 30-day period to cure the breach.
- b. In the event the City does not cure a breach within 30 days, Tenant may vacate the Premises, leaving it in good, clean condition.
- c. In the event Tenant fails to cure a breach within 30 days, except for a shorter period as provided herein, this Agreement terminates, and Tenant must immediately vacate the premises, leaving it in good, clean condition.
 - (1) In the event Tenant does not vacate with the period set forth above, the City may re-enter and take possession of the Premises and remove all persons and property without liability.
 - (2) For causes with specific termination period set forth herein, the specific termination period is applicable.

11.2 Non-use of Premises.

- a. Tenant’s failure to use the Premises in accordance with this Agreement for 90 consecutive days or 120 total days within a 12-month period, which period is incorporated in any renewal of this Agreement and regardless of payment of Rent, will subject this Agreement to termination.

- b. Tenant may request an exception to the non-use period in writing to the Airport Director advising of the non-use of the Premises and the reasons for the non-use (e.g., off-Airport maintenance, securing of a replacement aircraft). Exceptions may be granted for up to 150 days total after which the Agreement will terminate.
- 11.3 Airworthy Aircraft. In the event the Aircraft fails to be an Airworthy Aircraft, Tenant will have 30 days to vacate and surrender the Premise to the City in clean and good condition.
- 11.4 Change of Ownership Interest
 - a. This Agreement terminates within 30 days upon the death or dissolution of Tenant at which time the Premises will be surrendered in good and acceptable condition. Additional time to wrap up Tenant's affairs may be granted by the Airport Director provide rental payments are timely made.
 - b. If Tenant no longer holds an interest in the Aircraft, this Agreement will terminate, and Tenant will be required to surrender the Premise to the City in clean and good condition within 30 days.
- 11.5 Bankruptcy or Insolvency. In the event bankruptcy or state-law insolvency or receivership proceedings are initiated by or against Tenant, the City may declare this Agreement immediately terminated and the Premises be surrendered in good and acceptable condition. No right or interests in the Premises accrues to receiver, trustee, or other officer on behalf of the Tenant or the estate. The City reserves all claims against the estate's assets for any amount due.

12. Notice.

All notices required or beneficial under this Agreement must be mailed first class or hand delivered to the address below. Delivery by mail will be considered perfected upon receipt or after five days when delivered to the USPS or other recognized commercial delivery service. The parties are required to provide current mailing addresses and pending receipt of any change of address the following will be used for notices:

For Tenant: _____ (Same as provided on page one) _____

For the City: Murfreesboro Municipal Airport
 Attn: Airport Director
 P. O. Box 4145
 Murfreesboro, TN 37133-4145

13. Miscellaneous

- 13.1 Tenant must comply with federal, state, and local laws and regulations applicable to the operations at the Airport, including codes, rules, and standards adopted by the Airport Commission or City Council, and violations may result in the termination of this Agreement.
- 13.2 Tenant acknowledges the City is a governmental entity under the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* that has governmental immunity for certain acts

and the statutory limit on financial liability which are applicable to its operation of the Airport.

- 13.3 In the event of litigation, the City will be entitled to recover, in addition to other recovery attorney fees, including the value of in-house attorneys' time, and costs incurred, including court costs, expert witness fees, deposition and other discovery costs (including travel and court reporter costs).
- 13.4 This Agreement is governed by the laws of the State of Tennessee. Any disputes relating to this Agreement must be resolved in accordance with the laws of the State of Tennessee and in the courts of Rutherford County, Tennessee.
- 13.5 Should a provision of this Agreement be declared invalid by a court of competent jurisdiction, that provision will be severed and not affect the validity of the remaining provisions of this Agreement.

Signatures appear on following page

CITY OF MURFREESBORO**TENANT**

Chad Gehrke
Airport Director

Approved as to form
Murfreesboro Legal Department,
Adam F. Tucker, City Attorney
Date: _____

Name _____
Title _____

Email: _____
Telephone: _____

**Hangar Lease Agreement Addendum
Additional Tenants**

Primary Tenant: _____
Lease Term: _____

Additional Tenant Contact Information**Individuals**

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Partnerships or Corporations

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____
Telephone: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____
Telephone: _____

Entity Name: _____
Contact: _____
Title: _____
Address: _____

CITY COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Taxiway A and Apron Pavement Rehabilitation Final Design Grant

Department: Airport

Presented by: Chad L. Gehrke, Airport 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

Grant for Final Design of Taxiway A and Apron Pavement Rehabilitation

Staff Recommendation

Approve federally funded Grant for \$87,700 for the final design of the Taxiway A and Apron Pavement Rehabilitation project and associated Work Authorization with Barge Design Solutions.

Background Information

The pavement on Taxiway A and one area of the apron by T-hangars A, B, and C require pavement rehabilitation. The Airport engineering firm, Barge Design Solutions, has been working with the Tennessee Aeronautics Division on the appropriate methods to rehabilitate the pavement in these areas. As this design works nears completion, the Airport will make it next request for a Grant that will assist with the cost of the pavement work. Other pavement areas will be addressed in future grant requests.

Council Priorities Served

Responsible Budgeting

Utilizing grant funds to maintain important City infrastructure is a responsible means of managing expenditures.

Fiscal Impact

This expenditure, \$87,700, is fully funded by a Federal Aviation Administration grant.

Attachments

Taxiway A and Apron Pavement Rehabilitation Grant

Barge Design Solutions Work Authorization



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date 4/15/2022	End Date 4/14/2024	Agency Tracking # 40100-40400	Edison ID 70791		
Grantee Legal Entity Name City of Murfreesboro			Edison Vendor ID 4110		
Subrecipient or Recipient <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient		CFDA #20.106 Grantee's fiscal year end – June 30			
Service Caption (one line only) Taxiway A and Apron Rehabilitation Final Pavement Repair – Design					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
2022	\$0.00	\$87,700.00		\$0.00	\$87,700.00
TOTAL:	\$0.00	\$87,700.00		\$0.00	\$87,700.00
Grantee Selection Process Summary					
<input checked="" type="checkbox"/> Competitive Selection		For every project, the airport owner, sponsor or educational program must submit a letter of request and an application to the Aeronautics Division. The Aeronautics Division staff reviews all project requests monthly. The review is based on the Division's established criteria and policies. The review results are presented to the Commissioner for approval. Grant award amounts will be based upon available funds and the amount requested, and such funding will be continued in order of application approval.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - GG	
Speed Chart (optional) TX00 TX00		Account Code (optional) 71302			

VENDOR ADDRESS: 5

LOCATION CODE: MURFRE-002

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF MURFREESBORO**

This grant contract ("Grant Contract"), by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" or the "Grantor State Agency" and City of Murfreesboro hereinafter referred to as the "Grantee," is for the provision of airport development, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID # 4110

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The purpose of this Grant shall be to sponsor a project for the further development of a public airport under Tennessee Code Annotated 42-2-203 and the Airport and Airway Improvement Act of 1982, Title 49 of the United States Code or Tennessee Code Annotated 4-3-2313 and 2314, Aeronautics Economic Development Fund. Pursuant to these provisions, the State shall be designated as the party to apply for, receive, and disburse all funds to be used in the payment of the costs of said project or as reimbursement of costs incurred. The Grantee shall be a recipient of funds from the State Transportation Equity Fund and/or Federal Airport Improvement Program, and/or Aeronautics Economic Development Fund, and shall undertake an airport improvement project.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
 - a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. and c., below);
 - b. the State grant proposal solicitation as may be amended, if any;
 - c. the Grantee's proposal, **Attachment One**, incorporated to elaborate supplementary scope of services specifications.
- A.5. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as **Attachment Two** is incorporated in this Grant Contract.

B. TERM OF CONTRACT:

- B.1. This Grant Contract shall be effective on **April 15th, 2022**, ("Effective Date") and extend for a period of **twenty-four (24) months** after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
- B.2. Renewal Options. This Grant Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **three (3)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed **Eighty-Seven Thousand Seven Hundred Dollars and Zero Cents (\$87,700.00)** ("Maximum Liability"). The Grant Budget attached and incorporated as **Attachment Three** is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Department of Transportation-Aeronautics Division
<https://www.blackcataviation.com/>

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
 - (2) Invoice Date.
 - (3) Invoice Period (to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the State).
 - (5) Grantor: Department of Transportation-Aeronautics Division.
 - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
 - (7) Grantee Name.
 - (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
 - (9) Grantee Remittance Address.
 - (10) Grantee Contact for Invoice Questions (name, phone, or fax).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.

- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
- b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
- c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the State pursuant to this Grant Contract.
- d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the

attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.

- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
 - b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:
The State:

Ryan Healey, TPM 2
Aeronautics Division
7335 Centennial Boulevard
Nashville TN, 37209
Email: Ryan.Healey@tn.gov
Telephone: 615-741-3208

The Grantee:

Shane McFarland, City Mayor
City of Murfreesboro
City Hall
111 Vine Street
Murfreesboro, TN 37130
Telephone: 615-849-2629

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations

regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.

- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.
- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.
- The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.
- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State Agency. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law. If the Grantee is subject to an audit under this provision, then the Grantee shall complete **Attachment Four**.

When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.
- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which

reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

For purposes of this Grant Contract, the term “equipment” shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.
- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event

results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.

- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. **Reserved.**
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-408.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.34. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

- b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.35. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the Grantee provides information to the State as required.

The Grantee shall comply with the following:

- a. Reporting of Total Compensation of the Grantee's Executives.
 - (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee's preceding completed fiscal year, if in the Grantee's preceding fiscal year it received:

- i. 80 percent or more of the Grantee's annual gross revenues from Federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
- ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Grantee's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Grantee must report executive total compensation described above to the State by the end of the month during which this Grant Contract is established.
- c. If this Grant Contract is amended to extend its term, the Grantee must submit an executive total compensation report to the State by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Grantee will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Grantee's failure to comply with the above requirements is a material breach of this Grant Contract for which the State may terminate this Grant Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Grantee unless and until the Grantee is in full compliance with the above requirements.

- E.3. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.
- E.4. Grantee Participation. Grantee Participation amounts detailed in the Grant Budget are intended as a goal for the total project, and the amount of actual Grantee Participation expenditures will not impact the maximum amounts reimbursable to the Grantee as detailed by the Grant Budget column, "Grant Contract."
- E.5. Reimbursements to Reflect Match/Share. Reimbursements to Grantee shall reflect the percentage of Grantee Match/Share detailed in the Grant Budget. Reimbursements are subject to the other provisions of this Grant Contract, including but not limited to, the maximum liability amount in Section C.1.
- E.6. Airport Operations. For all grants that total fifty thousand dollars (\$50,000.00) or more, as consideration for receiving this Grant from the State, the Grantee agrees to operate and maintain the Airport for a period of twenty (20) years from the effective date of this Grant Contract.
- E.7. Compliance with FAA Regulations. For all grants involving federal funds, the Grantee agrees to accomplish the project in compliance with the terms and conditions contained in the U. S. Department of Transportation Federal Aviation Administration *Terms and Conditions of Accepting Airport Improvement Program Grants* hereby incorporated into this document by reference. Said document is on file in the Tennessee Department of Transportation, Aeronautics Division Office. These assurances can also be located on the FAA Website at www.faa.gov/airports/aip/grant_assurances
- E.8. No Retainage Allowed. The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.
- E.9. Printing Authorization. The Grantee agrees that no printing/publication shall be printed pursuant to this Grant Agreement without the prior authorization of the State even if printing costs are included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement. The Grantee and its employees may publish the results of the research in whole or in part as they deem appropriate without authorization by the State if it is at no cost to the Grantor State Agency.
- E.10. Travel Requirements. Travel must be project related and ALL conference and/or out-of-state travel must be preapproved by the Grantor State Agency even if included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- The Grantee, upon request, must include (in addition to other invoice requirements of this Grant Agreement) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."
- E.11. Ban on Texting While Driving. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009 and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the State and subrecipients are encouraged to:
- a. Adopt and enforce workplace safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing any work related to this grant or subgrant.
 - b. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - (1) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (2) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- E.12. Completion of Project and Repayment of Funds. The Grantee agrees to use best efforts to ensure timely completion of the Project. If the Grantee elects not to complete the Project, then the Grantee shall notify the State in writing within thirty (30) days after having made such determination and, at the discretion of the State, the Grantee may be required upon written notice to repay to the State some or all of the funds paid to the Grantee pursuant to this Agreement. The State shall have the sole determination over the amount of funds owed by the Grantee. If the State determines that any funds are owed by the Grantee, the Grantee shall pay said funds within one hundred eighty (180) days of receipt of written notice from the State.
- E.13. Employee Protection from Reprisal.
- a. Prohibition of Reprisals:
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2), information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal office or employee responsible for oversight of a grant program;
 - v. A court or grand jury;
 - vi. A management office of the State or the Grantee; or
 - vii. A Federal or State regulatory enforcement agency.
 - b. Submission of Complaint: A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - c. Time Limitation for Submittal of a Complaint: A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
 - d. Required Actions of the Inspection General: Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
 - e. Assumption of Rights to Civil Remedy: Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
- E.14. Trafficking in Persons. In accordance with section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), the Grantee, its employees, and any subgrant recipients' employees may not:
- a. Engage in severe forms of trafficking in persons;
 - b. Procure a commercial sex act; or
 - c. Use forced labor in the performance of this Grant Contract and subgrant agreements.
- Violation of this requirement may result in termination of this Grant Contract.
- E.15. Buy American. Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Grantee will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any permitted use for which funds are provided under this Grant Contract. The Grantee will include a provision implementing Buy American in every contract and subcontract issued under this Grant Contract.

- E.16. Face Coverings Policy. The Grantee agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) guidelines and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the Airport property, except to the extent exempted under those requirements. This special condition requires that the Grantee continue to require masks until Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, is no longer effective.
- E.18. Plans and Specifications Approval Based Upon Certification. The State and the Grantee agree that the FAA's approval of the Grantee's Plans and Specification is based primarily upon the State's and Grantee's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Grantee understands that:
- a. The State's and Grantee's certification does not relieve the Grantee of the requirement to obtain prior FAA and State approval for modifications to any AIP or supplemental appropriation standards or to notify the FAA and State of any limitations to competition within the project;
 - b. The FAA's acceptance of the State's and Grantee's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements; and
 - c. If the FAA and/or State determines that the Grantee has not complied with its certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP or supplemental appropriation.
- E.19. Consultant Contract and Cost Analysis. The Grantee understands and agrees that no reimbursement will be made on the consultant contract portion of this Grant Contract until the State has received the consultant contract, the Sponsor's analysis of costs, and the independent fee estimate.
- E.20. Design Grant. This Grant Contract is being issued in order to complete the design of a project funded under this Grant Contract. The Grantee understands and agrees, that within 2 years after the design is completed, the Grantee will accept, subject to the availability of the amount of Federal funding identified in the ACIP, a grant to complete the construction of the project in order to provide a useful and useable unit of work. The Grantee also understands that if the FAA has provided Federal funding to complete the design for the project, and the Grantee has not completed the design within four (4) years from the execution of this Grant Contract, the FAA may suspend or terminate grants related to the design.

IN WITNESS WHEREOF,

CITY OF MURFREESBORO:

75-555-0169-22

GRANTEE SIGNATURE

DATE

SHANE MCFARLAND, CITY MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

GRANTEE LEGAL COUNSEL'S SIGNATURE

DATE

DEPARTMENT OF TRANSPORTATION:

JOSEPH GALBATO III, INTERIM COMMISSIONER

DATE

JOHN H. REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY

DATE

OMB Number: 4040-0004
Expiration Date: 12/31/2022**Application for Federal Assistance SF-424**

* 1. Type of Submission:

- ☐ Preapplication
☒ Application
☐ Changed/Corrected Application

* 2. Type of Application:

- ☒ New
☐ Continuation
☐ Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

City of Murfreesboro

* b. Employer/Taxpayer Identification Number (EIN/TIN):

62*6000374

* c. UEI:

d. Address:

* Street1:

111 West Vine Street

Street2:

* City:

Murfreesboro

County/Parish:

Rutherford

* State:

TN: Tennessee

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

37130-0001

e. Organizational Unit:

Department Name:

Murfreesboro Municipal Airport

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Mr.

* First Name:

Chad

Middle Name:

* Last Name:

Gehrke

Suffix:

Title:

Airport Director

Organizational Affiliation:

City of Murfreesboro

* Telephone Number:

615-848-3254

Fax Number:

615-848-3256

* Email:

cgehrke@murfreesborotn.gov

Application for Federal Assistance SF-424*** 9. Type of Applicant 1: Select Applicant Type:**

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:****11. Catalog of Federal Domestic Assistance Number:**

CFDA Title:

*** 12. Funding Opportunity Number:**

* Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):*** 15. Descriptive Title of Applicant's Project:**

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424			
16. Congressional Districts Of:			
* a. Applicant <input style="width: 80%;" type="text" value="4th"/>	* b. Program/Project <input style="width: 80%;" type="text" value="4th"/>		
Attach an additional list of Program/Project Congressional Districts if needed.			
<div style="display: flex; justify-content: space-between; align-items: center;"> <input style="width: 30%;" type="text"/> <div> <input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/> </div> </div>			
17. Proposed Project:			
* a. Start Date: <input style="width: 80%;" type="text" value="05/01/2022"/>		* b. End Date: <input style="width: 80%;" type="text" value="05/01/2023"/>	
18. Estimated Funding (\$):			
* a. Federal	<input style="width: 80%;" type="text" value="78,900.30"/>	<div style="border: 1px solid black; padding: 5px; background-color: #e6f2ff;"> TDOT USE ONLY Staff Recommended: APPROVED Fiscal Year: <u>2022</u> Federal: <u>\$87,700.00</u> State: <u>\$0.00</u> Local: <u>\$0.00</u> PSR Signature: <u>Jay Norris (May 5, 2022 08:47 CDT)</u> Date: <u>May 5, 2022</u> TAC Signature: _____ Date: _____ </div>	
* b. Applicant	<input style="width: 80%;" type="text" value="0.00"/>		
* c. State	<input style="width: 80%;" type="text" value="4,383.35"/>		
* d. Local	<input style="width: 80%;" type="text" value="4,383.35"/>		
* e. Other	<input style="width: 80%;" type="text" value="0.00"/>		
* f. Program Income	<input style="width: 80%;" type="text" value="0.00"/>		
* g. TOTAL	<input style="width: 80%;" type="text" value="87,667.00"/>		
* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?			
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on <input style="width: 100px;" type="text"/>			
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.			
<input checked="" type="checkbox"/> c. Program is not covered by E.O. 12372.			
* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If "Yes", provide explanation and attach			
<div style="display: flex; justify-content: space-between; align-items: center;"> <input style="width: 30%;" type="text"/> <div> <input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/> </div> </div>			
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)			
<input checked="" type="checkbox"/> ** I AGREE			
** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.			
Authorized Representative:			
Prefix: <input style="width: 80%;" type="text" value="Mr."/>	* First Name: <input style="width: 80%;" type="text" value="Chad"/>		
Middle Name: <input style="width: 80%;" type="text"/>			
* Last Name: <input style="width: 80%;" type="text" value="Gehrke"/>			
Suffix: <input style="width: 80%;" type="text"/>			
* Title: <input style="width: 80%;" type="text" value="Airport Director"/>			
* Telephone Number: <input style="width: 80%;" type="text" value="615-838-3254"/>		Fax Number: <input style="width: 80%;" type="text"/>	
* Email: <input style="width: 80%;" type="text" value="cgehrke@murfreesborotn.gov"/>			
* Signature of Authorized Representative:			* Date Signed: 3-24-2022

ATTACHMENT TWO

PAGE ONE

Federal Award Identification Worksheet

Subrecipient's name (must match registered name in DUNS)	
Subrecipient's DUNS number	
Federal Award Identification Number (FAIN)	3-47-SBGP-59
Federal award date	5/29/2022
CFDA number and name	20.106
Grant contract's begin date	4/15/2022
Grant contract's end date	4/14/2024
Amount of federal funds obligated by this grant contract	\$78,930
Total amount of federal funds obligated to the subrecipient (SPONSOR: TOTAL Federal dollars deposited into YOUR account in current FY (7/21-6/22) from ALL agencies) MUST be UPDATED every 6 months and uploaded into BlackCat Documents	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	\$19,191,159
Name of federal awarding agency	Federal Aviation Administration
Name and contact information for the federal awarding official	TN Department of Transportation Aeronautics Division 7335 Centennial Boulevard Nashville, TN 37209 615-741-3208
Is the federal award for research and development?	N/A
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	N/A

Federal Award Identification Worksheet (FAI) is a required document; it must be completed and returned with signed grant for execution, with an updated copy loaded into BlackCat (75-555-0169-22) every six (6) months.

Any questions please contact your Program Monitor, **Ryan Healey**, at 615-741-3208.

ATTACHMENT TWO
PAGE TWO

Federal Award Identification Worksheet

Subrecipient's name (must match registered name in DUNS)	
Subrecipient's DUNS number	
Federal Award Identification Number (FAIN)	3-47-SBGP-64
Federal award date	7/13/2021
CFDA number and name	20.106
Grant contract's begin date	4/15/2022
Grant contract's end date	4/14/2024
Amount of federal funds obligated by this grant contract	\$8,770
Total amount of federal funds obligated to the subrecipient (SPONSOR: TOTAL Federal dollars deposited into YOUR account in current FY (7/21-6/22) from ALL agencies) MUST be UPDATED every 6 months and uploaded into BlackCat Documents	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	\$14,663,946
Name of federal awarding agency	Federal Aviation Administration
Name and contact information for the federal awarding official	TN Department of Transportation Aeronautics Division 7335 Centennial Boulevard Nashville, TN 37209 615-741-3208
Is the federal award for research and development?	N/A
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	N/A

Federal Award Identification Worksheet (FAI) is a required document; it must be completed and returned with signed grant for execution, with an updated copy loaded into BlackCat (75-555-0169-22) every six (6) months.

Any questions please contact your Program Monitor, **Ryan Healey**, at 615-741-3208.

ATTACHMENT THREE
PAGE ONE

GRANT BUDGET				
City of Murfreesboro: TWY A and Apron Rehab Final Pavement Repair Design				AERO-22-###-00
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable				
Period:				
BEGIN: 4/15/2022		END: 4/14/2024		
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	\$87,700.00	\$0.00	\$87,700.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	\$87,700.00	\$0.00	\$87,700.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A*. (posted on the Internet at: <https://www.tn.gov/finance/looking-for/policies.html>).

² Applicable detail follows this page if line-item is funded.

ATTACHMENT THREE
PAGE TWO

GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
Taxiway A and Apron Rehabilitation Final Pavement Repair Design	\$87,700.00
TOTAL	\$87,700.00

TAD Project # 75-555-0169-22

Project Breakdown:

TX00	\$78,930.00	100% Federal 59 (NPE)
TX00	<u>\$ 8,770.00</u>	100% Federal 64 (ARPA)
Grant Total:	\$87.700.00	

Parent Child Information

PAGE ONE

The Grantee should complete this form and submit it with the Grant Contract. The Grantee should submit only one, completed "Parent Child Information" document to the State during the Grantee's fiscal year.

"Parent" means an entity whose IRS filing contains the information of at least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number: 4110

Is Grantee Legal Entity Name a parent? Yes ☒ No ☐

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is Grantee Legal Entity Name a child? Yes ☐ No ☒

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: 62-6000374

Note: If the parent entity's tax identification number is a social security number, this form must be submitted via US mail to:

Central Procurement Office, Grants Program Manager
3rd Floor, WRS Tennessee Tower
312 Rosa L Parks Avenue
Nashville, TN 37243

Parent entity's contact information

Name of primary contact person: Chad L. Gehrke

Address: 1930 Memorial Blvd., Murfreesboro, TN 37129

Phone number: 615-848-3254

Email address: cgehrke@murfreesboro.tn.gov

Parent entity's Edison Vendor ID number, if applicable: 4110

EXHIBIT "A"

WORK AUTHORIZATION NO. 22-01

MURFREESBORO MUNICIPAL AIRPORT

TAXIWAY ALPHA AND APRON REHABILITATION – FINAL DESIGN AND BIDDING

(TAD Project Identification No.)

Date: _____

It is agreed to undertake the following work in accordance with the provisions of the Owner-Engineer Agreement between City of Murfreesboro, Tennessee ("OWNER") and Barge Design Solutions, Inc. ("ENGINEER") dated January 1, 2021.

Scope of Services

The Engineer shall provide Final Design and Bidding services for the rehabilitation of Taxiway Alpha and the rehabilitation of a portion of apron around the existing T-hangers. See attached Exhibit "B" for a more detailed description of services to be provided.

Time of Performance

Refer to Exhibit B, Section II for the Preliminary Project Schedule.

Compensation

A total compensation budget of **\$87,667** is proposed for this project. See the attached Exhibit "C" for a full budget itemization.

Agree as to Scope of Services, Time of Performance and Compensation:

City of Murfreesboro

Barge Design Solutions, Inc.

Name

Name

Date: _____

Date: _____

City Attorney

Name

Date: _____

EXHIBIT "B"

SCOPE OF SERVICES

WORK AUTHORIZATION NO. 22-01

MURFREESBORO MUNICIPAL AIRPORT

TAXIWAY ALPHA AND APRON REHABILITATION – FINAL DESIGN AND BIDDING

PROJECT DESCRIPTION:

The OWNER intends to make the following improvements:

- A. Rehabilitate Taxiway Alpha
- B. Reconstruct south connector of Alpha to Runway 36 to meet FAA requirements
- C. Rehabilitate a portion of apron around the existing T-hangars

(hereinafter called the PROJECT) and engage the ENGINEER to perform services as specified herein and as defined in the 30% Design Review Meeting Notes dated 3/8/2022.

SECTION I – DESIGN CRITERIA AND REQUIREMENTS

The most current versions of the following design criteria and standards, as well as other applicable standards will be used for design and execution of the PROJECT:

- FAA AC 150/5300-13A, Change 1 Airport Design
- FAA AC 150/5320-5D Airport Drainage Design
- FAA AC 150/5370-10H Standards for Specifying Construction on Airport
- FAA AC 150/5370-2G Operation Safety on Airports During Construction

SECTION II – GENERAL ASSUMPTIONS AND CLARIFICATIONS

The following is a list of general assumptions and clarifications forming the basis of the fee proposal included herein as Exhibits C and D for providing the services detailed in this Scope of Services. It must be noted that any change to these general assumptions constitutes a change in the project scope and may result in a revision to the attached cost proposal and the Scope of Services.

1. This scope and fee is limited to Final Design (100%) and Bidding services for this project. Construction Administration, Resident Project Representative, Construction Testing and other services may be added by amendment at a later date.
2. A hydrologic study of airfield drainage is not included in the scope of work for this project.
3. The tentative Design Schedule has been included below. Any and all additions, changes or deletions to this scope of work may require additional negotiations to the ENGINEER's Scope, Fee and Production Schedule.
4. The OWNER shall provide any specific contracting requirements to be included in the Front-End Documents prior to the 90% Design Submittal.
5. The ENGINEER will provide 24" x 36" hard copies and electronic files (PDF) of the Project Documents to the OWNER and TDOT-Aeronautics Division (TAD) for review at 90% milestone. Please refer to the individual Phases outlined in this Scope of Services for additional information pertaining to specific deliverables.
6. The costs for obtaining construction permits are excluded in the fees under this Agreement.
7. Designs are based on visual observations from site trips. Unforeseen conditions that require repair may be revealed during construction. Additional Engineering services to address unforeseen conditions will be negotiated as required.

Tentative Project Schedule

The following Tentative milestone schedule has been established for this project:

• Final Design Request to TAC	March 25, 2022
• Executed Grant	May 2022
• 90% Design Submittal	August 2022
• 90% Design Review Meeting	August 2022
• Final Design Submittal	September 2022
• Advertisement for Bids	January 2023
• Pre-Bid Meeting	February 2023
• Bid Opening	February 2023
• Request for Construction Funding	March 2023
• TAC	April 2023
• Grant	May 2023

SECTION III - SERVICES OF THE ENGINEER

To develop the scope of work and associated fees, the work has been divided into various phases. This section presents the specific phases to be undertaken in this Scope of Services. The work phases will be performed by the ENGINEER's staff, consisting primarily of Project Management Staff, Technical Design and Production Staff. The individual work tasks will be assigned to appropriate personnel as deemed necessary by the ENGINEER to provide the services identified in each task. Where pertinent, staff assignments are included in the description of the work tasks.

The ENGINEER is to perform for the above-named PROJECT professional services as hereinafter set forth:

BASIC SERVICES

DESIGN SERVICES

Under this phase, the ENGINEER will collect and review existing site data, including site conditions of the work area. The ENGINEER will also prepare and obtain OWNER's approval of detailed drawings which show the scope of the work to be performed by contractors on the PROJECT, including such specifications, instructions to bidders, general conditions, special conditions and technical provisions required by the OWNER.

The ENGINEER will furnish the OWNER engineering data for, and assign in the preparation of, the required documents so that the OWNER may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the project.

The ENGINEER will prepare for review and approval of the OWNER and TAD, front end documents, contract documents, technical specifications and bid schedules specific to the project.

- Technical Specifications will be based on the most current versions of FAA Advisory Circular 150/5370-10G, Standards for Specifying Construction on Airports. For work not covered by the FAA Advisory Circulars, the ENGINEER will prepare specifications consistent with the ENGINEER's master specifications.

The ENGINEER will prepare an Engineer's Opinion of Probable Construction Cost, to be submitted with the 90% Plans and Specifications. The ENGINEER will determine the appropriate bid items, methods of measurement and payment for the construction contract.

The ENGINEER will provide an Engineer's Report at the 90% stage for review by TAD.

The ENGINEER will provide one (1) copy of the 90% Plans for the OWNERS use and one (1) copy of the 90% Plans TAD's use. The ENGINEER will also provide electronic copies of the Plan Sheets and Specifications and Engineer's Opinion of Probable Construction Cost in .pdf format, and any requested CAD files.

A formal design review meeting will be held onsite at the Airport for 90% final design review.

A preliminary sheet list is provided below:

Number of Sheets	Sheet Name
1	TITLE SHEET
1	CONSTRUCTION SAFETY AND PHASING PLAN
1	GENERAL NOTES AND SUMMARY OF QUANTITIES
3	EXISTING CONDITIONS
2	SITE DEMOLITION PLAN
2	SITE LAYOUT PLAN
2	SITE GRADING AND DRAINAGE PLAN APRON
1	APRON UNDERDRAIN PLAN
3	TAXIWAY ALPHA PLAN/PROFILE
1	TAXIWAY C AND D PLAN/PROFILE
4	ESPC PLANS

4	ESPC DETAILS
4	MARKING PLANS
2	MARKING DETAILS
1	CIVIL DETAILS

BIDDING SERVICES

Under this phase, the ENGINEER will assemble and compile the work products developed under the design tasks and prepare a set of construction drawings for the project. The drawing package will include such drawings as the ENGINEER deems appropriate and necessary to bid and construct the project.

The ENGINEER will provide support to the OWNER in order to advertise, receive bids, and award construction contracts based on the construction documents prepared by the ENGINEER. Specific support to be provided will include:

- Providing sets of the Contract Documents to contractors seeking to submit bid proposals. Contractors will be able to purchase Contract Documents from BARGE for a non-refundable fee to cover the costs to reproduce and ship the documents.
- Respond to bidder's questions in writing through the issuance of any addenda to the Contract Documents.
- Development and issuance of any Construction Drawing or Specification Revisions for inclusion in any addenda to the Bid Documents.
- Conduct bid opening meeting.
- Prepare a Certified Tabulation of Submitted Bids and submit to the OWNER.
- Assist the OWNER in evaluation of bids and preparation of a recommendation of award of the contract based on the specified criteria.

The ENGINEER will provide one full size copy each of the 'Issued for Bid' Plans and Specifications for the OWNER's use and one full size copy each of the 'Issued for Bid' Plans and Specifications for TDOT's use. The ENGINEER will also provide electronic copies of the Plan Sheets and Specifications in PDF and any requested CAD files.

The ENGINEER will also provide addenda, written responses to Bidder questions and any Construction Drawing or Specification Revisions or Clarifications to be included in addenda, Certified Bid Tabulation, and recommendation of award.

GENERAL PROJECT SERVICES

The following general project services fall under more than one of the Phases outlined above. As such, compensation for these tasks is distributed throughout the respective Phases under which they fall.

- **Project Management and Administration**

The ENGINEER will provide a main Point of Contact to manage the PROJECT. The ENGINEER will be responsible for coordinating OWNER and Agency issues for the PROJECT, such as interfacing with OWNER staff, TAD, and other federal, state and local agencies. The ENGINEER will work closely with all identified project stakeholders to ensure that the OWNER's goals and objectives are met within the agreed upon schedule.

- **Quality Control**

Provide quality control reviews and incorporation of comments in accordance with the ENGINEER's Quality Control Program. In addition, review comments provided by the OWNER, TAD and other agencies reviews of deliverables will be incorporated as appropriate.

REQUIRED STATE CONTRACT PROVISIONS

For Obligated Sponsors and Airport Improvement Program Projects

STANDARD TERMS AND CONDITIONS:

Grantees shall not assign an Aeronautics Grant Contract or enter into a subcontract for any of the services performed under an Aeronautics Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of the Aeronautics Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.

Please modify the highlighted fields accordingly based on the respective contract.

CONTRACT CLAUSES:

D.6. Conflicts of Interest. Engineer warrants that no part of the total contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to City of Murfreesboro in connection with any work contemplated or performed relative to this Contract.

D.7. Lobbying. The Engineer certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee

of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Promisor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Engineer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- D.10. Nondiscrimination. Engineer hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Engineer on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Engineer shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.12. Public Accountability. If the Engineer is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Contract involves the provision of services to citizens by Engineer on behalf of the State, Engineer agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Engineer shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER

TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The City of Murfreesboro shall obtain copies of the sign from the Tennessee Department of Transportation, Aeronautics Division, and upon request from the Engineer, provide Engineer with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Engineer in relation to this Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Engineer in relation to this Contract shall be approved by the State.
- D.15. Records. The Engineer and any approved subcontractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Engineer and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Engineer's records shall be subject to audit at any reasonable time and upon reasonable notice by the Tennessee Department of Transportation, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Contract expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Engineer shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Engineer shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Engineer shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Tennessee Department of Transportation, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

EXHIBIT "C"

COMPENSATION

WORK AUTHORIZATION NO. 22-01

MURFREESBORO MUNICIPAL AIRPORT

TAXIWAY ALPHA AND APRON REHABILITATION – FINAL DESIGN AND BIDDING

BASIC SERVICES

1. The ENGINEER shall be compensated for Final Design Services identified in the Scope of Services by the Owner in proportion to the completed design. Said total compensation shall be a lump sum fee of:

\$ 78,852.00

2. The ENGINEER shall be compensated for Bidding Services identified in the Scope of Services by the Owner in proportion to the completed services. Said total compensation shall be a lump sum fee of:

\$ 8,815.00

EXHIBIT "D"

SUMMARY OF PROFESSIONAL FEES

WORK AUTHORIZATION NO. 22-01

MURFREESBORO MUNICIPAL AIRPORT

TAXIWAY ALPHA AND APRON REHABILITATION – FINAL DESIGN AND BIDDING

Please refer to the attached Fee Proposal

A & E FEE PROPOSAL

Murfreesboro Municipal Airport
Murfreesboro, Tennessee



Barge Design Solutions

March 25, 2022

Project Number:

3741900

TAD Number

TAXIWAY ALPHA AND APRON FINAL DESIGN

SECTION A : BASIC FEE FOR AIRPORT DEVELOPMENT				NUMBER OF SHEETS	NUMBER OF HOURS	HOURLY RATE UNIT COST	EXTENDED COST	TOTAL COST
1. PROJECT DEVELOPMENT								
A. PRINCIPAL (P)					0	\$76.48	\$0.00	
B. CIVIL ENGINEER (CE)					0	\$53.39	\$0.00	
C. ENGINEER INTERN (EI)					0	\$32.42	\$0.00	
D. ELECTRICAL ENGINEER (EE)					0	\$65.69	\$0.00	
E. ARCHITECT (A)					0	\$65.28	\$0.00	
F. SENIOR AVIATION PLANNER (SAP)					0	\$0.00	\$0.00	
G. AVIATION PLANNER (AP)					0	\$48.20	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					0	\$29.43	\$0.00	
J. SECRETARIAL/TYPIST (S)					0	\$25.75	\$0.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
PROJECT DEVELOPMENT PHASE DIRECT LABOR:							\$0.00	
COMBINED OVERHEAD:				209.39%			\$0.00	
J. DOCUMENTS	SETS	0	0			\$0.10	\$0.00	
K. SHIPPING	SETS	0				\$15.50	\$0.00	
L. TRIPS	MILES	70	0			\$0.560	\$0.00	
M. FLIGHTS			0			\$750.00	\$0.00	
N. TRAVEL SUBSTINENCE			0			\$11.25	\$0.00	
PROJECT DEVELOPMENT PHASE EXPENSES:							\$0.00	
SUBTOTAL:								\$0.00
OPERATING MARGIN:				15%				\$0.00
FCCM (APPLIED TO DIRECT LABOR ONLY):				0.61%				\$0.00
TOTAL PROJECT DEVELOPMENT PHASE:								\$0.00
2. DESIGN PHASE								
A. PRINCIPAL (P)					2	\$76.48	\$152.95	
B. CIVIL ENGINEER (CE)					150	\$53.39	\$8,007.75	
C. ENGINEER INTERN (EI)					169	\$32.42	\$5,478.98	
D. ELECTRICAL ENGINEER (EE)					0	\$65.69	\$0.00	
E. ARCHITECT (A)					0	\$65.28	\$0.00	
F. SENIOR AVIATION PLANNER (SAP)					8	\$0.00	\$0.00	
G. AVIATION PLANNER (AP)					0	\$48.20	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					158	\$29.43	\$4,649.94	
J. SECRETARIAL/TYPIST (S)					24	\$25.75	\$618.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
DESIGN PHASE DIRECT LABOR:							\$18,907.62	
COMBINED OVERHEAD:				209.39%			\$39,590.67	
L. TOTAL PLAN SHEETS (50%)	SETS	0	0			\$2.50	\$0.00	
M. SHIPPING (50%)	SETS	0				\$40.00	\$0.00	
N. TOTAL SPEC SHEETS (90%)	SETS	0	0			\$0.10	\$0.00	
O. TOTAL PLAN SHEETS (90%)	SETS	0	0			\$2.50	\$0.00	
P. SHIPPING (90%)	SETS	0				\$40.00	\$0.00	
Q. TOTAL SPEC SHEETS (FINAL)	SETS	0	1			\$0.10	\$0.10	
R. TOTAL PLAN SHEETS (FINAL)	SETS	0	0			\$2.50	\$0.00	
S. SHIPPING (FINAL)	SETS	0				\$40.00	\$0.00	
T. TRIPS	MILES	70	1			\$0.560	\$39.200	
U. FLIGHTS			0			\$750.00	\$0.00	
V. TRAVEL SUBSTINENCE			0			\$11.25	\$0.00	
DESIGN PHASE EXPENSES:							\$39.30	
SUBTOTAL:								\$58,537.59
OPERATING MARGIN:				15%				\$8,780.64
FCCM (APPLIED TO DIRECT LABOR ONLY):				61.00%				\$11,533.65
TOTAL DESIGN PHASE:								\$78,852.00

SECTION A : BASIC FEE FOR AIRPORT DEVELOPMENT (Continued)		NUMBER OF SHEETS	NUMBER OF HOURS	HOURLY RATE UNIT COST		TOTAL COST
3. BID PHASE						
A. PRINCIPAL (P)			0	\$76.48	\$0.00	
B. CIVIL ENGINEER (CE)			26	\$53.39	\$1,388.01	
C. ENGINEER INTERN (EI)			16	\$32.42	\$518.72	
D. ELECTRICAL ENGINEER (EE)			0	\$65.69	\$0.00	
E. ARCHITECT (A)			0	\$65.28	\$0.00	
F. SENIOR AVIATION PLANNER (SAP)			18	\$0.00	\$0.00	
G. AVIATION PLANNER (AP)			0	\$48.20	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)			0	\$48.20	\$0.00	
I. DESIGNER (D)			0	\$29.43	\$0.00	
J. SECRETARIAL/TYPIST (S)			22	\$25.75	\$566.50	
K. RESIDENT PROJECT REP. (RPR)			0	\$33.87	\$0.00	
BID PHASE DIRECT LABOR:					\$2,473.23	
COMBINED OVERHEAD:		209.39%			\$5,178.70	
L. DOCUMENTS	SETS	200		\$0.10	\$0.00	
M. SHIPPING				\$40.00	\$0.00	
N. TRIPS	MILES	2		\$0.560	\$0.000	
O. FLIGHTS		0		\$750.00	\$0.00	
P. TRAVEL SUBSTINENCE		0		\$11.25	\$0.00	
BID PHASE EXPENSES:					\$0.00	
SUBTOTAL:						\$7,651.93
OPERATING MARGIN:		15%				\$1,147.79
FCCM (APPLIED TO DIRECT LABOR ONLY):		0.61%				\$15.09
TOTAL BID PHASE:						\$8,815.00
4. CONSTRUCTION PHASE						
A. PRINCIPAL (P)			0	\$76.48	\$0.00	
B. CIVIL ENGINEER (CE)			0	\$53.39	\$0.00	
C. ENGINEER INTERN (EI)			0	\$32.42	\$0.00	
D. ELECTRICAL ENGINEER (EE)			0	\$65.69	\$0.00	
E. ARCHITECT (A)			0	\$65.28	\$0.00	
F. SENIOR AVIATION PLANNER (SAP)			0	\$0.00	\$0.00	
G. AVIATION PLANNER (AP)			0	\$48.20	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)			0	\$48.20	\$0.00	
I. DESIGNER (D)			0	\$29.43	\$0.00	
J. SECRETARIAL/TYPIST (S)			0	\$25.75	\$0.00	
K. RESIDENT PROJECT REP. (RPR)			0	\$33.87	\$0.00	
CONSTRUCTION PHASE DIRECT LABOR:					\$0.00	
COMBINED OVERHEAD:		209.39%			\$0.00	
J. DOCUMENTS	SETS	0		\$0.10	\$0.00	
K. SHIPPING				\$40.00	\$0.00	
L. TRIPS	MILES	70		\$0.560	\$0.000	
M. FLIGHTS		0		\$750.00	\$0.00	
N. TRAVEL SUBSTINENCE		0		\$11.25	\$0.00	
CONSTRUCTION PHASE EXPENSES:					\$0.00	
SUBTOTAL:						\$0.00
OPERATING MARGIN:		15%				\$0.00
FCCM (APPLIED TO DIRECT LABOR ONLY):		0.61%				\$0.00
TOTAL CONSTRUCTION PHASE:						\$0.00
TOTAL BASIC FEE FOR AIRPORT DEVELOPMENT						
PROJECT DEVELOPMENT PHASE			\$0.00	0%		
DESIGN PHASE			\$78,852.00	90%		
BID PHASE			\$8,815.00	10%		
CONSTRUCTION PHASE			\$0.00	0%		
TOTAL SECTION A:						\$87,667.00
SECTION B: FEES FOR AIRPORT PLANS AND OTHER ITEMS IF INCLUDED AS BASIC SERVICES						
1. CATDEX CHECKLIST						\$0.00
2. GEOTECHNICAL SUBSURFACE INVESTIGATION (SUBCONTRACTED)						\$0.00
3. TOPOGRAPHIC SURVEY (SUBCONTRACTED)						\$0.00
TOTAL SECTION B:						\$0.00
TOTAL BASIC ENGINEERING FEE (Sections A and B):						\$87,667.00

ESTIMATED ADDITIONAL SERVICES - IF AUTHORIZED BY OWNER (ESTIMATED BUDGETS)									
SECTION C: AIRPORT PLANS, AND STUDIES INCLUDED AS ADDITIONAL SERVICES									
1. CONSTRUCTION MATERIALS TESTING SERVICES									
2. AIRPORT LAYOUT PLAN									\$0.00
3. AIRPORT LAYOUT PLAN UPDATE									\$0.00
4. RUNWAY JUSTIFICATION STUDY									\$0.00
TOTAL SECTION C:									\$0.00
SECTION D: SURVEY									
0 DAYS OF DESIGN SURVEY									
0 DAYS OF CONSTRUCTION SURVEY									
0 TOTAL DAYS OF SURVEY									
1. 2-MAN SURVEY CREW (1 PARTY CHIEF, 1 INSTRUMENT MAN)									
REGULAR		0	HRS @	\$55.05 / HR =		\$0.00			
OVERTIME		0	HRS @	\$82.57 / HR =		\$0.00			
2. SURVEY MANAGER		0	HRS @	\$39.48 / HR =		\$0.00			
4. SURVEY PROCESSOR		0	HRS @	\$39.48 / HR =		\$0.00			
DIRECT LABOR TOTAL SECTION D:							\$0.00		
COMBINED OVERHEAD:						209.39%	\$0.00		
5. AUTO EXPENSES	12	DAYS @	MILES/DAY @	\$0.560 =		\$0.00			
6. PER DIEM	0	DAYS @	/ DAY / PERSON =			\$0.00			
EXPENSES TOTAL SECTION D:							\$0.00		
SUBTOTAL:									\$0.00
OPERATING MARGIN:								10%	\$0.00
FCCM (APPLIED TO DIRECT LABOR ONLY):								1.28%	\$0.00
TOTAL SECTION D:									\$0.00
SECTION E: ENVIRONMENTAL									
1. ADEM PERMITTING									\$0.00
2. COE 404 PERMITTING									\$0.00
3. ENVIRONMENTAL ASSESSMENT									\$0.00
4. WETLAND DELINEATION SURVEY									\$0.00
TOTAL SECTION E:									\$0.00
SECTION F: RESIDENT PROJECT REPRESENTATIVE									
CALENDAR DAY CONTRACT									
1. RESIDENT PROJ. REPS		DAYS @	8	HRS @	\$33.87 / HR =		\$0.00		
DIRECT LABOR TOTAL SECTION F:							\$0.00		
COMBINED OVERHEAD:						209.39%	\$0.00		
2. AUTO EXPENSES		DAYS @	70	MILES/DAY @	\$0.560		\$0.00		
3. PER DIEM		DAYS @	\$11.25 / DAY =				\$0.00		
EXPENSES TOTAL SECTION F:							\$0.00		
SUBTOTAL:									\$0.00
OPERATING MARGIN:								10%	\$0.00
FCCM (APPLIED TO DIRECT LABOR ONLY):								1.28%	\$0.00
TOTAL SECTION F:									\$0.00
TOTAL ESTIMATED ADDITIONAL SERVICES (Sections C through F)									\$0.00
GRAND TOTAL - FEE PROPOSAL (Includes Basic Fee + Estimated Add'l Services)									\$87,667.00

ADDITIONAL PROJECT EXPENSES (IF REQUIRED)									
1. DBE PLAN UPDATE FOR PROJECT (FOR FAA PROJECT FUNDING OF \$250,000 OR MORE)									\$0.00
2. NEWSPAPER ADVERTISING									\$0.00
3. PAVEMENT ANALYSIS AND TESTING									\$0.00
4. GEOTECHNICAL EVALUATION									\$0.00
5. CONSTRUCTION TESTING									\$0.00
TOTAL ADDITIONAL PROJECT EXPENSES:									\$0.00

[illegible]

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: City Paving Contract Renewal

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

Renewal of the Annual City Paving Contract.

Staff Recommendation

Approval the renewal of the Annual City Paving contract with Blue Water Industries.

Background Information

The Annual City Paving Contract was awarded to Blue Water Industries on June 7, 2018. This contract is typically used for resurfacing of existing city streets.

The contract is renewable for up to four years after the original award if agreed upon by both parties. This is the fourth renewal year.

The budget for paving is determined annually based on the City's anticipated State Street Aid revenues and paving needs.

Council Priorities Served

Responsible Budgeting

Maintenance of the City infrastructure protects the City's investment in its critical assets, which is an important aspect of responsible budgeting.

Fiscal Impact

The primary funding source for the Annual City Paving Contract is from State Street Aid which is the local share of the State's gasoline tax.

Attachments

Letter requesting contract renewal from Blue Water Industries.



April 19, 2022

Mr. Chris Griffith
City of Murfreesboro
111 West Vine Street
P. O. Box 1139
Murfreesboro, TN 37133-1139

Re: 2018-2019 City Paving Contract
Contract Renewal – July 1, 2022 thru June 30, 2023

Dear Sir:

In accordance with the Special Conditions, Page 5, Item No. 15 Contract Extension, BWI MTN II Inc. dba Blue Water Industries respectfully requests that the above referenced contract be extended for an additional twelve (12) month period, effective July 1, 2022. We understand that all terms and conditions of the current contract will remain the same.

Respectfully submitted,

BLUE WATER INDUSTRIES

A handwritten signature in blue ink, appearing to read 'J. Goad', is written over the company name.

Jeremy D. Goad
General Manager

/pe

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: City Specialty Paving Contract Renewal – Hawkins Asphalt Paving, LLC.

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

Renewal of the Annual City Specialty Paving Contract.

Staff Recommendation

Staff recommends approval of the renewal of the Annual City Specialty Paving contract with Hawkins Asphalt Paving, LLC.

Background Information

The Annual City Specialty Paving Contract was bid and awarded to Hawkins Asphalt Paving on June 7, 2018. This contract is typically used for the resurfacing of existing city streets. The Specialty Paving contract includes items such as crack sealant, stamped asphalt cross walks and fog sealing that are not included in the traditional paving contract.

The contract is renewable up to four years after the original award if agreed upon by both parties. This is the fourth renewal year.

Council Priorities Served

Safe and Livable Neighborhoods

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

Fiscal Impact

The primary funding source for the City Specialty Paving Contract is from State Street Aid, which is the local share of the State's gasoline tax. The budget for paving is determined annually based on the City's anticipated State Street Aid revenues and paving needs.

Attachments

Letter from Hawkins Asphalt Paving, LLC. requesting contract renewal.

April 20, 2022

Mr. Joe Ehelben
City of Murfreesboro
111 E. Vine St.
Murfreesboro, TN 37130

RE: Annual Paving Contract

Dear Mr. Ehelben

This letter is to serve as notice that Hawkins Asphalt Paving, LLC would like to hereby request the renewal of the City of Murfreesboro annual Paving Contract for the upcoming year. Please feel free to contact me if you need any additional information from Hawkins Asphalt Paving, LLC.

I would further like to express that it has been a great pleasure working with you and the City of Murfreesboro throughout the duration of our contract and we hope to continue to be of service to the City for the upcoming term.

Sincerely,



Steven Flippo
Hawkins Asphalt Paving, LLC
Office Manager

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: City Concrete and Storm Drainage Annual Contract Renewal

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

Renewal of the Annual City Concrete and Storm Drainage Contract.

Staff Recommendation

Approve the renewal of the Annual City Concrete and Storm Drainage contract with Rollins Excavating, LLC.

Background Information

The Annual City Concrete and Storm Drainage contract awarded to Rollins Excavating, LLC. on June 13, 2019. This contract is typically used for the installation and/or maintenance of the storm drainage facilities and sidewalks. Most of the work is completed in response to a request from a resident or inspection by our public works staff. Rollins has successfully performed its contractual obligations in a manner beneficial to the community.

The contract is renewable for up to four years after the original award if agreed upon by both parties. This is the third renewal year.

Council Priorities Served

Responsible Budgeting

Maintenance of the City infrastructure protects the City's investment in critical assets of the City, which is an important aspect of responsible budgeting.

Fiscal Impact

The expense for this contract is primarily funded by the State Street Aid's Annual City Concrete and Storm Drainage contract and the local share of the State's gasoline tax. Storm Water User Fee provides additional funding is.

Attachments

Letter requesting contract renewal from Rollins Excavating, LLC.

ROLLINS EXCAVATING CO., LLC.

1468 Middle Tennessee Blvd., Murfreesboro, TN 37130

April 19, 2022

Mr. Chris Griffith
City of Murfreesboro
111 E Vine St.
Murfreesboro, TN 37130

RE: Annual Concrete & Storm Drainage Contract

Dear Mr. Griffith,

Please be advised that Rollins Excavating Co., LLC hereby requests renewal of the City of Murfreesboro annual Concrete and Storm Drainage Contract for the July 1, 2022 thru June 30, 2023 term. In the event that any additional information is required concerning this matter, please do not hesitate to contact me.

It has been a pleasure conducting business with you & the City of Murfreesboro during the duration of our contract and we hope to continue to be of service to the City for the next term.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Beebe", written in a cursive style.

Jay Beebe, General Supt.
Rollins Excavating Co., LLC

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Acquisition of ROW and Easements for Chaffin Place Improvements

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

Acquisition of property for the Chaffin Place Improvement project.

Staff Recommendation

Approve funding for the acquisition of right-of-way and easements.

Background Information

The improvements to Chaffin Place require an acquisition of right-of-way and temporary construction easements on two parcels. Appraisal services for the acquisition of one of these parcels has been retained.

The City has been in contact with the property owners concerning the project. Final negotiations are pending. If agreements are not reached, staff recommends proceeding with condemnation after appraising the property and depositing the appraised value in court. Per the appraised value the estimated cost to acquire the right-of-way and secure temporary easements is approximately \$45,200. This amount is incorporated in the project's budget, which includes a small contingency to expedite the acquisition process.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

This expenditure, estimated to be \$45,200, is budgeted within the FY21 CIP budget for this project.

Attachments

Table of ROW and easements needed for the Chaffin Place improvements.



Chaffin Place Improvements

Right of Way Acquisition Table

Parcel	Owner	Description	Negotiated	Estimated/Assessed Value
Map 92 Parcel 82.00	Tri-Star Energy, LLC	Right of Way and Temporary Construction Easement	No	\$41,100
Map 92 Parcel 81.01	JRN Chicken Stores Inc.	Temporary Construction Easement	No	\$4,100
			Total	\$45,200

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Community Investment Program Funds Transfer

Department: Finance

Presented by: Jennifer Brown, Finance Director

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:

Purchase of N. Thompson Lane Property

Transfer \$1,050,673 from Brinkley Road, Butler Drive, Jones Blvd, and Thompson Lane to the Fire Admin Building in the 2016 Bond. Transfer the same amount from the Fire Admin Building to the same road projects in the 2021 Bond.

Priorities Served

Responsible budgeting

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

Fiscal Impacts

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

Attachments

CIP Funds Transfer Request – 2016 Bond / 2018 Bond / 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 2016 Bond/2018 Bond/2019 Loan/2021 Bond

Transfer CIP funds from:

Brinkley Road (2016 Bond) \$ (932,667.02)

Butler Drive (2016 Bond) \$ (24,345.06)

Jones Blvd (2016 Bond) \$ (62,836.50)

Thompson Ln (2016 Bond) \$ (30,824.73)

Fire Admin Bldg (2021 Bond) \$ (1,050,673.31)

TOTAL TRANSFER \$ (2,101,346.62)

Transfer CIP funds to:

Fire Admin Bldg (2016 Bond) \$ 1,050,673.31

Brinkley Road (2021 Bond) \$ 932,667.02

Butler Drive (2021 Bond) \$ 24,345.06

Jones Blvd (2021 Bond) \$ 62,836.50

Thompson Ln (2021 Bond) \$ 30,824.73

TOTAL TRANSFER \$ 2,101,346.62

Explanation: In an effort to spend down the 2016 Bond cash balance, it is requested that

\$1,050,673.31 of road CIP lines items from the 2016 Bond be swapped with Fire Admin Building 2021

Bond. These funds will be added to the 2018 Bond funds and the 2019 Loan funds that will be used

to purchase the N. Thompson Lane property.


Budget Director Signature

5-2-22
Date


Reviewed by Finance

5-2-22
Date

Approved




City Manager

Declined



5-2-22
Date

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

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Purchase Equipment for Five Apparatus

Department: Fire Rescue

Presented by: Mark A. Foulks, Fire Chief

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 Equipment for Five Apparatus.

Staff Recommendation

Approve the purchase of equipment from EVS/G&W Diesel.

Background Information

MFRD desires to purchase Task Force Tips (TFTs) nozzles, valves, gauges, etc. totaling \$15,735 for five apparatus needing replacement equipment. In March, the Department purchased \$22,786 of TFTs to equip a new ladder truck. Therefore, the total purchases with this vendor for like materials exceeds \$25,000 and Council approval is required. MFRD requests approval to purchase this equipment from EVS/G&W Diesel. EVS/G&W is the manufacturer's dealer for TFT products in the State. MFRD uses TFT nozzles and appliances on all apparatus and MFRD personnel are trained and certified in repairing TFT nozzles and appliances. Therefore, purchasing these products will maintain interoperability within the Department.

Council Priorities Served

Maintain public safety

Proper nozzles and appliances are essential pieces of equipment on fire apparatuses.

Fiscal Impact

Total expenditure, \$15,735, is funded from the Department's Operating Budget.

Attachments

1. EVS/G&W Diesel Primary Dealer Letter
2. Quote
3. Contract



January 13, 2022

Assistant Chief Jernigan
Murfreesboro Fire Rescue
206 E Vine St.
Murfreesboro, TN 37130
Kjernigan@murfreesborotn.gov

Dear Chief Jernigan:

Please allow this correspondence to confirm that EVS / G&W Diesel, with an office in Memphis, TN is Task Force Tips' primary strategic dealer for the state of Tennessee.

As Task Force Tips' primary strategic dealer EVS / G&W Diesel has the responsibility for providing warranty information and processing, service and technical support, and for the promotion of TFT products through training and education. In addition, as our primary strategic dealer they are also entitled to our most favorable pricing structure.

Please feel free to contact me if there are any questions concerning this confirmation.

Regards,



Jim Menke
Jim Menke
Vice President – Domestic Sales

cc: Chris Carson – Task Force Tips – South Atlantic Territory Manager
Jessi Collums – EVS / G&W Diesel

CONFIDENTIALITY WARNING:

This message is intended only for the use of the individual or entity to which it is addressed and supersedes all previous correspondence of this nature.

CONWAY, AR

OLIVE BRANCH, MS

MEMPHIS, TN

NASHVILLE, TN

KNOXVILLE, TN

Quote Number 00006480

Date 4/27/2022

Expiration Date 5/27/2022

Contact Name Dillon Harris

Phone 931-409-9322

Company Name Murfreesboro Fire Department (TN)

Account Number 3490

Bill To 220 Nw Broad Street
Murfreesboro, Tennessee 37130
United States

Ship To 1311 Jones Blvd
Murfreesboro, Tennessee 37129
United States

Telephone

Salesperson Leach Will

Freight Included No Charge

Salesperson Email wleach@gwevs.com

Quantity	Vendor	Part Number	Description	Notes	Unit Price	Total Price
20.00	Task Force Tips (TFT)	F140FP	1.5" Ball Valve w/ Grip	Specify Handle Color	\$305.29	\$6,105.80
15.00	Task Force Tips (TFT)	ME1TO-226	Metro 1.5" Nozzle Tip, 160@50		\$468.82	\$7,032.30
5.00	Task Force Tips (TFT)	FSS8	7/8" Smooth Bore Tips		\$97.06	\$485.30
5.00	Task Force Tips (TFT)	J140FP	2.5" Ball Valve w/ Grip	Specify Handle Color	\$325.29	\$1,626.45
5.00	Task Force Tips (TFT)	FSS10	1-1/8" Smooth Bore Tips		\$97.06	\$485.30

Quoted By Jessi Collums

Quoted By Email jcollums@gwevs.com

Subtotal \$15,735.15

Tax \$0.00

Total \$15,735.15

**AGREEMENT BETWEEN
CITY OF MURFREESBORO
AND
G & W DIESEL SERVICE INCORPORATED dba
EMERGENCY VEHICLE SPECIALISTS MIDSOUTH
FOR TASK FORCE TIPS NOZZLES & APPLIANCES**

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 **G & W Diesel Service Incorporated dba Emergency Vehicle Specialists MidSouth**, a corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- Contractor's Sales Quote #6480, dated April 27, 2022;
- 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, Contractor's Sales Quote #6480 dated April 27, 2022

- 1. Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase Task Force Tips (TFT) Nozzles and Appliances as set forth in Contractor's Sales Quote #6480, dated April 27, 2022. Furthermore, the City may utilize this Contract to procure additional equipment from Contractor throughout the term of the contract. Such future procurements shall be executed through a Purchase Order after purchases exceeding \$25,000 have been approved by City Council.
- 2. Term.** The term of this Contract shall begin on the Effective Date for a period of one year. 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 this procurement be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. **Price; Compensation; Method of Payment.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Contractor's Sales Quote #6480, dated April 27, 2022, which reflects a **purchase price of \$15,735.15**. 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 Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. All invoices should be sent to accountspayable@murfreesborotn.gov
- b. Deliveries of all items shall be made within 4-6 weeks of order to: 1311 Jones Blvd., Murfreesboro, TN 37129. Delivery Contact: Firefighter Dillon Harris (tel.: 615-893-1311, email: dharris@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- 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 item(s) received which fail to meet the specifications as stated in the Invitation to Bid.
- 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 agrees to the standard manufacturer's warranty. The warranty period begins on the date the equipment is delivered and accepted by the City.

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. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

7. **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."

8. 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:
 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.

- 9. 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:
Will Leach
East TN Equipment Sales Manager
892 Kansas St.
Memphis, TN 38106
wleach@gwevs.com

- 10. Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.

- 11. 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.

- 12. Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

- 13. 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.

- 14. 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.

- 15. 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.

- 16. 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.

Contractor further acknowledges that the City is a federal government contractor, and that by virtue of this Contract, Contractor is a federal government subcontractor. Therefore, in accordance with federal law, Contractor specifically acknowledges and agrees as follows:

- a. **The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
- b. **The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- c. **The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."**

17. 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.

18. 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.

- 19. 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.
- 20. 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.
- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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 _____, 2022 (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

EMERGENCY VEHICLE SPECIALISTS

By: Will Leach
Will Leach, East TN Equipment Sales Manager

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: McFadden Outdoor Court Lighting

Department: Parks and Recreation

Presented by: Nate Williams, Parks Director

Requested Council Action:

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

Summary

Contract with Musco Lighting for new basketball court lighting at McFadden Community Center.

Staff Recommendation

Approve contract with Musco Lighting.

Background Information

The Parks and Recreation Department was awarded a \$40,000 grant from the National Recreation and Park Association to support the construction of an outdoor basketball court at McFadden Community Center to serve the surrounding community and MPRD programs. To maximize this new outdoor court space, sports lighting is needed, and the same standard will be followed as with the Jordan Farm Soccer field lighting project. The selection of Musco Lighting was completed through the Sourcewell purchasing process.

The cost of this aspect of the McFadden outdoor court project is included in the project budget as reflected in the FY19 CIP Budget. Total cost of the lights is \$44,850, of which \$40,000 is grant funded and the remaining will come from project funding in the FY19 CIP Budget.

Council Priorities Served

Responsible budgeting

Use of grant funds to supplement the City infrastructure is a cost-effective method of procuring or constructing assets beneficial to the community.

Fiscal Impact

The expense, \$44,850, is mostly grant funded with remaining funds provided in the FY19 CIP Budget.

Attachment

Musco Lighting Contract

**Agreement
for
Light-Structure System for Basketball Court
at McFadden Community Center**

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 **Musco Sports Lighting, LLC**, a limited liability company of the State of Iowa ("Contractor").

This Agreement consists of the following documents:

- This document
- Contractor's Sourcewell (Formerly NJPA) Contract Number: 071619-MSL (all relevant documents)
- Contractor's Proposal dated April 28, 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 Agreement (most recent amendment or change order given first priority)
- Second, this Agreement
- Third, Contractor's Sourcewell (Formerly NJPA) Contract Number: 071619-MSL (all relevant documents)
- Lastly, the Contractor's Proposal dated April 28, 2022

1. Duties and Responsibilities of Contractor.

- a. Scope of Work. Contractor agrees to provide and install, and City agrees to purchase a Light-Structure System with Total Light Control – TLC for LED™ technology from the Contractor's Sourcewell (Formerly NJPA) Contract Number: 071619-MSL in accordance with Contractor's Proposal.
- b. Supervision and Superintendence of Work.
 - i. Contractor will supervise and direct the work efficiently and with Contractor's best skill and attention. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor will be responsible to see that the finished work complies accurately with the Contract documents.
 - ii. Contractor will keep on the work site at all times during work progress a competent resident superintendent, who shall not be replaced without written notice to the City except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.
- c. Labor, Materials, and Equipment.
 - i. Contractor will provide competent, suitably qualified personnel to survey and lay out the work and perform installation as required by the Contract documents. The Contractor will at all times maintain good discipline and order at the site.

- ii. Contractor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, and all other incidentals necessary for the execution, testing, initial operation and completion of the work.
 - iii. All materials will be new, except as otherwise provided in the Contract documents. If required by the City, Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment.
 - iv. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract documents.
- d. Substitute Materials or Equipment. If it is indicated in the specifications that Contractor may furnish or use a substitute that is equal to any material or equipment specified, and if Contractor wishes to furnish or use a proposed substitute, Contractor shall, promptly after the award of the Contract, make written application to the City's designated representative for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the City's designated representative who shall be the sole judge of equality.
- e. Warranty and Guarantee. The Contractor warrants to the City that:
 - i. Unless otherwise provided for, all materials, machinery, and equipment used on the work shall be new, of the best quality in their kind and grade, and of the most efficient and effective design and type available for the purposes for which they are intended;
 - ii. All materials, machinery, and equipment conform in every respect with the specifications, drawings, approved samples, and other requirements of the Contract documents;
 - iii. Only such materials, machinery, and equipment shall be used on the work as have been produced or manufactured in accordance with the established and generally accepted standards for goods and workmanship of the type covered by the specifications and are of such a design and construction as to perform properly the function or work for which they are intended and to afford the maximum ease in upkeep and repair;
 - iv. The finish of the exterior surface of the materials, machinery and equipment used on the work shall be in accordance with the specifications, or if there are no applicable specifications, such finish shall be consistent with commercially accepted practices for the services to be rendered by the respective materials, machinery, and equipment;
 - v. The Contractor agrees that all warranties in the Contract documents shall survive acceptance of, delivery of, and payment for, the goods, whether any defects shall be latent or patent, and agrees to indemnify and hold the City harmless from any loss, damage, or other expense, including attorneys' fees, that the City may suffer as a result of the failure of the materials, machinery, and equipment or workmanship to be as warranted. The Contractor agrees to correct without expense to, and to the satisfaction of, the City, any defects that may develop in material, workmanship, and design during the period of such warranty; and

- vi. The warranties set forth in the preceding paragraph are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or by the Contract documents.
- f. Subcontractors.
- i. Contractor will not employ any subcontractor to perform any of the work required under the Contract documents without first obtaining the written approval of the City's designated representative to employ the subcontractor.
 - ii. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract documents shall create any contractual relationships between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any monies due any subcontractor, except as may otherwise be required by law. The City may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.
 - iii. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
 - iv. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.
- g. Permits. Contractor will secure and pay for all construction permits and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the work which are applicable at the time of Contractor's bid. Contractor will also pay all public utility charges.
- h. Use of Premises.
- i. Contractor will confine Contractor's equipment, the storage of materials and equipment, and the operations of Contractor's workers to areas permitted by law, ordinances, permits, or the requirements of the Contract documents, and shall not unreasonably encumber the premises with materials or equipment.
 - ii. Contractor will not load nor permit any part of the structure to be loaded with weights that will endanger the structure, nor will Contractor subject any part of the work to stresses or pressures that will endanger it.
- i. Safety and Protection.
- i. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:
 - 1. All employees on the work and other persons who may be affected thereby.
 - 2. All the work and all materials or equipment to be incorporated there, whether in storage on or off the site, and
 - 3. Other property at the site or adjacent property, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- ii. Contractor will comply with all applicable laws, ordinances, rules, regulations and order of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. Contractor will notify the City of adjacent utilities when prosecution of the work may affect them. All damage, injury, or loss to any property referred to in subparagraph (2) or (3) of this section caused directly or indirectly, in whole or in part, by Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by Contractor; except damage or loss attributable to the fault of drawings or specifications or to the acts or omissions of the City or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor.
 - iii. Contractor will designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the City.
- j. Emergencies. In emergencies affecting the safety of persons or the work or property at the site or adjacent property, Contractor, without special instruction or authorization from the City, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury or loss.
- k. Cleaning Up. Contractor will keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work, and at the completion of the work, Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the City. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract documents.
- l. Coordination of Work.
 - i. The City may perform additional work related to the Project by itself, or may let other direct contracts for additional work, which shall contain general conditions similar to these. Contractor will afford the other Contractors who are parties to such direct contracts (or the City, if the City is performing the additional work itself) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate Contractor's work with theirs.
 - ii. If any part of Contractor's work depends for proper execution or results upon the work of any such other Contractor (or City), Contractor will inspect and promptly report to the City's designated representative in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor's failure to report shall constitute an acceptance of the other work as fit and proper for the relationship of Contractor's work except as to defects and deficiencies that may appear in the other work after the execution of Contractor's work.
 - iii. Contractor will do all cutting, fitting and patching of Contractor's work that may be required to make its several parts come together properly and fit it to receive

or be received by such other work. Contractor will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the City's designated representative.

- m. Access to the Work. Representatives of the City will at all times have access to the work. Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing by others.
 - n. Contractor's Continuing Obligation. Contractor's obligation to perform the work and complete the Project in accordance with the Contract documents shall be absolute. Neither any payment by the City to Contractor under the Contract documents, nor any use or occupancy of the Project or any part by the City, nor any act of acceptance by the City nor any failure to do so, nor any correction of defective work by the City shall constitute acceptance of work not in accordance with the Contract documents.
2. **Duties and Responsibilities of City.**
- a. Communications to Contractor. The City will issue all communications to Contractor through the Murfreesboro Parks and Recreation Department Director, or the Director's designee. Such individual shall be the City's representative during the construction period.
 - b. Clarifications and Interpretations. The City's designated representative will issue with reasonable promptness written clarifications or interpretations of the Contract documents (in the form of drawings or otherwise) as the City may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract documents.
 - c. Work Changes. The City reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract price and time of termination. All changes will be authorized by written change order signed by the City. The change order will include conforming changes in the Contract and termination time. Work shall be changed, and the Contract price and termination time shall be modified only as set out in the written change order. Any adjustment in the Contract sum resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change.
3. **Term.** 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.
4. **Price; Compensation; Method of Payment.**
- a. The price for the goods and other items to be provided and installed under this Agreement is set forth in the Contractor's Sourcewell (Formerly NJPA) Contract Number: 071619-MSL and the Contractor's Proposal which reflects a **total purchase price of Forty-Four Thousand, Eight Hundred Fifty Dollars and No Cents (\$44,850.00)**. 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, installed, 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 and the work has been accepted by the City and approved by an inspector from the Murfreesboro Building and Codes Department.
 - b. Deliveries of all items shall be made within eight to twelve weeks of order to the job site located at 211 Bridge Avenue, Murfreesboro, TN 37129. Installation of all items shall be made within three (3) weeks of delivery to the job site and installation shall be complete no later than three (3) weeks from delivery date. Contact Person: Thomas Laird (tel. 615-642-3725 email. tlaird@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
 - c. Deliveries and installation of all items shall be made as stated in the Contractor's Proposal dated April 28, 2022. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. 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 Proposal dated April 28, 2022, from Contractor's Sourcewell (Formerly NJPA) Contract Number: 071619-MSL.
 - e. All deliveries made pursuant to the Agreement 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 purchase price.
5. **Warranty.** Unless otherwise specified, every item bid shall meet the warranty requirements set forth in the Contractor's Proposal, from Contractor's Sourcewell (Formerly NJPA) Contract Number 071619-MSL.
6. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor upon request. 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. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any

such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

8. **Insurance.** During the term of this Agreement, Contractor must maintain insurance coverage as required in Exhibit A, attached hereto.

9. **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:
 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.

10. **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 the Contractor:

Ryan Tighe
Musco Sports Lighting, LLC
100 1st Ave. W.
Oskaloosa, IA 54577
Fax: 800-374-6402
Email: musco.contracts@musco.com

cc: Greg Gilley
Phone: 641-660-2362
Email: greg.gilley@musco.com

11. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.

12. **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.

13. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

14. **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.

15. **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.

16. **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.

17. **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.
18. **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.
19. **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.
20. **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.
21. **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, epidemic, pandemic, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

22. **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.
23. **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.
24. **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.
25. **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 _____, 2022 (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

MUSCO SPORTS LIGHTING, LLC

By: _____
Shane McFarland, Mayor

By: _____
Jim Hansen, General Counsel

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

EXHIBIT A

CONTRACTOR'S INSURANCE 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 \$2,000,000 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. **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.

5. **Umbrella Coverage.** Contractor must secure, pay for, and maintain umbrella coverage in the amount of not less than \$5,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.

6. **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.

7. **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.

8. **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.

9. **Term of Coverage**

- 9.1 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").
- 9.2 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.

- 9.3 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.
- 9.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

10. Subcontractor and Lower-Tier Entities Insurance Requirements

- 10.1 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.

11. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 11.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 11.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 11.3 Include the Project per aggregate endorsement;
- 11.4 Waive all rights of subrogation against the Owner;
- 11.5 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
- 11.6 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.

12. Certificates and Endorsements

- 12.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 12.2 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.
- 12.3 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.

- 13. 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.

14. Suppliers and Materialmen Coverages

- 14.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 14.2 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.

15. Condition Precedent to Starting Work

- 15.1 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;

- 15.2 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.
16. **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.
17. **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.
18. **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.

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Mandatory Referral for Abandonment of Drainage Easement Along Medical Center Parkway

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 drainage easement on property along the east side of Medical Center Parkway

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission voted to recommend approval on May 4, 2022.

Background Information

In this mandatory referral [2022-710], Council is being asked to consider the abandonment of a portion of a drainage easement along the east side of Medical Center Parkway. This request works in tandem with the development plans for the proposed Clari Park development. There are existing drainage facilities located within this easement. However, the Clari Park development plan proposes to reroute the stormwater currently utilizing this portion of the drainage easement, which will render the easement in excess. Provided that the plans are executed as submitted and the stormwater is rerouted into a new easement, the City Engineer has no objection to this application.

Planning Staff and the Planning Commission recommend that the City Council approve this request subject to the following conditions:

- 1) The drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.
- 2) 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.
- 3) The applicant will be responsible for paying any recording fees.
- 4) The final plat dedicating the new drainage easement shall be recorded simultaneously with the recording of the quit claim deed abandoning the easement.

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 surplus easements so that property owners can more fully enjoy and utilize their property.

Improve Economic Development

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

Attachments:

1. Staff comments from May 4, 2022 Planning Commission meeting
2. Letter and exhibits from applicant
3. Memo from City Engineer

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
MAY 4, 2022
PROJECT PLANNER: AMELIA KERR**

- 4.b. Mandatory Referral [2022-710] to consider the abandonment of a portion of a drainage easement located on property along the east side of Medical Center Parkway, Chris Mabery of Ragan Smith applicant.**

This easement abandonment request is from Chris Mabery with Ragan Smith. The subject property is located along the east side Medical Center Parkway west of Robert Rose Drive.



In this mandatory referral, the Planning Commission is being asked to consider abandoning a 600'-long portion of an existing drainage easement known as Drainage Easement No. 2 on property to be developed by Hines Clari Park Land Holdings, LLC. The request is to abandon this portion of an existing drainage easement as shown in the hatched area on the attached plat exhibit. This drainage easement was granted on September 12, 2003.. With this request and the approval of the final plat submitted by Ragan Smith, the stormwater that was previously being discharged from Medical Center Parkway will now be piped to the storm drainage system being designed as a part of the Clari Park development.

In order to abandon the drainage easement, the Murfreesboro Engineering Department requires that the drainage easement should be subject to submission and recording of a subdivision plat that relocates the easement as proposed by the applicant. The drainage easement abandonment and final plat recording should be done simultaneously. A copy of the correspondence from the City Engineer has been included in the agenda materials. Staff further recommends that this request be subject to the following conditions in order to facilitate the abandonment process:

- 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.
- 2) The drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.
- 3) The applicant will be responsible for paying any recording fees.
- 4) The final plat dedicating the new drainage easement shall be recorded simultaneously with the recording of the quit claim deed abandoning the easement.

The Planning Commission will need to discuss this application and make a recommendation to the City Council. 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:

Tax Map/Group/Parcel: Map 092, p/o
Parcel 94.06

Address (if applicable): _____

Street Name (if abandonment of ROW): _____

Type of Mandatory Referral: Drainage Easement abandonment, not including any right-of-way

Applicant Information:

Name of Applicant: Chris Mabery, RLS

Company Name (if applicable): RaganSmith

Street Address or PO Box: 100 E. Vine Street, Suite 402

City: Murfreesboro

State: Tennessee

Zip Code: 37130

Email Address: cmabery@ragansmith.com

Phone Number: (615) 378-5236

Required Attachments:

- ☐ Letter from applicant detailing the request
- ☐ Exhibit of requested area, drawn to scale
- ☐ Legal description (if applicable) (Surveyor's Description and easement recorded document)

Applicant Signature

04/13/2022

Date



APPLICANT LETTER FOR MANDATORY REFERRAL

April 14, 2022

VIA ONLINE MURFREESBORO PLAN SUBMISSION

City of Murfreesboro
111 W. Vine Street
Murfreesboro, TN 37130

**RE: DRAINAGE EASEMENT ABANDONMENT
MAP 092, PARCEL 94.06 – HINES CLARI PARK (FORMERLY GATTON PROPERTY)
MEDICAL CENTER PARKWAY
MURFREESBORO, TENNESSEE
RAGANSMITH JOB# 07137-1559**

To whom it may concern:

Ragan-Smith-Associates, Inc. (RaganSmith), on behalf of Hines, would like to submit a request for Mandatory Referral of a Drainage Easement off Medical Center Parkway, across property belonging to Hines. The Drainage Easement was granted to the city of Murfreesboro on September 12, 2003, by instrument of record in Record Book 314, page 216, Register's Office for Rutherford County, Tennessee. Said easement lies on property identified as Parcel 94.06 as shown on Rutherford County Property Map 092.

Hines, employed RaganSmith and SEC, Inc. (SEC), in partnership to subdivide this property into multiple lots containing various commercial businesses. As shown on the preliminary plat previously submitted by SEC and the final plat being submitted by RaganSmith concurrently with this request, the stormwater that was previously being discharged from Medical Center Parkway will now be piped to the storm drainage system being designed as part of the Clari Park development.

Attached, please find an exhibit and description showing the subject easement to be abandoned.

If you have any questions or need anything further, please let us know.

Sincerely,

RAGAN-SMITH ASSOCIATES, INC.

Chris Mabery, RLS
Survey Manager

NASHVILLE

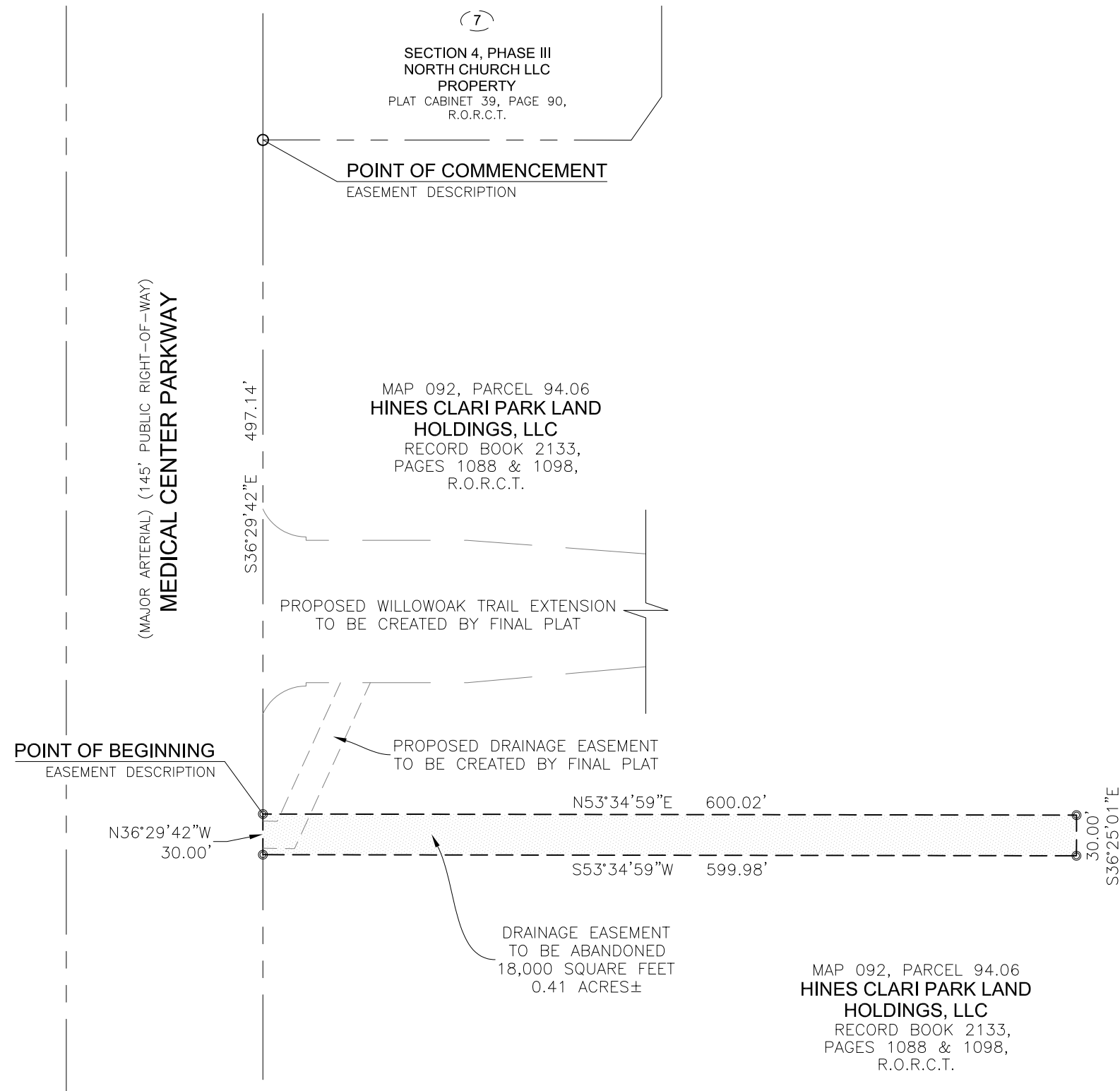
315 Woodland Street
Nashville, TN 37206
(615) 244-8591

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



GENERAL NOTES

1. THE PURPOSE OF THIS EXHIBIT IS TO SHOW THE PORTION OF A DRAINAGE EASEMENT BEING ABANDONED BY MANDATORY REFERRAL.
2. THIS EXHIBIT IS NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULES OF TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS, CHAPTER 0820-3-07. THIS EXHIBIT IS NOT TO BE USED FOR TRANSFER OF PROPERTY.

EASEMENT REFERENCE

BEING DRAINAGE EASEMENT NO. 2 RECORDED IN RECORD BOOK 314, PAGE 216, REGISTER'S OFFICE FOR RUTHERFORD COUNTY, TENNESSEE.

PROPERTY MAP REFERENCE

SUBJECT EASEMENT IS SITUATED ON A PORTION OF PARCEL NUMBER 94.06 AS SHOWN ON RUTHERFORD COUNTY PROPERTY MAP NUMBER 092.

DEED REFERENCE

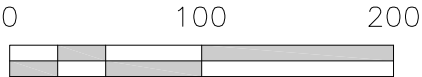
SUBJECT EASEMENT IS SITUATED ON A PORTION OF THE SAME PROPERTY CONVEYED TO HINES CLARI PARK LAND HOLDINGS, LLC BY WARRANTY DEED OF RECORD IN RECORD BOOK 2133, PAGE 1088 AND BY QUITCLAIM DEED OF RECORD IN RECORD BOOK 2133, PAGE 1098, REGISTER'S OFFICE FOR RUTHERFORD COUNTY, TENNESSEE.

LEGEND

- IRON ROD (OLD)
(W/CAP STAMPED "SEC")
- ⊙ NON-MONUMENTED POINT
- R.O.R.C.T. REGISTER'S OFFICE FOR
RUTHERFORD COUNTY,
TENNESSEE



(TN NAD83)



Nashville - Murfreesboro - Chattanooga
ragansmith.com

**CLARI PARK
DRAINAGE EASEMENT ABANDONMENT
FOR
HINES**

13th CIVIL DISTRICT OF RUTHERFORD COUNTY, CITY OF MURFREESBORO, TENNESSEE

Scale:	1" = 100'
Date:	APRIL 14, 2022
Approved By:	CJM
Revisions:	
	- -
	- -
	- -
	- -
	- -

Drawing Title:
**PARTIAL
EASEMENT
ABANDONMENT
EXHIBIT**

Drawing No.

1 OF 1

Project No.
07137-1559

**DRAINAGE EASEMENT ABANDONMENT
MEDICAL CENTER PARKWAY
MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE
EXISTING EASEMENT DESCRIPTION**

Being an existing 30-foot wide Drainage Easement lying and being in the Thirteenth (13th) Civil District of Rutherford County, city of Murfreesboro, Tennessee. Being Drainage Easement No. 2 as recorded in Record Book 314, page 216, Register's Office for Rutherford County, Tennessee (R.O.R.C.T.), said easement being situated on a portion of the same property conveyed to Hines Clari Park Land Holdings, LLC by Warranty Deed of record in Record Book 2133, page 1088 and by Quitclaim Deed of record in Record Book 2133, page 1098, R.O.R.C.T. and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod (old) with cap stamped "SEC" in the northeasterly right-of-way of Medical Center Parkway (145-foot right-of-way), said iron rod being the southwest corner of Lot 7 as shown on the final plat entitled "Section 4, Phase III, North Church LLC Property" of record in Plat Cabinet 39, page 90, R.O.R.C.T.;

Thence, with the northeasterly right-of-way of said Medical Center Parkway, South 36 degrees 29 minutes 42 seconds East, 497.14 feet to the northwest corner and **POINT OF BEGINNING** of the herein described easement;

Thence, leaving the northeasterly right-of-way of said Medical Center Parkway, crossing the Hines Clari Park Land Holdings, LLC property of record in Record Book 2133, pages 1088 and 1098, R.O.R.C.T. the following three (3) calls:

1. North 53 degrees 34 minutes 59 seconds East, 600.02 feet;
2. South 36 degrees 25 minutes 01 seconds East, 30.00 feet;
3. South 53 degrees 34 minutes 59 seconds West, 599.98 feet to a point in the northeasterly right-of-way of said Medical Center Parkway;

Thence, with the northeasterly right-of-way of said Medical Center Parkway, North 36 degrees 29 minutes 42 seconds West, 30.00 feet to the **POINT OF BEGINNING**, containing 18,000 square feet or 0.41 acres, more or less.

Being Drainage Easement No. 2 granted to the city of Murfreesboro as recorded in Record Book 314, page 216, Register's Office for Rutherford County, Tennessee.



. . . creating a better quality of life.

MEMORANDUM

DATE: April 19, 2022
TO: Amelia Kerr
FROM: Michele Emerson
RE: Drainage Easement Abandonment Clari Park

In response to your April 15 request, we have reviewed the drainage easement abandonment request for Clari Park and offer the following comments on behalf of the Engineering Department.

This drainage easement was granted to the city of Murfreesboro on September 12, 2003, by instrument of record in Record Book 314, page 216.. The request to abandon the drainage easement should be subject to submission and recording of a subdivision plat that relocates the easement as proposed by the applicant. The drainage easement abandonment and final plat recording should be done simultaneously.

In order to facilitate the abandonment process, the applicant should be prepared to provide legal descriptions and exhibits necessary for the City to draft the necessary legal documents as well as any recording fees. In addition, the drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.

C: Chris Griffith
David Ives

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Mandatory Referral for Abandonment of Drainage Easements 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 drainage 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 May 4, 2022.

Background Information

In this mandatory referral [2022-709], Council is being asked to consider the abandonment of a drainage easement along the west side of South Church Street south of Westgate Boulevard. A site plan has been submitted and approved for the redevelopment of a Mapco gas station at this location. The development plan hinges on the abandonment of this easement. The easement appears to be in excess and has no existing drainage facilities located within it. The City Engineer has reviewed this request and has no objection to it.

Planning Staff and the Planning Commission recommend that the City Council approve this request subject to the following conditions:

- 1) The drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.
- 2) 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.
- 3) The applicant will be responsible for 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 surplus easements so that property owners can more fully enjoy and utilize their property.

Improve Economic Development

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

Attachments:

1. Staff comments from May 4, 2022 Planning Commission meeting
2. Letter and exhibits from applicant
3. Memo from City Engineer

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
MAY 4, 2022
PROJECT PLANNER: AMELIA KERR**

- 4.a. Mandatory Referral [2022-709] to consider the abandonment of a drainage 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 drainage easement on property developed with a Mapco gas station. The request is to abandon a drainage easement as shown in the hatched area on the attached exhibit. This easement was dedicated with Warrior Drive Subdivision on December 11, 2006. This easement appears to be in excess and has no facilities located within the easement. 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.

The Murfreesboro Engineering Department has no objection to the proposed easement abandonment. A copy of the correspondence from the Engineering Department has been included in the agenda materials. Staff recommends that approval of this request be made 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.
- 2) The drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.
- 3) The applicant will be responsible for paying any recording fees.

The Planning Commission will need to discuss this application and make a recommendation to the City Council. 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:

Tax Map/Group/Parcel: 113K A 002.00 Address (if applicable): 2430 S. Church Street

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

Type of Mandatory Referral: Drainage 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: TN

Zip Code: 37215

Email Address: josh@fulmerlucas.com

Phone Number: 615-477-9440

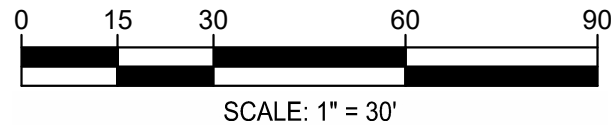
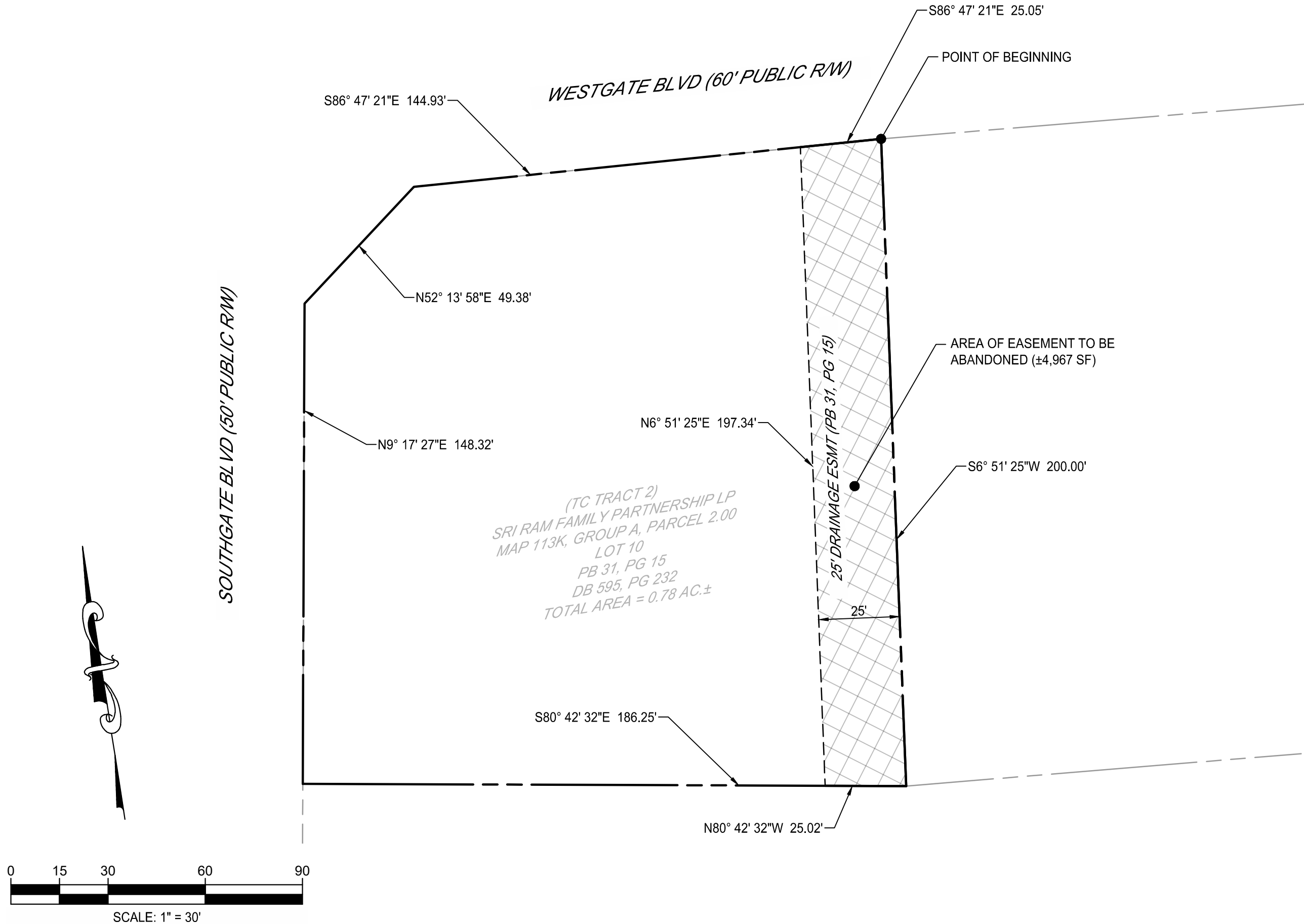
Required Attachments:

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

Applicant Signature

Date

4/8/2022



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

DRAINAGE
EASEMENT
ABANDONMENT
EXHIBIT

EXH

AREA OF EASEMENT TO BE ABANDONED (+/- 4,967 SF)

BEGINNING AT THE NORTHEAST CORNER OF THE PROPERTY WITH PARCEL ID 113K-A-002.00-000,
THENCE WITH THE FOLLOWING CALLS: SOUTH 06 DEG 51 MIN 25 SEC WEST, 200.00 FEET TO A POINT;
THENCE, NORTH 80 DEG 42 MIN 32 SEC WEST, 25.02 FEET TO A POINT; THENCE, NORTH 06 DEG 51 MIN
25 SEC EAST, 197.34 FEET TO A POINT; THENCE, SOUTH 86 DEG 47 MIN 21 SEC EAST, 25.05 FEET TO THE
POINT OF BEGINNING.



. . . creating a better quality of life.

MEMORANDUM

DATE: April 20, 2022
TO: Amelia Kerr
FROM: Michele Emerson
RE: Drainage Easement Abandonment 2430 S. Church Street

In response to your April 14, 2022 request, we have reviewed the drainage easement abandonment request for 2430 S. Church Street and offer the following comments on behalf of the Engineering Department.

This drainage easement was recorded with Warrior Drive Subdivision in plat book 31 page 15. This easement appears to be in excess and has no facilities located within the easement.

In order to facilitate the abandonment process, the applicant should be prepared to provide legal descriptions and exhibits necessary for the City to draft the necessary legal documents as well as any recording fees. In addition, the drainage easement abandonment should be subject to the final approval of the legal documents by the City Attorney.

C: Chris Griffith
David Ives

COUNCIL COMMUNICATION

Meeting Date: 03/07/2022

Item Title: Use of Competitive Sealed Proposals for Various City Departments

Department: Purchasing

Presented by: Cathy Smith, 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

Using the Request for Competitive Sealed Proposals (RFCSP) method for certain purchases enables the department to have more flexibility with procurements for which price is not the only determining factor.

Staff Recommendation

Approve the use of RFCSP process for procurement of services for the Airport, Parks and Recreation, Employee Services, and City Schools.

Background Information

There are several upcoming projects in which it would better benefit the departments by using this method of procurement, which allows for evaluations. These are:

Airport-Airport Fuel and Fuel Farm Design

Parks and Recreation-Ninja Warrior and Outdoor Fitness Design

City Schools-Box Truck for Maintenance staff (numerous varieties and options made this method preferable)

Pursuant to state statute and City Code, Council approval is required to use the RFCSP process for procurement.

Council Priorities Served

Responsible budgeting

By using this procurement method, the Purchasing Department can assist staff in achieving a more qualified pool of bid proposals, which allows staff to choose an experienced vendor that provides the required services as well as beneficial pricing.

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: FY23 Recommended Water Rate Increase
[2ND Reading]

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

MWRD has received its biannual cost of service study (COSS) for FY21 and integrated the anticipated recoveries (revenues to expenses) into an FY26 pro forma. The pro forma demonstrates a need for water rate adjustment in the FY23 budget.

Recommendation

Adopt Ordinance 22-O-09 on second reading increasing minimum monthly charge for water only on 5/8", 1", 1 1/2", and 2" water meters.

Background Information

Jackson Thornton provided staff MWRD's FY21 Cost of Service Study and FY26 pro forma. The results of that report were provided under first reading of the referenced ordinance and recommend the minimum monthly fee of the water be adjusted in order to avoid under-recovery in FY26.

Council Priorities Served

Responsible budgeting

Establishing costs for service in the City's water and sewer enterprise funds is fiduciarily responsible. Determining future expenses as compared to projected revenues also allows minor rate adjustments over time to afford customers the ability to budget appropriately for future water and sewer bills.

Attachments

Ordinance 22-O-09

ORDINANCE 22-O-09 amending Chapter 33, Water and Sewers, Section 33-1 of the Murfreesboro City Code, dealing with minimum monthly water charges and minimum monthly sewer charges.

WHEREAS, the City of Murfreesboro should have water and sewer rates, fees and charges that generate sufficient funds to retire indebtedness for existing and planned capital improvements of the Water Resources Department and to meet its normal operating expenses; and,

WHEREAS, the City of Murfreesboro Cost of Service Study and Pro Forma prepared by Jackson Thornton Utilities determined the water rates were insufficient in meeting the system’s future revenue requirements; and,

WHEREAS, the Water and Sewer Board studied and decided to recommend these charges to the City Council on March 22, 2022.

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

SECTION 1. Section 33-1, Water and Sewer Rates and Charges, of the Murfreesboro City Code is hereby amended at subsection (B) by substituting in lieu thereof the following:

MINIMUM MONTHLY WATER CHARGES

Meter Size	Charge*	Allowance, gallons
5/8 inch	\$ 9.72	--
1 inch	\$ 21.54	--
1 1/2 inch	\$ 45.08	--
2 inch	\$ 70.07	--
3 inch	\$ 164.40	--
4 inch	\$ 328.80	--
6 inch	\$ 685.00	--

*Tax not included

SECTION 2. That this Ordinance shall take effect for bills printed on and after July 1, 2022, following its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

Shane McFarland, Mayor

1st reading

2nd reading

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:

Adam F. Tucker

43A2035E51F0401...

Adam Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Zoning for property along Northwest Broad Street
[Second Reading]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Removal of approximately 238 acres located along Northwest Broad Street from the GDO-1 zoning overlay district.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

Background Information

The City of Murfreesboro presented a zoning application [2022-409] for approximately 238 acres located along Northwest Broad Street to be removed from the GDO-1 (Gateway Design Overlay 1) zoning district. The subject property is proposed to be developed by Legacy Sports Tennessee. The areas proposed to be removed from the GDO-1 zone include elements of the proposed development that would seem impractical to include in the GDO, including the outdoor recreation fields and the large buildings housing the indoor recreation facilities. Approximately 20.8 acres of the subject property fronting along Northwest Broad Street, proposed to be developed with retail, restaurant, and hospitality uses, are proposed to remain in the GDO-1. During its regular meeting on May 4, 2022, the Planning Commission conducted a public hearing on this matter and voted to recommend its approval.

On May 5, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This zoning action will help to facilitate the development of Legacy Sports Tennessee a sports and entertainment facility with ancillary retail and hospitality uses, which

will create employment opportunities for the community and generate tax revenue for the City.

Establish Strong City Brand

The proposed Legacy Sports Tennessee development will add to Murfreesboro's already strong reputation as a sports and recreation destination.

Attachments:

Ordinance 22-OZ-08

ORDINANCE 22-OZ-08 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 238 acres along Northwest Broad Street by removing it from the GDO-1 Zoning Overlay District; City of Murfreesboro, applicant, [2022-409].

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

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

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be zoned and removed from the Gateway Design Overlay One (GDO-1) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

ATTEST:

Jennifer Brown
City Recorder

Shane McFarland, Mayor

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

43A2035E51F9401...
Adam F. Tucker
City Attorney

SEAL

Ordinance 22-OZ-08

RS-15

CITY LIMITS



Area Removed from the GDO-1 Overlay

Area remaining in the GDO-1 Overlay

RIVER RD

OAKLEIGH DR

RS-15

RS-15

CITY LIMITS

RYAN DR

LONGDR

SHANNON DR

L-I

41
1

41
1

41
1

41
1

NW BROAD ST

OLD NASHVILLE HWY

REYNOLDS DR



COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Amending the Zoning Ordinance
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Ordinance amending the Zoning Ordinance regarding industrial accessory structures, recreation field lighting, and floodplain regulations.

Staff Recommendation

Enact the ordinance amendment.

The Planning Commission recommended approval of this ordinance amendment.

Background Information

The Planning Department presented an ordinance amendment [2022-801] to amend the Zoning Ordinance as it pertains to the height of industrial accessory structures, the height of lighting fixtures at recreation fields, and the City's floodplain management regulations. During its regular meeting on March 2, 2022, the Planning Commission conducted a public hearing on this matter and then voted to defer action. On March 16, 2022, the Planning Commission voted to approve the request subject to several changes to the text. The attached ordinance amendment has incorporated the changes recommended by the Planning Commission.

On May 5, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

The proposed language allows for additional flexibility in the height of industrial accessory structures, removing a regulatory hurdle for potential industrial developments whose operations require taller accessory structures, such as storage silos.

Establish Strong City Brand

Murfreesboro is quickly becoming a destination for sports enthusiasts. Amending the ordinance to address the height of lighting fixtures at recreation fields will provide clear guidance on this topic for future developers of such outdoor sports facilities.

Maintain Public Safety

The City's floodplain management regulations promote the safety and security of people and property. Maintaining accurate, clear, and user-friendly floodplain management regulations helps communicate to the public the City's requirements in order to minimize damage and destruction in times of flooding.

Attachments:

Ordinance 22-O-06

ORDINANCE 22-O-06 amending Murfreesboro City Code Appendix A—Zoning, Sections 2, 18, 25, 34, Chart 2, and Chart 2 Endnotes, dealing with maximum building height for accessory structures in industrial districts, maximum height of light fixtures at recreation fields and regulations pertaining to development in regulatory floodways, City of Murfreesboro Planning Department, applicant [2022-801].

WHEREAS, the City of Murfreesboro participates in the National Flood Insurance Program; and,

WHEREAS, there is an occasional need to modify the floodplain and the regulatory floodway with the preliminary approval of the Federal Emergency Management Agency.

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

SECTION 1. Appendix A, Section 2, Interpretation and Definitions, of the Murfreesboro City Code is hereby amended by inserting the following definition alphabetically into the list of definitions:

Recreation field: An area developed with open-air fields or courts intended for athletic or recreational purposes and/or competitive games or sports. This includes, but is not limited to, a baseball field, football field, soccer field, and tennis courts. Recreation fields may contain accessory structures, including, but not limited to, fences, restrooms, concession stands, storage buildings, lighting fixtures, bleachers, and grandstands. Recreation fields may be a principal use, or they may be accessory to other uses, such as an institutional group assembly use or a commercial outdoor amusement use.

SECTION 2. Appendix A, Section 18, Regulations of General Applicability, of the Murfreesboro City Code is hereby amended at subsection (G)(14) by deleting it in its entirety and substituting in lieu thereof the following:

- (14) Light fixtures for recreation fields shall comply with all applicable lighting requirements listed in this article, except for any conflicting regulation regarding fixture height. Additionally, light fixtures for recreation fields shall be designed so that the light emitted is directed downward towards the fields themselves and not outward. Such light fixtures shall be designed to minimize glare and light spillover onto adjacent properties and public rights-of-way. Evidence of compliance with these and all applicable lighting standards shall be submitted for review during the site plan review process. Additional standards may be required by the Planning Commission and/or the Planning Director during the site plan review process (and/or by the Board of Zoning Appeals, during the special use permit process, if applicable) to minimize glare and light spillover onto adjacent properties and public rights-of-way, including, but not limited to, additional shielding, bulb type, or other types of modern technology used for this purpose.

Light fixtures for recreation fields shall be subject to the following maximum height requirements:

- Light fixtures accessory to recreation fields, where such recreation field use is permitted as a principal use by right, shall not exceed 80 feet in height. Light fixtures accessory to recreation fields, where such recreation field use is permitted as a principal use by special use permit, may be approved up to a maximum height of 80 feet by the Board of Zoning Appeals in its granting of the special use permit.
- Light fixtures accessory to recreation fields that are accessory to an institutional group assembly use, where such institutional group assembly use is permitted by right, shall not exceed 80 feet in height. Light fixtures accessory to recreation fields that are accessory to an institutional group assembly use, where such institutional group assembly use requires a special use permit, may be approved up to a maximum height of 80 feet by the Board of Zoning Appeals in its granting of the special use permit.
- Light fixtures accessory to recreation fields that are accessory to a commercial outdoor amusement use, where such commercial outdoor amusement use is permitted by right, shall not exceed 80 feet in height. Light fixtures accessory to recreation fields that are accessory to a commercial outdoor amusement use, where such commercial outdoor amusement use requires a special use permit, may be approved up to a maximum height of 80 feet by the Board of Zoning Appeals in its granting of the special use permit. However, light fixtures for recreation fields accessory to commercial outdoor amusement uses (whether such use is permitted by right or by special use permit) may have a maximum height of 100 feet if they are located on a lot of at least 50 acres and all light fixtures exceeding 80 feet in height are located at least 300 feet from the nearest property zoned or used for residential purposes, as measured from the property line of any such residential property to the base of the light fixture.

The above standards pertaining to the height of light fixtures for recreation fields shall not be superseded by the maximum heights listed in Chart 2 of this article, any other provision in Section 18 of this article pertaining to light fixture height, or any overlay district regulations except for any applicable height restrictions in the Airport Overlay District.

SECTION 3. Appendix A, Section 25, Temporary and Accessory Structures and Uses, of the Murfreesboro City Code is hereby amended at subsection (E)(4) by deleting it in its entirety and substituting in lieu thereof the following:

- (4) no accessory structure shall exceed the height limitations of the district in which such structure is located except for the following:
 - (a) In the L-I, G-I, and H-I districts, the maximum building height for accessory structures for uses classified as industrial in Chart 1 of this article shall be 100 feet. The following minimum building setback requirements shall apply to any such accessory structure that exceeds 75 feet in height:
 - [1] A minimum distance equal to its building height from any property line.

[2] A minimum distance of 600 feet from any contiguous property zoned or used for residential purposes (as measured from the lot line of any contiguous residential property).

(b) lighting fixtures accessory to recreation fields shall be subject to the height requirements denoted for such in Section 18 of this article.

SECTION 4. Appendix A, Section 34, Floodplain Zoning, of the Murfreesboro City Code is hereby amended at Article V, Provisions for Flood Hazard Reduction, by deleting subsections (C) through (H) in their entirety and substituting in lieu thereof the following and adding new subsection (I) as follows:

(C) *Standards for Special Flood Hazard Areas with Established Base Flood Elevations and With Floodways Designated.* Located within the Special Flood Hazard Areas established in Article III, Section B, are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris, or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements or other development within the adopted regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof;
- (2) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the applicant first applies for a conditional letter of map revision (CLOMR) and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of FEMA;
- (3) ONLY if Article V, Section C, provisions (1) through (2) are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Article V, Sections A and B.

(D) *Standards for Areas of Special Flood Hazard Zones AE with Established Base Flood Elevations but Without Floodways Designated.* Located within the Special Flood Hazard Areas established in Article III, Section B, where streams exist with base flood data provided but where no floodways have been designated (Zones AE), the following provisions apply:

- (1) Require until a regulatory floodway is designated, that no new construction, substantial, or other development, including fill shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated through hydrologic and hydraulic analyses performed that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.
- (2) A community may permit encroachments within Zones AE on the community's FIRM, that would result in an increase in the water surface elevation of the base flood, provided that the applicant first applies for a conditional letter of map revision (CLOMR) and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of FEMA;

- (3) ONLY if Article V, Section D, provisions (1) through (2) are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Article V, Sections A and B.

(E) *Standards for streams without established base flood elevations or floodways (A Zones)*. Located within the areas of special flood hazard areas established in Article III, subsection (B), where streams exist, but no base flood data has been provided and where a floodway has not been delineated, the following provisions shall apply:

- (1) The Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any Federal, State or other sources, including data developed as a result of these regulations (see 2 below), as criteria for requiring that new construction, substantial improvements, or other development in approximate A Zones meet the requirements of Article V subsections (A) and (B).
- (2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.
- (3) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least one foot (1') above the highest adjacent grade (as defined in Article II). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in Article IV subsection (B). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of Article V subsection
- (4) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point with the City of Murfreesboro, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
- (5) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of Article V subsections (A) and (B). Within approximate A Zones, require that those subsections of Article V subsection (B) dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are maintained and manufactured homes provisions are complied with as required.

(F) *Standards For Areas of Shallow Flooding (Zone AO)*. Located within the Special Flood Hazard Areas established in Article III, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article V, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) The lowest floor (including basement) shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of one (1) foot above the highest adjacent grade; or at least three (3) feet above the highest adjacent grade, if no depth number is specified.

- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article V, Section F(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article IV, Section B(1) (c) and Article V, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(G) *Standards For Areas of Shallow Flooding (Zone AH).* Located within the Special Flood Hazard Areas established in Article III, Section B, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to meeting the requirements of Article V, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(H) *Standards for areas protected by flood protection system (A-99 Zones).* Located within the areas of special flood hazard established in Article III are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations have not been determined. Within these areas (A-99 Zones) all provisions of Article IV and Article V subsection (A) shall apply.

(I) *Standards for Unmapped Streams.* Located within Murfreesboro, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:

- (1) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the locality.
- (2) When a new flood hazard risk zone, and Base Flood Elevation and floodway data is available, new construction and substantial improvements shall meet the standards established in accordance with Articles IV and V.
- (3) ONLY if Article V Section I, provisions (1) through (2) are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Article V, Sections A and B.

SECTION 5. Appendix A, Chart 2, Minimum Lot Requirements, Minimum Yard Requirements and Land Use Intensity Ratios, of the Murfreesboro City Code is hereby amended by deleting it in its entirety and substituting in lieu thereof the attached Chart 2.

Changes include separating L-I, G-I, and H-I each into “industrial uses” and “all other uses”, adding Superscript “8” in the “Maximum Height” column for industrial uses in the L-I, G-I, and H-I rows, and deleting Superscript “10” for the “Minimum Side Yard Requirement” column in the RS-8 row.

SECTION 6. Appendix A, Chart 2 Endnotes, Minimum Lot Requirements, Minimum Yard Requirements and Land Use Intensity Ratios, of the Murfreesboro City Code is hereby amended by deleting endnote 8 in its entirety and substituting in lieu thereof the following:

8. See Section 25 of this article for applicable height regulations for accessory structures.”

SECTION 7. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

ATTEST:

Jennifer Brown
City Recorder

Shane McFarland, Mayor

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

43A2033E51F9401...
Adam F. Tucker
City Attorney

SEAL

	Minimum Lot Requirements		Minimum Yard Requirements ^{[5][17][25]}					Land Use Intensity Ratios			
DISTRICT AND USE	Area (Sq. Ft.)	Width (Ft.)	Front ^[38] (Ft.)	Side (Ft.)	Rear (Ft.)	Maximum Height ^[16] (Ft.)	Maximum Gross Density ^[2] (D.U./Acre)	Maximum F.A.R.	Minimum L.S.R.	Minimum O.S.R.	Maximum Lot Coverage (percent)
RS-15 DISTRICT											
1. Dwellings and other uses permitted	15,000	75 ^[12]	40	12.5	30	35	2.9	none	none	none	25
RS-12 DISTRICT											
1. Dwellings and other uses permitted	12,000	70 ^[12]	35	10	25	35	3.63	none	none	none	25
RS-10 DISTRICT											
1. Dwellings and other uses permitted	10,000	65 ^[12]	35	10	25	35	4.4	none	none	none	25
RS-8 DISTRICT											
1. Dwellings and other uses permitted ^[28]	8,000	55 ^[12]	35 ^{[1][29]}	5	20	35	5.4	none	none	none	30
RS-6 DISTRICT											
1. Dwellings and other uses permitted ^[28]	6,000	50 ^[12]	35 ^{[1][29]}	5	20	35	7.2	none	none	none	50
RS-4 DISTRICT											
1. Dwellings and other uses permitted ^[28]	4,000	40 ^[12]	35 ^{[1][29]}	5	20	35	10.8	none	none	none	40
R-D DISTRICT											
1. Single-family detached dwellings and other uses permitted except ^[28]	8,000	55 ^[12]	35 ^{[1][29]}	5	25	35	5.4	none	none	none	30
2. Two-family dwellings	8,000	55 ^[12]	30 ^[1]	5	25	35	10.9	none	none	none	30
3. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	4,000	27 ^[12]	35 ^[1]	10 ^[7]	25	35	10.9	none	none	none	none

	Minimum Lot Requirements		Minimum Yard Requirements ^{[5][17][25]}					Land Use Intensity Ratios			
DISTRICT AND USE	Area (Sq. Ft.)	Width (Ft.)	Front ^[38] (Ft.)	Side (Ft.)	Rear (Ft.)	Maximum Height ^[16] (Ft.)	Maximum Gross Density ^[2] (D.U./Acre)	Maximum F.A.R.	Minimum L.S.R.	Minimum O.S.R.	Maximum Lot Coverage (percent)
RM-12 DISTRICT											
1. Single-family detached dwellings and other uses permitted except ^[28]	7,500	50 ^[12]	35 ^{[1][37]}	5	25	35	5.8	none	none	none	30
2. Two-family dwellings	7,500	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
3. Three-family dwellings	11,250	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
4. Four-family dwellings	15,000	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
5. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	3,750	18 ^[12]	35 ^{[1][37]}	10 ^[7]	25	35	11.6	none	none	none	none
6. Multiple-family dwellings and Single-family attached townhouse dwellings ^[30]	FN ^[14]	50 ^[12]	30 ^[1]	FN ^[3]	25	45 ^[11]	FN ^[14]	none	none	FN	none
RM-16 DISTRICT											
1. Single-family detached dwellings and other uses permitted except ^[28]	6,000	50 ^[12]	35 ^{[1][37]}	5	25	35	7.3	none	none	none	35
2. Two-family dwellings	6,000	50 ^[12]	30 ^[1]	5	25	35	14.5	none	none	none	35
3. Three-family dwellings	9,000	50 ^[12]	30 ^[1]	5	25	35	14.5	none	none	none	30
4. Four-family dwellings	12,000	50 ^[12]	30 ^[1]	5	25	35	14.5	none	none	none	30
5. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	3,000	18 ^[12]	35 ^{[1][37]}	10 ^[7]	25	35	14.5	none	none	none	none
6. Multiple-family dwellings and Single-family attached townhouse dwellings ^[30]	FN ^[9]	50 ^[12]	30 ^[1]	FN ^[3]	25	45 ^[11]	FN ^[9]	none	none	FN	none
RS-A DISTRICT^[35]											
1. Single-family detached and single-family attached or detached with zero-lot line (max. 2 units attached) ^{[7][28][31]}	3,000	30 ^[12]	35 ^{[1][37]}	5	20	35	14.5	none	none	none	none
2. Single-family attached townhouse on one lot or individual lots (Suburban Type) ^{[30][32][33]}	2,000 ^[36]	20 ^[36]	35 ^[1]	5	20	35	12	1	0.5	0.25	none
3. Single-family attached townhouse on one lot or individual lots (Urban Type) ^{[30][32][33][34]}	2,000 ^[36]	20 ^[36]	20 ^{[1][34]}	5	20	45 ^[34]	12	1	none	none	none

Ordinance 22-O-06 Attachment

Chart 2
Page 3 of 6

Revised _____

	Minimum Lot Requirements		Minimum Yard Requirements ^{[5][17][25]}					Land Use Intensity Ratios			
	Area (Sq. Ft.)	Width (Ft.)	Front ^[38] (Ft.)	Side (Ft.)	Rear (Ft.)	Maximum Height ^[16] (Ft.)	Maximum Gross Density ^[2] (D.U./Acre)	Maximum F.A.R.	Minimum L.S.R.	Minimum O.S.R.	Maximum Lot Coverage (percent)
DISTRICT AND USE											
4. Other uses permitted	6,000	30 ^[12]	30 ^[1]	10	20	35	none	none	none	none	35

	Minimum Lot Requirements		Minimum Yard Requirements ^{[5][17][25]}					Land Use Intensity Ratios			
DISTRICT AND USE	Area (Sq. Ft.)	Width (Ft.)	Front ^[38] (Ft.)	Side (Ft.)	Rear (Ft.)	Maximum Height ^[16] (Ft.)	Maximum Gross Density ^[2] (D.U./Acre)	Maximum F.A.R.	Minimum L.S.R.	Minimum O.S.R.	Maximum Lot Coverage (percent)
R-MO DISTRICT											
1. Mobile homes	4,000	40 ^[12]	25 ^[1]	10	15	12	10.9	none	none	none	none
CM-R DISTRICT											
1. Single-family detached	5,000	50 ^[12]	35 ^{[1][29]}	10	20	35	8.7	none	none	none	none
2. Two-family dwellings	5,000	50 ^[12]	30 ^[1]	10	20	35	16	none	none	none	none
3. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	2,500	30	35 ^[1]	10	20	35	16	none	none	none	none
4. Single-family attached townhouse dwellings ^[30]	2,500	50 ^[12]	30 ^[1]	10	20	35	16 ^[9]	0.3	0.48	0.7	none
5. Four-family dwellings	15,000	50 ^[12]	30 ^[1]	5	25 ^[4]	35	11.6	none	none	none	30
6. Medical offices, clinics, and other related uses	none	50 ^[12]	30 ^[1]	10	20	60	none	none	none	none	none
CM DISTRICT											
1. Medical offices, clinics, and other related uses	none	50 ^[12]	30 ^[1]	10	20	60	none	none	none	none	none
CM-RS-8 DISTRICT											
1. Single-family detached	8,000	50 ^[12]	35 ^{[1][29]}	10	20	35	5.4	none	none	none	none
2. Medical offices, clinics, and other related uses	none	50 ^[12]	30 ^[1]	10	20	60	none	none	none	none	none
OG-R DISTRICT											
1. Offices and other uses except	5,000	50 ^[12]	30 ^[1]	10	20	35	none	0.3	0.28	0.6	none
2. Single-family detached	5,000	50 ^[12]	35 ^{[1][29]}	10	20	35	8.7	none	none	none	none
3. Two-family dwellings	5,000	50 ^[12]	30 ^[1]	10	20	35	17.4	none	none	none	none
4. Three-family dwellings	7,500	50 ^[12]	30 ^[1]	10	20	35	17.4	none	none	none	30
5. Four-family dwellings	12,000	50 ^[12]	30 ^[1]	10	20	35	14.5	none	none	none	30
6. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	2,500	25 ^[12]	35 ^[1]	10	20	35	17.4	none	none	none	none
OG DISTRICT											
1. Offices and other uses	5,000	50 ^[12]	30 ^[1]	10	20	35	none	0.3	0.28	0.6	none

	Minimum Lot Requirements		Minimum Yard Requirements ^{[5][17][25]}					Land Use Intensity Ratios			
DISTRICT AND USE	Area (Sq. Ft.)	Width (Ft.)	Front ^[38] (Ft.)	Side (Ft.)	Rear (Ft.)	Maximum Height ^[16] (Ft.)	Maximum Gross Density ^[2] (D.U./Acre)	Maximum F.A.R.	Minimum L.S.R.	Minimum O.S.R.	Maximum Lot Coverage (percent)
CL DISTRICT											
1. All commercial uses except	none	none ^[13]	42	10 ^[6]	20	35	none	none	none	none	none
2. Single-family detached dwellings ^[28]	7,500	50 ^[12]	35 ^{[1][29]}	5	25	35	5.8	none	none	none	30
3. Two-family dwellings	7,500	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
4. Three-family dwellings	11,250	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
5. Four-family dwellings	15,000	50 ^[12]	30 ^[1]	5	25	35	11.6	none	none	none	30
6. Single-family attached or detached with zero lot line (max. 2 units attached) ^{[7][31]}	3,750	18 ^[12]	35 ^[1]	10 ^[7]	25	35	11.6	none	none	none	none
CF DISTRICT											
1. All uses	none	none ^[13]	42	10 ^[15]	20 ^[15]	45	none	none	none	none	none
CH DISTRICT											
1. All uses	none	none ^[13]	42	10 ^[6]	20	75	none	none	none	none	none
MU DISTRICT											
1. Multiple family dwellings	5 acres	100 ^[20]	15 ^[21]	10 ^[22]	20 ^[23]	75	25 ^[24]	none	none	none	none
2. All commercial uses except mixed use	none	100 ^[20]	15 ^[21]	10 ^[22]	20 ^[23]	150	none	none	none	none	none
3. Mixed uses (vertical mix)	none	100 ^[20]	15 ^[21]	10 ^[22]	20 ^[23]	150	25 ^[24]	none	none	none	none
CBD DISTRICT											
1. All uses except	none	none ^[13]	none	none	none	75	none	none	none	none	none
2. Multiple-family dwellings	none	none ^[13]	none	none	none	75	FN ^[8]	none	none	none	none
H-I DISTRICT											
1. Industrial uses	none	50 ^[13]	42	10	20	75 ^[8]	none	none	none	none	none
2. All other permitted uses	none	50 ^[13]	42	10	20	75	none	none	none	none	none
G-I DISTRICT											
1. Industrial uses	none	50 ^[13]	42	10	20	75 ^[8]	none	none	none	none	none
2. All other permitted uses	none	50 ^[13]	42	10	20	75	none	none	none	none	none
L-I DISTRICT											
1. Industrial uses	none	50 ^[13]	42	10	20	75 ^[8]	none	none	none	none	none
2. All other permitted uses	none	50 ^[13]	42	10	20	75	none	none	none	none	none

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Resolution 22-R-12 – Unclaimed Property Request

Department: Finance

Presented by: Jennifer Brown, Finance Director

Requested Council Action:

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

Summary

Annual request to State to return unclaimed property remitted by the City.

Staff Recommendation

Approve Resolution 22-R-12

Background Information

The City remits unclaimed property to the State on an annual basis. Upon request, the State returns unclaimed property to the City after the required holding period has been met and the property remains unclaimed. Upon return, the City accepts liability for future claims and report such claims annually to the State.

Funds are returned to the City and the liability for future claims is generally low. To date we have not had a claim for funds after return from the State.

Council Priorities Served

Responsible budgeting

Funds held by the City are available for investment earnings in the City's General Fund.

Fiscal Impacts

Varies, funds are returned to the City with relatively marginal investment returns, and the liability for future claims is generally low.

Attachment:

Resolution 22-R-12

RESOLUTION 22-R-12 requesting unclaimed balance of accounts remitted to State Treasurer under Unclaimed Property Act.

WHEREAS, Tennessee Code Annotated Section 66-29-102 and Section 66-29-123, provide that a municipality or county in Tennessee may request payment for the unclaimed balance of funds reported and remitted by or on behalf of the local government and its agencies if it exceeds \$100, less a proportionate share of the cost of administering the program; and,

WHEREAS, the City of Murfreesboro and/or its agencies have remitted accounts to the State of Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act for the report year ending December 31, 2021; and,

WHEREAS, the City of Murfreesboro agrees to meet all of the requirements of Tennessee Code Annotated Section 66-29-101 et seq. and to accept liability for future claims against accounts represented in funds paid to it and to submit an annual report of claims received on these accounts to the State Treasurer by September 1 each year; and,

WHEREAS, it is agreed that the City of Murfreesboro will retain a sufficient amount to ensure prompt payment of allowed claims without deduction for administrative costs or service charge and that the balance of funds will be deposited in the City’s General Fund.

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

SECTION 1. The City of Murfreesboro requests the State Treasurer to pay the unclaimed balance of funds remitted for the 2021 report year to it in accordance with the provisions of Tennessee Code Annotated Section 66-29-121. A list of remittances made by or on behalf of the City and its agencies is attached.

SECTION 2. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

43A2035E51F9401...
Adam F. Tucker
City Attorney

I, Jennifer Brown, hereby certify that this is a true and exact copy of the foregoing Resolution which was approved and adopted at a meeting held on the ____ day of _____, 20____, the original of which is on file in the office of the City Recorder of the City of Murfreesboro, Tennessee. I further certify that the City Council, which includes the Mayor, consists of seven (7) members, and that ____ members voted in favor of the Resolution.

WITNESS my official signature and the seal of said Municipality this ____ day of _____, 20____.

JENNIFER BROWN, CITY RECORDER

(SEAL)

05/04/22

REMITTANCES FILED BY OR ON BEHALF OF LOCAL GOVERNMENT AND ITS AGENCIES

Name of County/Municipality City of Murfreesboro

Mailing Address P. O. Box 1139
Murfreesboro TN 37133-1139

Name of Holder or Agency Submitting Report and Remittance	Holder Identification Number	Amount of Remittance (If Available)	Date of Remittance (If Available)	Federal employer tax ID #
City of Murfreesboro	15830	16832.60	10/14/21	62-6000374

I certify that any agencies included in this request are chartered under this local government.

615-893-5210

Phone Number

Jennifer Brown

Printed Name

Date _____

(Signature)

Finance Director

(Title)

This report and accompanying Resolution may be filed with the Unclaimed Property office of the State Treasury Department at any point between the actual remittance of unclaimed accounts and the June 1 eighteen months following.

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Schools Budget Amendment #9—Childcare Stabilization Grant

Department: City Schools

Presented by: Trey Duke, Director

Requested Council Action:

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

Summary

Schools amendment # 9 to the FY22 Extended School Program (ESP) fund budgeting for a new ARA Childcare Stabilization grant.

Staff Recommendation

Approve Resolution 22-R-13 amending the FY22 Schools ESP budget as presented.

Background Information

City Schools Extended School Program was recently awarded \$2,519,318 from the Department of Health and Human Services. A portion of the award, \$321,000, must be utilized to pay bonuses for full-time and part-time childcare workers as a condition of receiving the grant. Remaining funds will be used to make upgrades to several playgrounds, purchase instructional materials and supplies for ESP, and cover additional wages and related benefits.

The MCS Board approved the attached budget amendment to the FY22 ESP fund on May 10, 2022. The ARA Childcare Stabilization terms require that funding be spent by September 30, 2023.

Council Priorities Served

Responsible budgeting

Utilization of federal grants is a cost effective means of providing critical services to the community.

Fiscal Impact

The ARA Childcare Stabilization grant will be budgeted in the ESP fund to recognize new revenues and expenditures related to the grant award.

Attachments

1. Resolution 22-R-13
2. Exhibit A: MCS Budget Amendment # 9

RESOLUTION 22-R-13 amending the 2021-2022 Murfreesboro City Schools Budget (9th Amendment).

WHEREAS, the City Council adopted Resolution 21-R-19 on May 20, 2021 to implement the 2021-2022 Murfreesboro City Schools Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the 2021-2022 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

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

SECTION 1. The 2021-2022 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on Exhibit A.

SECTION 2. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

Extended School Program Fund 146
Fiscal Year 2021-2022

Resolution No.

22-R-13

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
COVID ARA Child Care Stabilization	-	2,519,318	2,519,318
Total Increase in Revenues	\$ -	\$ 2,519,318	\$ 2,519,318
<u>Expenditures</u>			
Community Services - ESP Salaries	3,788,801	4,538,801	750,000
Community Services - Social Security	239,361	285,861	46,500
Community Services - Retirement	122,877	157,877	35,000
Community Services - Medicare	56,463	67,338	10,875
Community Services - Materials & Supplies	329,258	506,201	176,943
Community Services - Capital Outlay	116,200	1,616,200	1,500,000
Total Increase in Expenditures	\$ 4,652,960	\$ 7,172,278	\$ 2,519,318

CHANGE IN FUND BALANCE (CASH)

To budget the American Rescue Act (ARA) Childcare Stabilization grant of \$2,519,318 in the Extended School Program (ESP) fund. This grant includes \$321,000 budgeted for bonuses to full-time and part-time ESP child care workers. The difference, \$2,198,318, is budgeted for new playground equipment at six schools, instructional materials and supplies, and an increase to the ESP Salary and benefits line-items.

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Planning Commission Recommendations

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Scheduling matters previously heard by the Planning Commission for public hearings before Council.

Staff Recommendation

Schedule public hearings for the items below on June 23, 2022.

Background Information

During its regular meeting on May 4, 2022, the Planning Commission conducted public hearings on the items listed below. After the public hearings, the Planning Commission discussed the matters and then voted to recommend their approval.

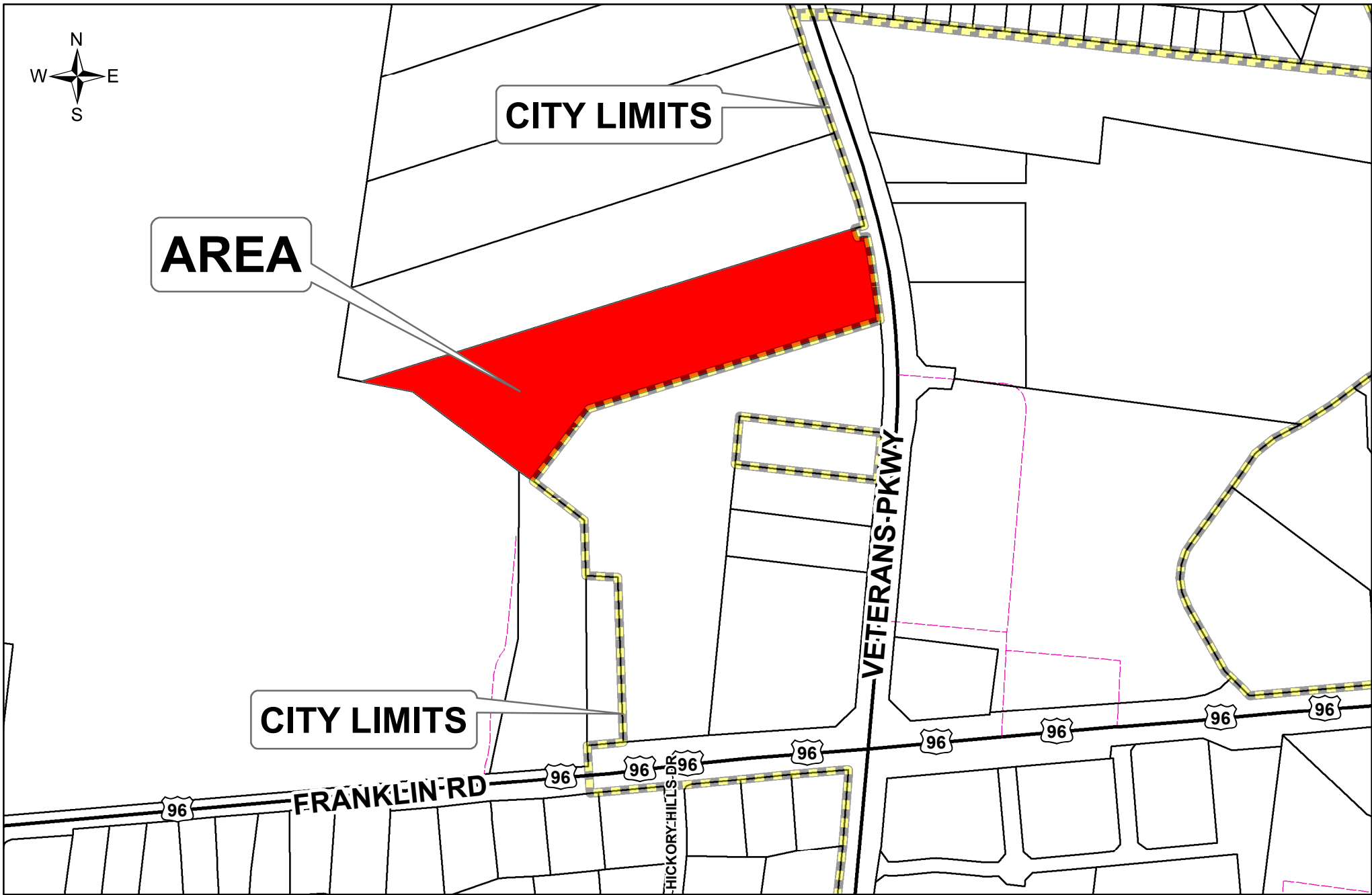
- a. Zoning Ordinance amendment [2022-802] regarding amendments to Sections 2, 7, 24, Chart 1 and Chart 4 pertaining to alcohol manufacturing, City of Murfreesboro Planning Department applicant.
- b. Annexation petition and plan of services [2022-502] for approximately 7.3 acres located along Veterans Parkway, David Scott Rowlett applicant.
- c. Zoning application [2022-402] for approximately 1.6 acres located along Veterans Parkway to be zoned CH simultaneous with annexation; 5.7 acres to be zoned PRD (The Villas at Veterans PRD) simultaneous with annexation; and to amend the existing Villas at Veterans PRD zoning on 7.1 acres located along Franklin Road, Harney Homes, LLC applicant.

Fiscal Impact

Advertising expense for notice publication in the newspaper, which is unknown at this time, is provided for in the Department Operating Budget.

Attachments:

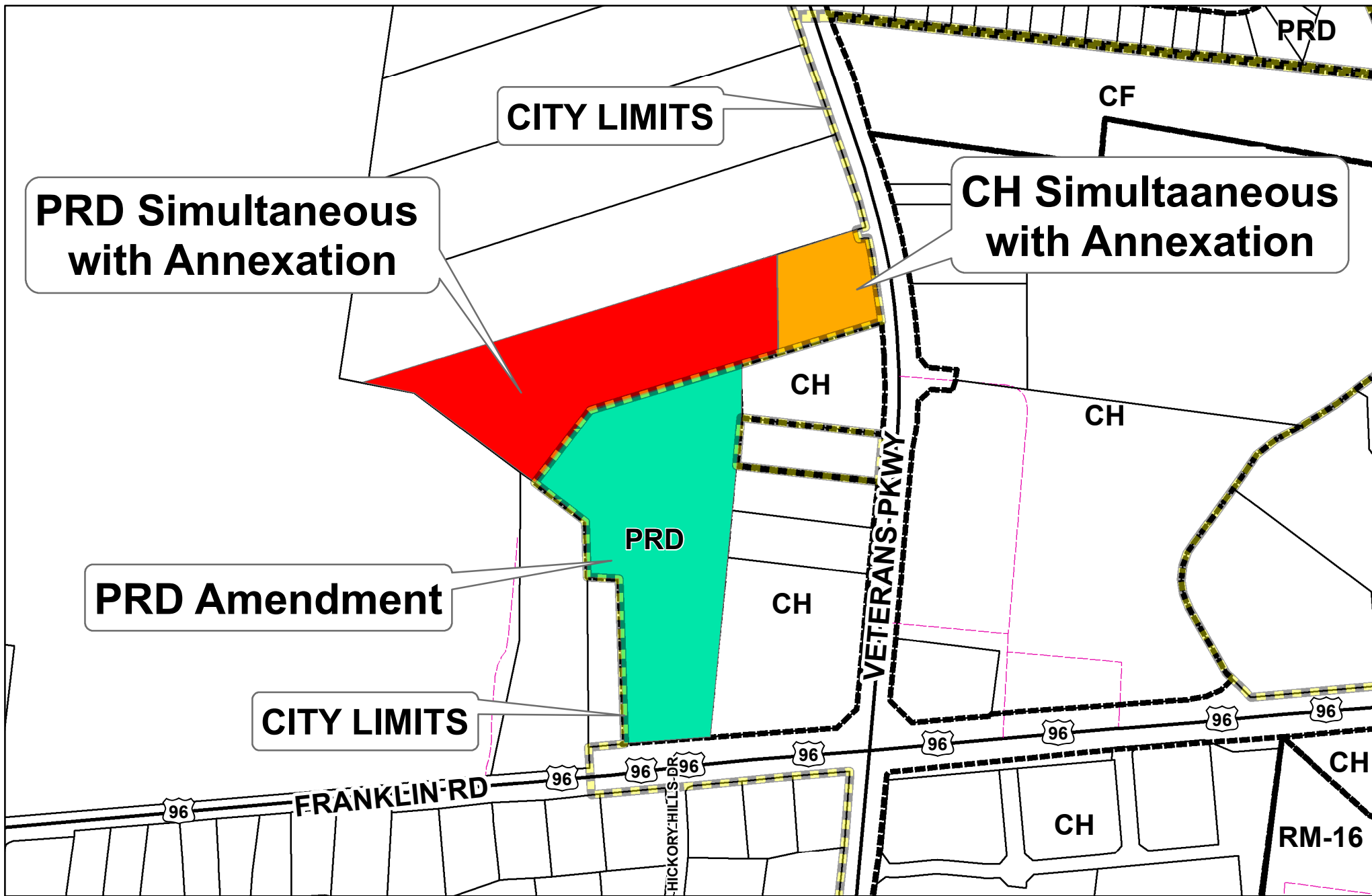
- 1. Map for annexation petition for approx. 7.3 acres located along Veterans Parkway
- 2. Map for zoning application for approx. 14.4 acres located along Veterans Parkway and Franklin Road



Annexation Request for Property located along Franklin Road and Veterans Parkway

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

570 285 0 570 Feet



**Zoning Request for Property located along Franklin Road and Veterans Parkway
PRD Amendment (Villas at Veterans PRD),
and PRD and CH Simultaneous with Annexation**

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Professional Services Contract for Renovations of 2140 N Thompson Lane

Department: Administration

Presented by: Scott Elliott, Project Development 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

Professional Services Contract for plans for renovations to 2140 N Thompson Lane building.

Staff Recommendation

Approve the contract with KDGi Inc.

Background Information

In April, staff requested and was approved to purchase the building at 2140 N Thompson Lane for future administrative headquarters for the Fire Rescue and Parks and Recreation Departments. The proposed contract with KDGi provides for design services for the build-out and renovations to the property. KDGi's proposal is for \$79,120 to complete the scope of work.

Council Priorities Served

Responsible budgeting

Renovating this building for future City administrative offices will save the City approximately \$8 million in new construction costs.

Fiscal Impact

The cost for this contract, \$79,120, is part of the project costs, which are funded by the FY21 CIP Budgets.

Attachments

Professional Services Contract with KDGi Inc.



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 11th day of May in the year 2022
(In words, indicate day, month and year.)

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

City of Murfreesboro
111 Vine Street
Murfreesboro, Tennessee 37130

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

Kingdom Development Group Incorporated
102 S. Maple Street
Murfreesboro, Tennessee 37130

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

2140 N. Thompson Lane – Administrative Building Renovation

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

AIA Document B101[™] – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 19:15:44 ET on 05/05/2022 under Order No.3104236655 which expires on 02/12/2023, 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:

(1685213548)

TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner’s program for the Project:
(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

- KDG*i* and its Subconsultants will provide permit ready construction drawings per the Owner’s programmatic requirements
- Construction drawings will be considered Drawings-of-Record
- Existing space is approximately 15,360 SF and includes the following scope:
 - Full Build-out of the Second Floor
 - Minor Renovation of the First Floor offices, shared, and staff support areas, including additional restroom facilities (as required by code)
 - Exterior design is not required
 - Although sustainable practices will be utilized, LEED or other formal sustainable design certifications will not be pursued
- The requirement for fire protection and fire alarm systems will be evaluated for appropriate application
- MPE Commissioning is excluded at this time but may be provided for additional services
- Unforeseen MPE design required for the First Floor is excluded but may be provided for additional services
- Structural Engineer will evaluate the current wood structure (building was damaged by 2009 tornado and later reconstructed)
- Structural design will be limited and will include the addition of structural members to allow for a more open floor plan (specifically where wider openings or longer clear spans are required)

- Bidding Support and Construction Administration will be provided
- A Project Manual with Specifications will be provided
- KDG project team will assist with cost estimating

§ 1.1.2 The Project's physical characteristics:

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

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

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

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

While sustainable practices will be utilized, LEED or other formal sustainable design certifications will not be pursued

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

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

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

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Structural Engineer:

Bob Warren
3219 Briarwood Dr.
Murfreesboro, TN 37130

.2 Civil Engineer:

NA

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

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

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Mechanical Engineer:

I.C. Thomasson Associates, Inc.
2950 Kraft Drive
Nashville, Tennessee 37204

.2 Electrical Engineer:

I.C. Thomasson Associates, Inc.
2950 Kraft Drive

(Paragraphs deleted)

Nashville, Tennessee 37204

§ 1.1.11.2 Consultants retained under Supplemental Services:**§ 1.1.12 Other Initial Information on which the Agreement is based:**

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall

Init.

pay the Architect as set forth in Section 11.9. Architect shall not cancel or modify an insurance coverage required by this Agreement without providing Owner with at least 30-days' prior written notice.

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

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

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

§ 2.5.4 Workers' Compensation at statutory limits.

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

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

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

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

§ 2.5.9 Indemnification. The Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from any and all claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner arise out of or result from Architect's negligent acts or omissions or intentional misconduct in performing work under this Agreement, except to the extent that such claims arise from the negligent acts or omissions of the City or its employees and agents. Architect's obligation to indemnify, save and hold harmless the Owner shall not be limited to the amount of insurance actually secured under this Agreement, including any insurance above the minimum required, but shall extend to the full amount on any claims, loss or damage incurred or awarded, including costs, expenses and attorneys' fees.

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

Init.

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

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

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

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

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

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

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

§ 3.1.8 In accordance with the standard of care, The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3 Design Development Phase Services

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

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

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

§ 3.4 Construction Documents Phase Services

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time.

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

§ 3.5.3 Negotiated Proposals

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

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

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

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

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

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

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect and Owner shall have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or timely so as not to affect the Contract Time or the Contract Sum.

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

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

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

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

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**§ 4.1 Supplemental Services**

[Intentionally Omitted]

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

Init.

§ 4.2 Architect's Additional Services

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

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

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

- .1 Up to 2 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Up to 6 (Six) visits to the site by the Architect during construction
- .3 Up to 2 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Up to 2 (Two) inspections for any portion of the Work to determine final completion.

Init.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within 10 (Ten) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

§ 5.5 The Owner may elect to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Owner may, in its sole discretion, request that the Architect secure these services by contracting with a third party.

Init.

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

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

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

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

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

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

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall timely notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

- .1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the Cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such use.

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

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

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

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court whose jurisdiction includes Rutherford County, Tennessee

☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 [Intentionally Omitted]

(Paragraphs deleted)

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred and unpaid.

§ 9.7

(Paragraphs deleted)

[Intentionally Omitted]

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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

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

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

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

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

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

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

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of

Init.

compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

\$79,120 (Seventy-Nine Thousand, One Hundred and Twenty Dollars)
- .2 Percentage Basis
(Insert percentage value)

() % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other
(Describe the method of compensation)

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Not applicable

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

In accordance with the hourly rates set forth in Section 11.7

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

Not Applicable

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

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Thirty	percent (	30	%)
Construction Documents	Thirty-Five	percent (	35	%)

Phase				
Procurement Phase	Ten	percent (	10	%)
Construction Phase	Five	percent (	5	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The Architect’s rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect’s rates may be negotiated with the Owner.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

KDGi Hourly Billing Rates

Principal	\$193.00
Sr. Architect	\$170.00
Project Architect	\$145.00
Project Designer III	\$133.00
Project Designer II	\$115.00
Project Designer I	\$100.00
Project Associate	\$80.00

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

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

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

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

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Eight Thousand Dollars (\$ 8,000.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

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

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

10% (Ten Percent) Per Year

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

ARTICLE 13 SCOPE OF THE AGREEMENT

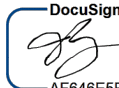
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

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

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

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

DocuSigned by:



AF646E5EE290490...

OWNER (Signature)

ARCHITECT (Signature)

Shane McFarland, Mayor

(Printed name and title)

Brandon M. Harvey, AIA
President & Managing Partner

TN 107050

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

Approved as to form:

DocuSigned by:



43A2035E51F9401...

Adam F. Tucker, City Attorney

Init.

/

Additions and Deletions Report for **AIA® Document B101™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:15:44 ET on 05/05/2022.

PAGE 1

AGREEMENT made as of the 11th day of May in the year 2022

...

City of Murfreesboro
111 Vine Street
Murfreesboro, Tennessee 37130

...

Kingdom Development Group Incorporated
102 S. Maple Street
Murfreesboro, Tennessee 37130

...

2140 N. Thompson Lane – Administrative Building Renovation

PAGE 2

- KDGi and its Subconsultants will provide permit ready construction drawings per the Owner's programmatic requirements
- Construction drawings will be considered Drawings-of-Record
- Existing space is approximately 15,360 SF and includes the following scope:
 - Full Build-out of the Second Floor
 - Minor Renovation of the First Floor offices, shared, and staff support areas, including additional restroom facilities (as required by code)
 - Exterior design is not required
 - Although sustainable practices will be utilized, LEED or other formal sustainable design certifications will not be pursued
- The requirement for fire protection and fire alarm systems will be evaluated for appropriate application
- MPE Commissioning is excluded at this time but may be provided for additional services
- Unforeseen MPE design required for the First Floor is excluded but may be provided for additional services
- Structural Engineer will evaluate the current wood structure (building was damaged by 2009 tornado and later reconstructed)
- Structural design will be limited and will include the addition of structural members to allow for a more open floor plan (specifically where wider openings or longer clear spans are required)
- Bidding Support and Construction Administration will be provided
- A Project Manual with Specifications will be provided
- KDGi project team will assist with cost estimating

PAGE 3

Additions and Deletions Report for AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission.** This document was produced by AIA software at 19:15:44 ET on 05/05/2022 under Order No.3104236655 which expires on 02/12/2023, 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:

(1685213548)

While sustainable practices will be utilized, LEED or other formal sustainable design certifications will not be pursued

PAGE 4

.1 ~~Geotechnical~~ Structural Engineer:

Bob Warren
3219 Briarwood Dr.
Murfreesboro, TN 37130

...

NA

...

~~.1 Structural~~

.1 Mechanical Engineer:

I.C. Thomasson Associates, Inc.
2950 Kraft Drive
Nashville, Tennessee 37204

PAGE 5

.2 ~~Mechanical~~ Electrical Engineer:

I.C. Thomasson Associates, Inc.
2950 Kraft Drive

~~.3 Electrical Engineer:~~

Nashville, Tennessee 37204

...

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

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

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

PAGE 6

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

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

...

§ 2.5.9 Indemnification. The Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from any and all claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner arise out of or result from Architect's negligent acts or omissions or intentional misconduct in performing work under this Agreement, except to the extent that such claims arise from the negligent acts or omissions of the City or its employees and agents. Architect's obligation to indemnify, save and hold harmless the Owner shall not be limited to the amount of insurance actually secured under this Agreement, including any insurance above the minimum required, but shall extend to the full amount on any claims, loss or damage incurred or awarded, including costs, expenses and attorneys' fees.

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

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

PAGE 7

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

...

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

§ 3.1.8 In accordance with the standard of care, The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

...

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall review such information to ascertain that it is

consistent with the requirements of the Project and shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

PAGE 8

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

...

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

...

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time.

PAGE 9

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

PAGE 10

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

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect ~~has and~~ Owner shall have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or ~~otherwise with reasonable promptness~~ timely so as not to affect the Contract Time or the Contract Sum.

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

PAGE 11

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule.approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review in a timely manner so as not to affect the Contract Time or the Contract Sum.

PAGE 12

§ 3.6.5.1 The Architect may order authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

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

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

...

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

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

...

[Intentionally Omitted]

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise

specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

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

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

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

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

PAGE 13

- .1 ~~(—)~~ Up to 2 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(—)~~ Up to 6 (Six) visits to the site by the Architect during construction
- .3 ~~(—)~~ Up to 2 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(—)~~ Up to 2 (Two) inspections for any portion of the Work to determine final completion.

PAGE 14

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~(—)~~ 10 (Ten) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

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

...

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

§ 5.5 The Owner ~~shall~~ may elect to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Owner may, in its sole discretion, request that the Architect secure these services by contracting with a third party.

PAGE 15

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

...

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

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall ~~promptly~~ timely notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

...

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

PAGE 16

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

...

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

...

§ 6.7 If the Owner chooses to proceed under Section ~~6.6.4,~~ the Architect shall modify the Construction Documents 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional

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

...

§ 7.3 ~~The~~ Upon execution of this Agreement, the Architect grants to the Owner a ~~nonexclusive~~ nonexclusive, irrevocable, royalty-free, right and license to use the Architect's Instruments of Service ~~solely and exclusively~~ for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11, ~~when due, under this Agreement~~. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, ~~subject to any protocols established pursuant to Section 1.3, Service~~ solely and exclusively for use in performing services or construction for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~ Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovation, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by Owner or Owner's representatives using the Architect's Instruments of Service.

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

PAGE 17

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action ~~against the other and action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ Tennessee law.

PAGE 18

[X] Litigation in a court of competent jurisdiction whose jurisdiction includes Rutherford County, Tennessee

...

§ 8.3 Arbitration [Intentionally Omitted]

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by,

mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

...

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

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

...

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

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

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

.1 — Termination Fee:

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

[Intentionally Omitted]

PAGE 19

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

...

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

...

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

PAGE 20

\$79,120 (Seventy-Nine Thousand, One Hundred and Twenty Dollars)

...

Not applicable

...

In accordance with the hourly rates set forth in Section 11.7

...

Not Applicable

...

Schematic Design Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>Thirty</u>	percent (	<u>30</u>	%)
Construction Documents Phase	<u>Thirty-Five</u>	percent (	<u>35</u>	%)
Procurement Phase	<u>Ten</u>	percent (	<u>10</u>	%)
Construction Phase	<u>Five</u>	percent (	<u>5</u>	%)

PAGE 21

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices. Architect’s rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect’s rates may be negotiated with the Owner.

...

KDGi Hourly Billing Rates

Principal	\$193.00
Sr. Architect	\$170.00
Project Architect	\$145.00
Project Designer III	\$133.00
Project Designer II	\$115.00
Project Designer I	\$100.00
Project Associate	\$80.00

...

Employee or Category	Rate (\$0.00)
----------------------	---------------

PAGE 22

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

...

§ 11.10.1.1 An initial payment of Eight Thousand Dollars (\$ 8,000.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

...

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

...

%—10% (Ten Percent) Per Year

...

~~2~~ — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

— ~~(Insert the date of the E203-2013 incorporated into this agreement.)~~

~~3~~ — Exhibits:

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

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

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

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

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

~~4~~ — Other documents:

— ~~(List other documents, if any, forming part of the Agreement.)~~

PAGE 23

Shane McFarland, Mayor

...

Approved as to form:

Adam F. Tucker, City Attorney

Brandon M. Harvey, AIA
President & Managing Partner
TN 107050

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Adam F. Tucker, 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 19:15:44 ET on 05/05/2022 under Order No. 3104236655 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

Adam F. Tucker

43A2035E51F9401...

(Signed)

City Attorney

(Title)

5/6/2022

(Dated)

COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Professional Services Contract for Design of 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 design of the realignment of Butler Drive.

Staff Recommendation

Approve the amendment to the contract with Kimley Horn Inc.

Background Information

Staff requested an amendment to the previous proposal from Kimley Horn, Inc for the preliminary and final design 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 \$265,400 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, \$265,400, is part of the project costs, which are funded by the FY16 and FY21 CIP Budgets.

Attachments

Professional Services Contract from Kimley Horn Inc.

AMENDMENT NUMBER 01 TO THE AGREEMENT BETWEEN CLIENT AND KIMLEY-HORN AND ASSOCIATES, INC.

This is Amendment number 01 dated _____, 2022 to the agreement between City of Murfreesboro ("Client") and Kimley-Horn and Associates, Inc. ("Consultant") dated March 18, 2022 ("the Agreement") concerning Butler Drive Realignment (the "Project").

The Consultant has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

The Agreement is amended to include services to be performed by Consultant for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

Consultant will perform the following services:

Project Understanding

The realigned Butler Drive will be approximately 0.90 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

This task will consist of the following project management activities:

- Project Coordination – coordination with the City to provide updates, coordinate project reviews, and other activities to help the City keep the project stakeholders generally informed of the progress of the project.
- Project Kick-off Meeting – consists of scheduling, setting the agenda, and producing meeting minutes for one project kick-off meeting.
- Plans Review Meetings – consists of scheduling, setting the agenda, and producing meeting minutes for up to three plan review meetings at project milestones (30%, 60%, and 100% design plans).
- Project Meetings – consists of scheduling, setting the agenda, and producing meeting minutes for up to three additional project meetings as needed throughout the project.
- Project Administration – administrative and accounting activities related to the day-to-day management of the project.

Task 3 – Traffic Engineering Study

Task 3.1 – Kickoff Meeting

Kimley-Horn will meet virtually with City of Murfreesboro staff to discuss the overall project regarding traffic. The following preliminary analyses will be prepared to use as discussion material for the kickoff meeting:

- Background growth rate research and calculations
- Planned/programmed transportation improvement research
- Land use and density assumptions for development potential in the undeveloped area

- bounded by Joe B Jackson Parkway, I-24, and the railroad
 - Trip generation calculations for the development potential
- Preliminary trip distribution and assignment
- Create summary packet for meeting discussion

Task 3.2 - Traffic Analysis

Intersection turning movement counts were performed in September 2021 for the Traffic Impact Study (TIS) for the Buc-ee's Travel Center Development (by others). The turning movement counts shown in the Buc-ee's TIS for the intersection of Joe B Jackson Parkway at Butler Drive (existing)/Elam Road will be used to develop existing volumes at the intersection of Joe B Jackson Parkway at Butler Drive (realigned).

In addition to existing volumes, background traffic from the Buc-ee's development and growth in the area will be added to the network to determine the projected "No-Build" intersection volumes. Trips associated with the development potential north of Joe B Jackson Pkwy, modified as needed based on feedback in the kickoff meeting, will be added to the network in addition to the background traffic to determine the projected "Build" intersection volumes.

Intersection capacity analyses will be performed for the following five (5) scenarios:

- Existing Conditions
- No Build Conditions
- Build Conditions
- Horizon Year No-Build Conditions (Build-Out Year + 5 Years)
- Horizon Year Build Conditions (Build-Out Year + 5 Years)

Intersection capacity analyses will be performed for the scenarios listed above using transportation modeling software. Transportation improvements will be identified and recommended for movements associated with the northern leg of the intersection.

Kimley-Horn will prepare a technical memorandum that will summarize the data collection, methodology, analysis results, conclusions, and recommendations for improvements to the transportation infrastructure. Kimley-Horn will submit a draft to the City of Murfreesboro for review and comment. Kimley-Horn will revise the memorandum based on the comments received and submit a final technical memorandum to the City of Murfreesboro in PDF format.

Task 4 – Environmental Studies

The project is located in the Stones watershed (HUC 05130203); the Middle Fork Stones River is located approximately 500 feet from the project corridor. Land use surrounding the project corridor includes hardwood forests, mixed pine-hardwood forests, agricultural fields, and industrial sites. A desktop analysis including the National Hydrography Dataset, National Wetland Inventory, topographic maps, and aerial imagery indicates that the proposed project corridor would involve crossings of an industrial pond and up to two streams.

Task 4.1 - Project Meetings and Agency Coordination

In an effort to manage the jurisdictional determination process, Kimley-Horn will coordinate as needed with the project team, the US Army Corps of Engineers (USACE), and the Tennessee Department of Environment and Conservation (TDEC). These coordination meetings will include environmental feature verification, proposed plan discussions and environmental permit coordination. One key goal of this process is to keep the agencies and appropriate stakeholders informed throughout the process to ensure that the project can proceed efficiently.

Task 4.2 - Jurisdictional Waters of the U.S. / State of Tennessee Field Studies

- Conduct field level studies to delineate the jurisdictional features on the subject site, as defined by the USACE 1987 Wetland Delineation Manual and subsequent regional supplements; Part 328 of Title 33, Code of Federal Regulations
- Complete the USACE Wetland Data Forms for each representative wetland/upland sampling site.
- Using a Trimble GeoXT GPS Unit, map the wetland boundaries (if present) and other relevant features.
- Complete the Rapid Bioassessment Protocols for Use in Streams and Wadable Rivers Habitat Assessment Forms, which the USACE uses to determine mitigation credits.
- A TDEC Qualified Hydrologic Professional will prepare wet weather conveyance and stream determinations, as defined by the TDEC Division of Water Pollution Control - Hydrologic Determination methodology.
- Prepare a summary report describing the findings that includes the routine wetland determination data forms, Hydrologic Determination forms, Habitat Assessment forms, a photo summary, and delineation map.

Task 4.3 - Endangered Species Review

Kimley Horn will perform initial consultation with the Tennessee Department of Environment and Conservation, Division of Natural Heritage (DNH) and the U.S. Fish and Wildlife Service (USFWS) IPaC data base to identify the likelihood of presence of threatened or endangered species along the proposed corridor and whether the project would adversely affect listed species or designated critical habitat.

Kimley-Horn understands that the purpose of the project is to gain endangered species clearance for the development site. Kimley Horn will review the project area and determine the presence or absence of potential habitat for listed species identified by the DNH and the IPaC during the initial consultation. Kimley-Horn will then report findings to the FWS. If habitat is present in the project area, Kimley-Horn will initiate additional coordination with the FWS under a separate scope of work.

Task 4.4 - Jurisdictional Determination Report and USACE Verification

- Kimley-Horn will prepare and submit documentation to request that the USACE verify the jurisdictional boundaries. Jurisdictional determination forms, wetland data forms, required maps and figures, and associated documentation will be delivered to USACE as part of this verification request.
- The task includes the preparation and submittal of a Preliminary or Approved Jurisdictional Determination. The type of determination will be made following the completion of Task 4.2, and whether potentially non-jurisdictional features are evident on-site.

Task 4.5 - Hydrologic Determination Report and TDEC Verification

- Kimley-Horn will prepare and submit a required Hydrologic Determination Report to TDEC Division of Water Pollution Control to verify State regulated streams and wet weather conveyances. This report will be completed by a Qualified Hydrologic Professional.
- Kimley-Horn will coordinate and conduct a one (1) day field verification site visit with the TDEC.

Task 5 – Preliminary Design Services

Task 5.1 – Preliminary Roadway Design

Kimley-Horn will prepare a preliminary design in accordance with TDOT's Roadway Design Guidelines and current City of Murfreesboro roadway design standards. The preliminary plans will be prepared to conform to TDOT's current MicroStation and Geopak CAD standards. The plans will consist of the following sheets:

- Title Sheet with index
- Roadway Typical Sections
- Present Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Driveway Profiles
- Culvert Cross Section(s)
- Preliminary Signing and Marking
- Roadway Cross Sections

Task 5.2 – Preliminary Design Submittal and Review

Kimley-Horn will submit preliminary plans (30% complete) to the City for review and comment. Kimley-Horn will meet with the City to discuss the City's comments. Following this review meeting, Kimley-Horn will revise the plans based on the comments received and direction from the review meeting. Kimley-Horn will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

Task 5.3 – Preliminary Engineer's Opinion of Probable Construction Cost

Kimley-Horn will prepare an opinion of the probable construction cost of the proposed improvements. Kimley-Horn will utilize the current version of the Cost Estimate Tool provided by TDOT's Strategic Transportation Investments Division to prepare preliminary cost estimate.

Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the City wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the City will be paid for as Additional Services.

Task 5 Kimley-Horn Deliverables:

1. Preliminary Plans package (one electronic copy, Adobe PDF format)
2. Preliminary Engineer's Opinion of Probable Construction Cost (one electronic copy, Adobe PDF format)

Task 6 – Right-of-Way Design Services

Task 6.1 – Right-of-Way Design Plans

Upon completion of Task 5, Kimley-Horn will prepare the right-of-way design plans in accordance with TDOT's Roadway Design Guidelines and current City of Murfreesboro roadway design standards. The plans will be prepared to conform to TDOT's current MicroStation and Geopak

CAD standards and will provide appropriate detail to support Right-of-Way acquisition. The plans will consist of the following sheets:

- Title Sheet
- Index with Standard Drawings
- Roadway Typical Sections
- Detail Sheets
- Right-of-Way Notes
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plan
- Signing and Marking
- Roadway Cross Sections

Task 6.2 – Right-of-Way Design Submittal and Review

Kimley-Horn will submit Right-of-Way design plans to the City for review and comment. Kimley-Horn will meet with the City to discuss the comments. Following this review meeting, Kimley-Horn will revise the plans based on the comments received and direction from the review meeting. Kimley-Horn will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

Task 6 Kimley-Horn Deliverables:

1. Right-of-Way plans package (one electronic copy, Adobe PDF format)

Task 8 – Final Design Services

Task 8.1 – Final Design Plans

Kimley-Horn will prepare final construction plans for the project. The plans are anticipated to consist of the following sheets:

- Title Sheet
- Index and Standard Drawings
- Estimated Roadway Quantities
- Roadway Typical Sections
- General Notes
- Special Notes
- Detail Sheets
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles

- Culvert Cross Section(s)
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plans
- Signing and Marking
- Roadway Cross Sections

Task 8.2 – Final Engineer’s Opinion of Probable Construction Cost

Kimley-Horn will prepare an opinion of the probable construction cost of the proposed improvements defined by the plans and technical specifications. Quantities will be those developed from the Construction plans. Kimley-Horn will base this opinion of cost on actual bid prices for recent projects which involved similar equipment and construction.

Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the City wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn’s services required to bring costs within any limitation established by the City will be paid for as Additional Services.

Task 8.3 – Final Design Submittal

Kimley-Horn will prepare a set of final construction plans. Kimley-Horn will submit draft construction plans to the City for review and comment. Kimley-Horn will meet with the City to discuss the City’s comments and coordinate the revisions received. Following the review meeting, Kimley-Horn will revise the plans based on the comments received. The Final Construction plans will be signed and sealed by a State of Tennessee licensed Professional Engineer.

Task 8 Kimley-Horn Deliverables:

1. Final sealed plans for City submittal (1 full-size hard copy, 2 half-size hard copies, and 1 electronic copy, Adobe PDF format)
2. Final sealed plans for bidding (1 electronic copy, Adobe PDF format) to the City
3. Final engineer’s opinion of probable construction cost (1 electronic copy, Adobe PDF format) to the City

Task 9 – Environmental Permitting

Task 9.1 – Stormwater Pollution Prevention Plan (SWPPP)

Kimley-Horn will prepare and submit the Storm Water Pollution Prevention Plan (SWPPP) permit documents required by TDEC for the land disturbance activities associated with this project. The SWPPP will consist of drawings and a technical narrative describing erosion and sediment control measures that should be implemented during construction to reduce the negative downstream impacts due to pollutant run-off related to construction activities.

Kimley-Horn will submit the SWPPP document to TDEC for review. Kimley-Horn will revise the SWPPP document in accordance with comments received from TDEC and will resubmit a final SWPPP document to TDEC for approval. The City of Murfreesboro shall be responsible for all permitting and review fees associated with this task.

Task 9.2 – NPDES Permit Application

Based on the assumed impact of the project improvements on the surrounding environment, it is assumed that a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity will be required for the project. Kimley-Horn will prepare the NPDES General Permit application and will submit it to TDEC along with the approved SWPPP document for processing by TDEC.

Preparation of technical studies or applications for other project-specific environmental permits are not part of this task. If additional environmental permits are required by TDEC, USACE, or any other agency, those permits can be provided by Kimley-Horn in accordance with Additional Services clause of this agreement.

Task 9 Kimley-Horn Deliverables:

1. Draft Project SWPPP (1 electronic copy, Adobe PDF format) to Client and TDEC
2. Final Project SWPPP (1 electronic copy, Adobe PDF format) to Client and TDEC
3. NPDES Permit Application (1 electronic copy, Adobe PDF format) to Client and TDEC

Task 10 – Utility Coordination

Task 10.1 – Preliminary Utility Coordination

Upon receiving a notice to proceed, Kimley-Horn will provide a notification to the potentially affected utility owners along the project corridor. The notification to each utility owner will consist of project map and a letter requesting that the utility company review the project map to determine if they own facilities within the project limits. The letter will request a written response from each utility.

Upon completion of Task 5, Kimley-Horn will submit Preliminary Plans to the identified utility owners within the project limits. The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities. The letter will request preliminary relocation plans from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the Preliminary plans.

Kimley-Horn will prepare for and host a utility coordination meeting as part of this task. Known impacted utility companies will be invited to attend a coordination meeting to discuss potential utility relocations within the project limits. Kimley-Horn will document the discussions and decisions made during the meeting and distribute to the meeting attendees. Utility Owners will be responsible for identifying utility conflicts within the project limits and the design and relocation of their utilities.

Task 10.2 – Final Utility Coordination

Upon completion of Task 6, Kimley-Horn will submit the approved Right-of-Way plans to utility owners identified in Task 10.1. The submittal to each utility owner will consist of an electronic set of plan drawings), information detailing any design changes made during Right-of-Way design, and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities and prepare final utility relocation plans.

During the Final Design phase, if there are any changes made to the proposed design plans that will impact final utility relocation plans, Kimley-Horn will submit the revised plans to the utility owners. Via this task, utility companies will also be invited to attend the final plans review meeting.

Kimley-Horn will not perform any utility relocation design services as part of this task. It is assumed that each utility owner will design, provide plans for, and construct their utility relocations.

Task 11 – Bid Phase Services

Task 11.1 – Proposal Contract Preparation

Kimley-Horn will prepare a proposal contract in accordance with TDOT and City of Murfreesboro standards. Kimley-Horn will prepare technical specifications for those items that are not covered by TDOT or City of Murfreesboro specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, specifications, required special provisions, and an 11" x 17" plan set. The proposal contract will be submitted to the City of Murfreesboro for approval. Upon authorization from the City, Kimley-Horn will proceed with bidding the project and will print and deliver 10 bond copies of the plans and Proposal Contract to the City.

Task 11.2 – Bid Assistance

Kimley-Horn will assist the City with drafting the advertisement for bids and conduct one pre-bid meeting with potential bidders. Kimley-Horn will be responsible for plans distribution during the bid phase. Kimley-Horn staff will respond to questions that arise during the bidding process and issue statements of clarification or bid addenda as appropriate. Kimley-Horn will conduct the bid opening and meet with City of Murfreesboro staff following the bid opening to assist with bid review. In addition, Kimley-Horn will tabulate the bids received and evaluate the compliance of the bids with the bidding documents and in accordance with TDOT Policy No. 355-02, Awards of Construction Contracts. Kimley-Horn will prepare a written summary of this tabulation and evaluation. Kimley-Horn will submit the bid tabulation and other required documentation to the City for review and approval to award the contract to the lowest responsive bidder.

Task 11 Kimley-Horn Deliverables:

1. Draft Proposal Contract (one electronic copy in Adobe PDF format) to the City
2. Final Proposal Contract (one electronic copy in Adobe PDF format) to the City
3. Plans Package and Proposal Contract copies for bidders (ten bond copies)
4. Responses to bidder questions (one electronic copy in Adobe PDF format)
5. Bid tabulation and recommendation of lowest responsive bidder submittal to the City (one electronic copy in Adobe PDF format)

The services currently authorized to be performed by Consultant in accordance with the Agreement and previous amendments, if any, shall be modified as followed:

Task 2 – Existing Conditions Survey

Task 2.2 – Data Collection

Kimley-Horn will perform up to three site visits to review the existing conditions along the corridor, check the field survey deliverable, and collect digital photography to assist with design efforts in later tasks.

Task 7 – Right-of-Way Acquisition Services

Task 7.3 – Right-of-Way Acquisition Coordination

Kimley-Horn will coordinate with the surveyor throughout the preparation of exhibits & legal descriptions. Kimley-Horn will prepare and share CAD files for proposed right-of-way and easements needed to create exhibits and review exhibits & legal descriptions to ensure accuracy with the plans.

Kimley-Horn will coordinate with the City and property owners during the right-of-way acquisition process to answer questions and handle minor design revisions as requested by the City.

Schedule

Given a notice to proceed and contract execution, Kimley-Horn is prepared to provide these services based upon a mutually agreed schedule.

For the services set forth above, Client shall pay Consultant the following compensation:

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 through 11 on a labor fee plus expenses basis with the maximum fee as summarized below.

Task 1 – Project Management	\$21,400
Task 2 – Existing Conditions Survey	\$3,900
Task 3 – Traffic Analysis	\$6,600
Task 4 – Environmental Studies	\$29,800
Task 5 – Preliminary Design Services	\$58,000
Task 6 – Right-of-Way Design Services	\$50,200
Task 7 – Right-of-Way Acquisition Services	\$6,400
Task 8 – Final Design Services	\$42,700
Task 9 – Environmental Permitting	\$14,400
Task 10 – Utility Coordination	\$14,900
Task 11 – Bid Phase Services	\$17,100
Total Maximum Labor / Expense Fee:	\$265,400

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 (4.6%) 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.

CLIENT:

CITY OF MURFREESBORO

By: _____

Title: _____

Date: _____

CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

By: Chris D. Rhoad

Title: Vice President

Date: May 12, 2022

EXHIBIT C

Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	Rate
Analyst I	\$100 - \$125
Analyst II	\$135 - \$150
Professional	\$160 - \$185
Senior Professional I	\$205 - \$250
Senior Professional II	\$295 - \$355
Senior Technical Support	\$90 - \$220
Technical Support	\$85 - \$135
Support Staff	\$70 - \$115

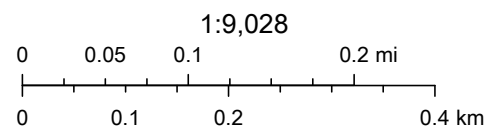
Effective through June 30, 2022

Subject to annual adjustment thereafter

Butler Drive Realignment



November 15, 2021



COUNCIL COMMUNICATION

Meeting Date: 05/19/2022

Item Title: Professional Services Agreement for Design of Rutherford Blvd and SE Broad Street Intersection Improvements

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 improvements at the Rutherford Blvd and SE Broad Street intersection.

Staff Recommendation

Approve design contract with Energy Land and Infrastructure LLC (ELI).

Background Information

Staff requested a proposal from ELI for a preliminary and final design for roadway improvements at the intersection of Rutherford Blvd and SE Broad St. This design will include an additional southbound through lane along SE Broad St. that extends to Elam Road, as well as modifying the eastbound approach of Rutherford Blvd to include dual left turn lanes. Also incorporated within this project are signal improvements that will align with planned upgrades associated with the Rutherford ASCT project. The contract estimate is \$153,320.

Council Priorities Served

Expand Infrastructure

Improvements to this intersection will increase capacity and help traffic flow to alleviate the congestion in this area.

Fiscal Impact

This expense, \$153,320, is a part of the project costs funded by the FY21 and FY22 CIP Budget.

Attachments

Professional Services Contract from Energy, Land, and Infrastructure, LLC.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

WHEN “STUDY AND REPORT PHASE” ARE DELETED AND “RESIDENT PROJECT REPRESENTATION” IS PROVIDED BY OWNER

THIS IS AN AGREEMENT made as of _____, between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and Energy Land and Infrastructure, LLC., (ENGINEER).

OWNER intends to secure professional services for ~~the survey, preliminary and final design, signal modifications, right-of-way exhibit and descriptions and the development of contract documents for the Broad Street and Rutherford Blvd. Intersection Improvement in the City of Murfreesboro, TN (hereinafter called the Project).~~

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional Engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall provide the OWNER professional Engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional Engineering representative for the Project, providing professional Engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental hereto.

~~1.2 Study and Report Phase~~

~~After written authorization to proceed, ENGINEER shall:~~

~~1.2.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data;~~

~~1.2.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.3, and assist OWNER in obtaining such data and services.~~

~~1.2.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.~~

~~1.2.4 Provide analyses of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.~~

~~1.2.5 Provide a general economic analysis of OWNER's requirements applicable to various alternatives.~~

~~1.2.6 Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost, allowance for engineering costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights of way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by~~

~~others for OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. The total of all such costs, allowances, etc., are hereinafter called "Total Project Costs."~~

~~1.2.7 Furnish five copies of the Study and Report documents and review them in person with OWNER.~~

~~1.2A Environmental Assessment~~

~~1.2A.1 Modified Transaction Screen~~

~~A Modified Transaction Screen shall be conducted to determine if there are any current or historically recognized environmental conditions that indicate that hazardous substances or petroleum products that could impact the proposed Project. Cost of the Modified Transaction Screen shall be based on funding sources and findings of the Report.~~

~~1.2A.2 Phase I Archeological Survey~~

~~A Phase I Archeological Survey shall be conducted to identify any cultural resources that may affect the proposed Project. Cost of the Phase I Archeological Survey shall be based on funding sources and findings of the Report.~~

~~1.2A.3 Ecological Survey~~

~~An Ecological Survey shall be conducted to identify any plant or animal life that may affect the proposed Project. Cost of the Ecological Survey shall be based on funding sources and findings of the Report.~~

~~1.2A.4 Wetland Delineation Study~~

~~A Wetland Delineation study shall be conducted to identify any potential wetlands that may affect the proposed Project. Cost of the Wetland Delineation shall be based on funding sources and findings of the Report.~~

~~1.2A.5 Geotechnical Survey~~

~~A Geotechnical Survey shall be conducted to identify land conditions that may affect the proposed Project. Cost of the Geotechnical Survey shall be based on funding sources and findings of the Report.~~

~~1.3 Preliminary Design Phase~~

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1 In consultation with OWNER and on the basis of the accepted Study and Report documents,

determine the general scope, extent, and character of the Project.

1.3.2 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

1.3.3 Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.

1.3.4 Based on the information contained in the Preliminary Design Documents, submit a revised opinion of probable Total Project Costs.

1.3.5 Furnish five copies of the above Preliminary Design Documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

1.4 Final Design Phase

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.4.1 On the basis of the accepted Preliminary Design Documents and revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent, and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications Institute).

1.4.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for general permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities. If permitting proceeds into an individual versus a general format, ENGINEER's services are available as part of the Agreement should the OWNER request such services, in accordance with paragraph 5.1.2.1.

1.4.3 Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused

by changes in general scope, extent, or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4 Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineer's Joint Contract Documents Committee or as specified by OWNER), and assist in the preparation of other related documents.

1.4.5 Furnish five copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

1.5 Bidding or Negotiating Phase

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend, chair and keep minutes for mandatory or voluntary pre-bid conferences, attend, chair and keep minutes for third party utility pre-bid coordination meetings, assist OWNER in preparation of construction milestones, and receive and process deposits for Bidding Documents.

1.5.2 Issue addenda as appropriate to interpret, clarify, or expand the Bidding Documents.

1.5.3 Consult with and advise OWNER as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4 Consult with OWNER concerning and determine the acceptability of substitute materials

and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.5.5 Attend the bid opening, prepare bid tabulation sheets, and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

~~1.6 Construction Phase~~

~~During the Construction Phase:~~

~~1.6.1 General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions of the Construction Contract, C 700 (20013 ed.) of the Engineer's Joint Contract Documents Committee said the Standard General Conditions document is amended by Owner. The extent and limitations of the duties, responsibilities and authority of ENGINEER are provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. OWNER will issue instructions to Contractor(s) through ENGINEER or inform ENGINEER of instructions issued to Contractor(s) and ENGINEER will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions, as modified in wiring~~

~~1.6.2 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:~~

~~1.6.2.1 Engineer shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents, including adherence to construction schedule and milestones~~

and ENGINEER shall keep OWNER informed of the progress of the work.

~~1.6.2.2. ENGINEER will be OWNER's agent under OWNER's supervision~~

~~1.6.2.3 The purpose of ENGINEER's visits to and representation by the OWNER's Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s) work in progress, supervise, direct, or have control over Contractor(s) work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s) failure to furnish and perform their work in accordance with the Contract Documents.~~

~~1.6.3 Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove or reject Contractor(s) work while it is in progress if ENGINEER believes that such work will not produce a complete Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.~~

~~1.6.4 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.~~

~~1.6.5 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples, and other data which Contractor(s) are required to submit, but only for conformance with the design concept of~~

~~the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.~~

~~1.6.6 Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.~~

~~1.6.7 Inspections and Tests. As OWNER's representative, ENGINEER shall have authority, upon prior approval by OWNER, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents (but only to determine generally that their content complies with the requirements of and the results certified indicate compliance with, the Contract Documents).~~

~~1.6.8 Disputes between OWNER and Contractor. ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.~~

~~1.6.9 Applications for Payment. Based on ENGINEER's onsite observations as an experienced and qualified design professional, and on review of applications for payment and the accompanying data and schedules:~~

~~1.6.9.1 ENGINEER shall coordinate and confirm the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated and complies with the construction milestones, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work,~~

~~ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).~~

~~1.6.9.2 By recommending any payment, ENGINEER will not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes, or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that the title to any of the work, materials, or equipment has passed to OWNER free and clear of any lien, claims, security interest or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.~~

~~1.6.9.3 If ENGINEER deems that CONTRACTOR has not progressed with the work to the point of compliance with established construction milestones, ENGINEER shall not recommend payment by OWNER, until such time as the appropriate milestone is met. In the event that construction milestones are not met repeatedly, the ENGINEER shall recommend to OWNER in writing the recommendation to notify CONTRACTOR's surety and apprise them of the delinquent progression of work. Upon OWNER's concurrence of recommendation, ENGINEER shall then notify the CONTRACTOR's surety in writing.~~

~~1.6.10 Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals the~~

~~results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.~~

~~1.6.11 Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.6.9.2.~~

~~1.6.12 Limitations of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s) work; however, nothing contained in paragraphs 1.6.1 through 1.6.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.~~

~~1.7 Operational Phase~~

~~During the Operational Phase, ENGINEER shall, when requested by OWNER:~~

~~1.7.1 Provide assistance in the closing of any financial or related transactions for the Project.~~

~~1.7.2 Provide assistance in connection with the refining and adjusting of any equipment or system.~~

~~1.7.3 Assist OWNER in training OWNER's staff to operate and maintain the Project.~~

~~1.7.4 Assist OWNER in developing systems and procedures for control of the operation and maintenance of and recordkeeping for the Project.~~

~~1.7.5 Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked up prints, drawings, and other data furnished by the Contractor(s) to ENGINEER and which ENGINEER considers significant.~~

~~1.7.6 In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.~~

~~The duties and responsibilities of ENGINEER during the Operational Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."~~

SECTION 2 ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters;" these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under

Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.4 Providing renderings or models for OWNER's use.

2.1.5 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, ~~mechanical and electrical~~ engineering ~~and customary architectural~~ design incidental thereto); and providing data or services of the type described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services

in lieu of furnishing the same in accordance with paragraph 3.4.

~~2.1.8 If ENGINEER's compensation is on the basis of a lump sum or percentage of Construction Cost or cost plus a fixed fee method of payment, services resulting from the award of more separate prime contracts for construction, materials, or equipment for the Project than are contemplated by paragraph 5.1.1.2. If ENGINEER's compensation is on the basis of a percentage of Construction Cost and ENGINEER has been required to prepare Contract Documents on the assumption that more than one prime contract will be awarded for construction, materials and equipment, but only one prime contract is awarded for construction, materials and equipment for the Project, services attributable to the preparation of contract documentation that was rendered unusable and any revisions or additions to contract documentation used that was necessitated by the award of only one prime contract.~~

2.1.9 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services called for in paragraph 6.2.2.5.

2.1.11 Providing any type of property surveys or related Engineering services needed for the transfer of interests in real property and field surveys for design purposes and Engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12 Preparation of operating, maintenance, and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs ~~1.2.3~~ and 1.4.2).

2.1.14 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2 Required Additional Services

(See Sections 8.3 and 8.5)

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive (except to the extent otherwise provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matter"). These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation of Basic Services is not commensurate with the additional services rendered.

2.2.2 Services in making revision to Drawings and Specification occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3 Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.

2.2.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 OWNER'S RESPONSIBILITY

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER.

3.1 City Engineer shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have primary authority to transmit instruction, receive information, and interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

3.2 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") the following:

3.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2 appropriate professional interpretations of all the foregoing;

3.4.3 environmental assessment and impact statements;

~~3.4.4 property, boundary, easement, right of way, topographic, and utility surveys;~~

~~3.4.5 property descriptions;~~

3.4.6 zoning, deed, and other land use restrictions; and

3.4.7 other special data or consultations not covered in Section 2; all of which ENGINEER may use and rely upon in performing services under this Agreement.

~~3.5 Provide engineering surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.~~

3.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER; obtain advice of an attorney, insurance counselor, and other consultants as OWNER deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8 Facilitate approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9 Provide such accounting, independent cost estimating, and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code, or order applicable to their furnishing and performing the work.

3.10 If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities, and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER ~~and the Resident Project Representative (and any assistants)~~ will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11 If more than one prime contract is to be awarded for construction, materials, equipment, and services for the entire Project, designate a person or organization to have authority and responsibility for

coordinating the activities among the various prime contractors.

3.12 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive, and other costs of the type referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections, and final payment inspections.

3.14 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15 Furnish or direct ENGINEER to provide Additional Services as stipulated in paragraph 2.1 of this Agreement, or other services as required.

3.16 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial operation of the Project, including extra work and required extensions thereto. If in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ENGINEER, all rates, measure, and amount of compensation provided herein shall be subject to equitable adjustments.

4.2 [Reserved]

4.3 Upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

4.4 After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent, or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

4.5 ENGINEER's services under the ~~Study and Report Phase~~, Preliminary Design Phase and Final Design Phase shall each be considered complete ~~at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the Project~~ as defined in Exhibit A Section 4.

4.6 After acceptance by OWNER of the ENGINEER's Drawings, Specifications, and other Final Design Phase documentation, including the most recent opinion of probable Total Project Costs, and upon OWNER's advertisement of the Project to the Public, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s) (except as may otherwise be required to complete the services called for in paragraph 6.2.2.5).

4.7 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of

separate prime contracts if the Project involves more than one prime contract.

4.8 The Operational Phase will commence during the Construction Phase and will terminate one year after the date of Substantial Completion of the last prime contract for construction, materials, and equipment on which substantial completion is achieved.

4.9 If OWNER has requested significant modifications or changes in the general scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.10 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.11 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials, or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.12 In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contract is to proceed concurrently and is to be included in Exhibit A, "Further

Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4. through 4.10, inclusive, will be modified accordingly.

SECTION 5 PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expense of ENGINEER

5.1.1 For Basic Planning and Study Report Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1A For Basic Design Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1.1 As outlined in the Basic Services of Section 1, the following studies shall be conducted:
T.B.D.

5.1.1.1A One Prime Contract. If only one prime contract is awarded for construction, materials, and equipment for the Project, the ENGINEER shall perform their services on an hourly basis for an amount not to exceed **\$153,320.00**. This amount does not include utility designs, which be under a separate contract. ~~equal to 7.5 percent of the Construction Cost for all Basic Services for the roadway, 10.0 percent of the Construction Cost for all Basic Services for the bridges and box culverts, 6 percent of the Construction Cost for all Basic Services for all utilities outside of the roadway and bridge corridor, and 4.5 percent of the Construction Cost for all Basic Services for all utilities inside the roadway and bridge corridor. (except services of ENGINEER's Resident Project Representative and assistants furnished under paragraph 1.6.2.1 and Operational Phase services furnished under paragraph 1.7); but, if the prime contract contains cost plus or incentive savings provisions for the Contractor's basic compensation, an amount equal to _% of the Construction Cost for such services.~~

5.1.1.2 Several Prime Contracts. ~~If more than one but less than three separate prime contracts are awarded for construction, materials, and equipment for the Project, an additional amount of 6% is to be~~

~~added to the aforementioned not to exceed amount of the Construction Cost for all Basic Services described in Section 5.1.1.1A, (except services of ENGINEER's Resident Project Representative and assistants furnished under paragraph 1.6.2.1 and Operation Phase services furnished under paragraph 1.7); but, if any prime contract contains cost plus or incentive savings provisions for Contractor's basic compensation, _____ % of the Construction Cost for such services.~~

~~5.1.1.3 Resident Project Services. For services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1., on the basis of Salary Costs times a factor of _____ for services rendered by principals and employees assigned to resident Project representation.~~

~~5.1.1.4 Operational Phase Services. For Operation Phase services furnished under paragraph 1.7, an amount equal to ENGINEER's Salary Costs times a factor of _____ for services rendered by principals and employees engaged directly on the Project.~~

5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1 General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13) on the basis of ENGINEER's hourly rate schedule ~~Salary Costs times a factor of 2.75.~~

5.1.2.2 Professional Associates and Consultants. For Services and Reimbursable Expenses of independent professional associates and consultant employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefor times a factor of 1.15. (See Section 8.4.)

5.1.2.3 Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration, or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of \$1,500.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4 As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4; and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1. ~~When Construction Cost is used as a basis for payment, it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:~~

~~5.1.4.1 For completed construction work, the total cost of all work performed as designed or specified by ENGINEER.~~

~~5.1.4.2 For work designed or specified but not constructed, the lowest *bona fide* bid received from a qualified bidder for such work; or, if the work is not bid, the lowest *bona fide* negotiated proposal for such work.~~

~~5.1.4.3 For work designed or specified but not constructed and for which no such bid or proposal is received, the most recent estimate of Construction Cost; or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.~~

~~Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates, including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from Construction Costs on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).~~

5.2 Time of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon hours worked on the Project at the hourly rates in Section 8.4. ~~ENGINEER's estimate of the proportion of the total services actually completed at the time of billing.~~ OWNER shall pay ENGINEER upon its statement with 30 days, provided the statement are in proper order and all supporting documentation has been provided to OWNER.

~~5.2.2 Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount,~~

~~if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:~~

Phase	Percentage
Study and Report	NA
Preliminary Design	35%
Final Design	40%
Bidding or Negotiating	5%
Construction	20%
Operational	NA
	100%

5.3 Other Provisions Concerning Payments

5.3.1 [Reserved].

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the progress of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ~~ENGINEER's Salary Costs times a factor of 2.75~~ Section 8.4 for services rendered by ENGINEER's principals and employees engaged directly on the Project during that phase to date of termination. In the event of any such termination, ENGINEER will also be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services, and for all unpaid Additional Services and unpaid Reimbursable Expenses, ~~plus all termination expenses. Termination expenses mean additional Reimbursable Expenses directly attributable to termination which, if termination is at OWNER's convenience, shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination as follows: 20 percent if termination occurs after commencement of the preliminary Design Phase but prior to commencement of the Final Design Phase; or 10 percent if termination occurs after commencement of the Final Design Phase.~~

5.3.3 Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.3.4 Whenever a factor is applied to Salary Costs in determining compensation payable to ENGINEER, that factor will be adjusted periodically and equitably

to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

5.4 Definitions

5.4. Salary Costs used as a basis for payment mean the fees specified in Section 8.4

5.4.2 Reimbursable Expenses mean the actual, reasonable expenses, if authorized in advance by OWNER, incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1.

SECTION 6 CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER; but it will not include ENGINEER's compensation or expenses, the cost of land, rights-of-way, or compensation for or damages to properties unless this Agreement so specifies; nor will it include OWNER's legal, accounting, insurance counseling, or auditing services, or interest and/or financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs defined in paragraph 1.2.5. See Section 8.3.)

6.2 Opinions of Cost

6.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Costs

provided for herein are to be made on the basis of ENGINEER's experience and qualifications, and shall represent ENGINEER's best judgment as an experienced and qualified professional ENGINEER, familiar with the construction industry. ENGINEER cannot and does not guarantee that proposals, bids, or actual Total Project Costs or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to Total Project Costs or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

6.2.2 If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project Costs or Construction Costs in excess of the then-established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2 Any Construction Cost limit so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.2.2.3 ENGINEER will determine, with advise and consent of OWNER types of materials, equipment, and component systems are to be included in the Drawings and Specifications, and to make reasonable adjustments in the general scope, extent, and character of the Project to bring it within the cost limit.

6.2.2.4 If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER; and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2. If the lowest responsible proposal or bid exceeds the established Construction Cost limit OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent, or

character to the extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of the condition numbered "3", ENGINEER shall modify the Contract Documents necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER its fees and Reimbursable Expenses for such services. The providing of such service will be the limit of ENGINEER's responsibility in this regard; and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not be liable for damages attributable to the rejected bid.

SECTION 7 GENERAL CONSIDERATION

7.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. OWNER may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five days written notice, which notice will direct the sequence and manner in which the termination will be implemented. Upon termination for convenience, OWNER will pay ENGINEER all fees and Reimbursable Expenses incurred to date of termination.

7.2 Reuse of Documents

All documents, including Drawings and Specifications, prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project; and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project.. Any reuse without written verification or adaption by ENGINEER for

the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants; and OWNER shall by only to the extent allowed by law, indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3 Insurance

7.3.1 ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any and all employees, or of any person other than such employees, and from claims or damages because of injury to or destruction of property, including loss of use resulting therefrom. ENGINEER shall carry, and shall provide proof of coverage, a minimum of \$1,000,000 in errors and omissions insurance.

7.4 Controlling Law

This Agreement is to be governed by the laws of the State of Tennessee.

7.5 Successors and Assigns

7.5.2 Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interest in (including without limitation monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and

ENGINEER and not for the benefit of any other party.

7.6 Dispute Resolution

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit C, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit C or other provisions of this Agreement or under law.

SECTION 8 EXHIBITS AND SPECIAL PROVISIONS

8.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement

8.1.1 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," consisting of **three** pages.

8.1.2 Exhibit B, "Duties, Responsibilities, and Limitation of Authority of Project Manager," consisting of **six** pages.

8.1.3 Exhibit C, "Dispute Resolution," consisting of **four** pages.

~~8.1.4 Exhibit D, "Special Provisions," consisting of — pages.~~

8.2 This Agreement (consisting of pages 1 through 16 inclusive, and the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, modified, or canceled only by a duly executed written instrument.

8.3 In the event an error is made in the plans, the ENGINEER will correct the error in the plans, and the ENGINEER's services rendered in connection with correcting the error shall be considered as part of the Basic Services. However, if the cost to the OWNER for correcting the error includes tearing out or redoing any portion of the Project, the cost associated with the tearing out or redoing shall not be considered a part of the overall Project Cost for the

purposes of calculating the ENGINEER's fee for Basic Services.

8.4 Notwithstanding any provision to the contrary, during the term of the Agreement the maximum billing rates shall be as follows:

Principal Engineer	\$195.00/hour
Senior Project Manager	\$170.00/hour
Project Manager	\$150.00/hour
Senior Engineer	\$145.00/hour
Project Engineer	\$125.00/hour
Senior Designer	\$115.00/hour
Engineering EIT	\$100.00/hour
Design CADD Technician	\$100.00/hour
Drafting Technician	\$75.00/hour
Registered Surveyor	\$120.00/hour
Survey Technician	\$80.00/hour
2-Man Survey Crew	\$120.00/hour
3-Man Survey Crew	\$145.00/hour
Technical/Clerical Support	\$60.00/hour

8.5 ENGINEER will obtain prior written approval before performing such work considered "Additional Services" and charging for same.

8.6 Notwithstanding any provision to the contrary, OWNER will not be invoiced for travel within Davidson, Williamson, and Rutherford Counties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.


OWNER:

ENGINEER:

CITY OF MURFREESBORO

ENERGY LAND AND INFRASTRUCTURE, LLC.

By: _____

By:  _____

Title: _____

Title:

Address for giving notice:

Engineering Department
City of Murfreesboro
P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

Address for giving notice:

745 South Church, Suite 805
Murfreesboro, Tennessee 37130
Phone

APPROVED AS TO FORM:


43A2035E51F9401

Attorney for the City of Murfreesboro, Tennessee

EXHIBIT A

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

1. This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, between the City of Murfreesboro, Tennessee, (OWNER) and ELI, Inc. (ENGINEER), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemental as indicated below, and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are as indicated below.
2. The Study and Report Phase services are not included in the Basic Services and have not been included in the Basic Services fee, but are available as part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.
3. The Basic Services relating to **surveying** and included in the Basic Services fee shall include a topographic survey with reference points, control traverses, bench marks, location of existing right-of-way and property lines, visible or marked utility locations and control for construction staking. Upon completion of the survey, the ENGINEER will immediately begin the Preliminary Design Phase. Other services are available as a part of the Agreement should the OWNER request such services in writing, in accordance with paragraphs 5.1.2.1.
4. As part of the **Preliminary Design Phase**, ENGINEER shall furnish the OWNER with a set of 1"=50' scale drawings depicting the topographic information and property line information for the subject limits. These drawings will show the proposed horizontal alignment, preliminary profile, right-of-way, property lines, and necessary cross drains. Contacts will be made with representatives of affected utility owners to determine the general locations of utility lines in the affected area.

Phase 1: The Preliminary Design Phase Services will be completed, and ENGINEER's documentation and opinion of costs submitted within 180 calendar days following written authorization from OWNER to ENGINEER to proceed with this phase of services. The OWNER's written authorization to proceed with the next phase of services will indicate the OWNER's acceptance of the services provided in the phase, or in absence of written authorization to proceed, services will be considered acceptable after 14 days from submittal, unless written notice of unacceptability is issued by the OWNER within the 14-day period. During this 14-day period, the OWNER will provide ENGINEER a marked-up print showing the preferred changes in respect to grades, alignments, and typical sections. Changes to the alignment made at OWNER's request after OWNER's approval of Preliminary Design will be billed as extra services according to the maximum billing rates found in Section 8.4. It is anticipated that one contract will be let for this Phase.

5. During the **Final Design Phase**, ENGINEER shall prepare construction documents. The ENGINEER will deliver to the OWNER a complete set of original drawings or acceptable reproducible intermediate drawings on 24"x36" media to be properly coordinated, approved, and accepted by the OWNER. These drawings will show the proposed horizontal alignment, proposed profile, right-of-way, property lines, and necessary storm drainage design for the roadway. The drawings will also include the proposed improvements to the existing box culvert and related storm drainage system within the project area.

Develop legal descriptions, sketches, and any field staking related to the ROW acquisition.

Develop NOI and SWPPP and submit to State for approval.

Signal Modification design shall include:

In general, traffic signal modifications will be limited to those items required to accommodate the proposed intersection widening:

- Modification of existing traffic signal cabinet
- Remove and replace traffic signal support poles (west side only)
- Update/Replace traffic signal displays
- Modify/Replace vehicle detection equipment
- Implementation of dynamic dual left-turn lane (westbound approach only)

Review and preparation of base mapping and CAD sheet layout. Digital field survey including topographic information and identification of known utilities will be provided to NSI. ELI will provide typical border sheet information in electronic CAD format.

- Prepare preliminary traffic signal construction plan layout based on provided field survey and guidance from city transportation department. Plan sheets will consist of a proposed signal layout and signal detail sheet.
- Submit electronic preliminary plans for incorporation by ELI into overall plan review set.
- Based on comments received from city transportation department, NSI will make requested revisions or additions. Task provides for up to one review by city officials.
- Prepare draft final construction plan documentation. This includes identification of TDOT standard drawings, general notes and special notes. Typical second sheet information (i.e. list of traffic signal standard drawings, general notes and special notes) will be provided as required in MS Word format for incorporation into construction plans by ELI.
- Develop estimated quantity list and preliminary engineers' opinion of probable cost.
- Preparation of westbound advanced overhead signing detail. Proposed equipment includes installation of new advanced overhead span sign deploying static and dynamic (blank-out) signs as recommended for westbound dynamic left-turn movement. Equipment will generally include two strain poles, span wiring, retroreflective static signs and blank-out sign.
- Submit final, sealed traffic signal construction plan sheets to ELI for incorporation into final plan set
- Review and advisement of proposed intersection pavement marking and signing plan. ELI will provide proposed intersection signing and pavement marking plans to NSI for review and comment. NSI scope excludes preparation and editing of signing and marking CAD files. NSI will provide red line comments in electronic format. This includes recommended signing and markings related to deployment of the proposed westbound dynamic left-turn lane
- Review and update basic intersection traffic signal timings. NSI will review existing traffic signal timings and provide recommended updates based on proposed new traffic signal phasing that reflects modified intersection geometrics and lane assignments. Update of traffic signal timings excludes review of existing vehicle clearance intervals and update of coordinated traffic signal timings. Existing traffic signal timings will be provided to NSI.

6. Section 1.5, **Bidding or Negotiation Phase**, is modified as follows:

The ENGINEER will assist the OWNER in the required advertisement for bids, with the cost of such advertising to be borne by the OWNER as a part of administrative expense. The ENGINEER will also attend the bid opening, tabulate the bids and assist the OWNER in evaluating the bids, and assist in the award of contracts and execution of contract documents. Unless otherwise required and stipulated in writing, the ENGINEER will be responsible for receiving requests for plans, collecting plans deposits, mailing bid documents, accepting returned plans, and returning applicable refunds.

APPENDIX 1 TO EXHIBIT A

The following tasks are excluded from the basic engineering services, but may be provided as additional services if requested by the City:

- A. Tree survey or landscape design.
- B. Traffic study.
- C. Offsite Road or Offsite Infrastructure Improvements.
- D. Utility Relocation, Extensions or Evaluations. Design of relocations could be provided as additional services.
- E. Flood Study (FEMA) or Drainage Study. The project area is within the FEMA floodplain. Drainage design for this project will be limited to any new construction.
- F. Electrical Design for supply or lighting, or lighting design (Except for coordination as outlined above)
- G. Environmental Permitting, detailed assessment, or Mitigation. Initial review of the project area indicates that there are no streams or wetlands in the project area. ELI staff will make a site visit to confirm conditions during the preliminary phase of work.
- H. Public Meetings or Hearings. No public meetings or hearings are expected. Project meetings with City staff are included.
- I. Construction Layout / Staking. Survey control for the Contractor or requested survey during construction may be provided as additional services.
- J. Construction Administration / Inspection

EXHIBIT B BETWEEN OWNER AND ENGINEER

Duties, Responsibilities, and Limitations of Authority of Project Manager

Paragraphs 1.6.2.1 and 1.6.2.2 and Exhibit A Paragraph 7 of the Agreement are amended and supplemented to include the following agreement of the parties:

B6.01 *Project Manager*

- A. ENGINEER shall furnish a Project Manager (“PM”) to assist ENGINEER in coordinating and reporting on the progress and quality of the Work to the Owner. The PM shall be the OWNER’s advisor inasmuch as the PM shall be the primary point of contact between OWNER and CONTRACTOR for the entire duration of the referenced construction operations. The PM is intended to supplement and support the OWNER’s existing staff. The PM as defined in this Exhibit B.

APPENDIX 1 TO EXHIBIT B

CIVIL ENGINEERING AND LAND SURVEYING HOURLY RATE SCHEDULE

Principal Engineer	\$195.00/hour
Senior Project Manager	\$170.00/hour
Project Manager	\$150.00/hour
Senior Engineer	\$145.00/hour
Project Engineer	\$120.00/hour
Senior Designer	\$115.00/hour
Engineering EIT	\$100.00/hour
Design CADD Technician	\$100.00/hour
Drafting Technician	\$75.00/hour
Registered Surveyor	\$120.00/hour
Survey Technician	\$80.00/hour
2-Man Survey Crew	\$120.00/hour
3-Man Survey Crew	\$145.00/hour
Technical/Clerical Support	\$60.00/hour

EXHIBIT C

DISPUTE RESOLUTION

DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 ENGINEER and the OWNER will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the GMP or Project Schedule, ENGINEER must first follow the provisions of any Claim procedure established by the ENGINEER Agreement before seeking relief under these Procedures.

2. Arbitration

- 2.1 Except as provided in Section 5 hereof, any Dispute that has not been resolved by negotiation will be decided by binding arbitration conducted in accordance with the Construction Industry Rules of the AAA; provided however, the matter will not be submitted to the AAA for administration.
 - a. The matter will be heard by an arbitrator who has 10 or more years of experience handling construction litigation matters in Rutherford, Davidson, or Williamson counties (the "Arbitrator").
 - b. The parties will agree upon the Arbitrator within five days of the Notice.
 - c. If the parties are unable to agree, each party will exchange within 10 days of the Notice a list of five attorneys qualified as set forth in Section 2.1(a). The OWNER will compare lists and a name that first appears on the OWNER's list that also appears on the ENGINEER's list will serve as the Arbitrator. If not name appears on both lists, the two attorneys first appearing on each list will select a third qualified attorney to serve as the Arbitrator.

- 2.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 2.3 In connection with such arbitration, each Party is entitled to conduct not more than five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 2.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 2.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
 - a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.
- 3. **Continuing Work** Unless otherwise agreed to in writing, ENGINEER must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the OWNER will continue to make payment to ENGINEER in accordance with the ENGINEER Agreement.
- 4. **Exceptions**
 - 4.1 Neither the OWNER nor ENGINEER are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the OWNER and ENGINEER.
 - 4.2 The OWNER or ENGINEER may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is

enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the OWNER for permitting, the excise of governmental police powers for the benefit of public health, safety, and welfare, or other actions taken in the OWNER's regulatory capacity.

4.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.