

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Murfreesboro Airport – 6:00 PM
November 17, 2022

PRAYER

Jamie Averwater

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEMS

STARS Award: Ronald Head

Consent Agenda

1. Hangar Site Design Services Work Authorization (Airport)
2. Titan Aviation Fuels Contract Amendment (Airport)
3. Brinkley Road Change Order #1 (Engineering)
4. Purchase of AED Machines (Fire Rescue)
5. PSAs with Tennis Instructors (Parks)
6. Contract with GT Distributors for Handguns and Accessories (Police)
7. Fifth Amendment to TripSpark Agreement (Transit)

Old Business

Ordinance

8. Ordinance 22-O-42 FY23 Budget Amendment (2nd and Final Reading)
(Administration)

Land Use Matters

9. Ordinance 22-OZ-18 Zoning for property along Highway 99 (2nd and final reading) (Planning)
10. Ordinance 22-OZ-39 Zoning property along North Thompson Lane (2nd and final reading) (Planning)

New Business

Resolution

11. Resolution 22-R-24 FY23 City Schools Budget Amendment #2 (Schools)

On Motion

12. Commercial Operator Lease Agreement with Mike Jones Aircraft Sales (Airport)
13. Change Order #1 to Construction Contract at Seigel Soccer Complex
(Administration)
14. Contract for Governmental Affairs—2023 Session of the General
Assembly (Administration)

15. Amendment to the Rules of Procedure of the Disciplinary Review Board
(Employee Services)
16. Purchase of Roll-Out Garbage Carts (Solid Waste)

Board & Commission Appointments

Licensing

Payment of Statements

Other Business

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Hangar site design services Work Authorization

Department: Airport

Presented by: Chad 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

Approval of a Work Authorization for hangar site design services.

Staff Recommendation

Approve Work Authorization with Barge Design Solutions for hangar site design services on the north end of the Murfreesboro Municipal Airport for \$74,146.

Background Information

The current Airport Layout Plan approved by the FAA, Tennessee Aeronautics Division, and adopted by the City in 2013 identifies the north end of the airport as the site for the development of various sized hangars to meet the high demand for aircraft storage facilities. There are currently over 41 individuals who have paid a deposit to be on the T-hangar Waiting List and there are local businesses expressing interest in basing their aircraft at the Airport. Th design contract will assist the Airport in economic development efforts and allow a diversification of the aeronautical uses and users of the airport. This work will also position the Airport and City in preparation for relocation of the MTSU Aerospace Department.

Council Priorities Served

Improve economic development

Design and development of the north end of the Murfreesboro Municipal Airport will provide economic development opportunities which will contribute jobs and tax revenues for the City as well as the Airport.

Fiscal Impact

The funding for the design service will be split between General Fund and CIP. General Fund will fund \$47,101 and the FY22 CIP will fund the remaining \$27,045.

Attachments

Barge Design Solutions Work Authorization.

BARGE DESIGN SOLUTIONS, INC.**PROFESSIONAL SERVICES AGREEMENT**

This agreement is made as of _____ by and between City of Murfreesboro, Tennessee (**Client**) and Barge Design Solutions, Inc. (**Barge**) for professional services for the assignment described as follows:

Project: Hangar Site Development Phase I Design
 Location: Murfreesboro Municipal Airport
 Description of Project: Design Services for Site Preparation of new Hangars

I. PROFESSIONAL SERVICES: **BARGE** agrees to perform the following Basic Services under this contract:

See Attached Scope of Work

II. COMPENSATION: **Client** shall compensate Barge for the Basic Services as follows:

<input type="checkbox"/>	Cost Plus in accordance with the rate schedule attached as Exhibit "A" including applicable reimbursables.		
<input type="checkbox"/>	Estimated Fee \$	or Maximum Fee \$	
<input checked="" type="checkbox"/>	Lump Sum \$ <u>74,146</u>		
<input type="checkbox"/>	Percentage of Construction Cost %	Estimated Fee \$	
<input type="checkbox"/>	Other (specify)		

In addition, **Client** shall pay **Barge** for additional services performed beyond the Basic Services in accordance with the hourly rate schedule.

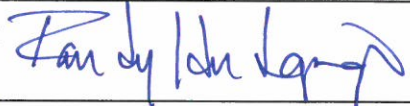
III. PAYMENTS: Invoices for services rendered will be issued monthly, and payment is due upon receipt of each invoice. Unless special arrangements are made, a finance charge of 1.5% per month will be added to unpaid balances more than thirty (30) days old.

IV. TIME: unless agreed otherwise in writing, **Barge** will commence its services within a reasonable time after receipt of an executed copy of this agreement. **Barge** will perform its services in a timely manner commensurate with the exercise of due professional care. time for performance shall be extended as necessary for delays or suspensions due to circumstances beyond **Barge's** control. if such delay or suspension extends more than six months (cumulatively), **Barge's** compensation shall be equitably adjusted.

- V. **SUSPENSION OF SERVICES:** If **Client** fails to pay any invoice when due or otherwise is in material breach of this Agreement, **Barge** may at its sole discretion suspend performance of services upon five (5) days' written notice to **Client**. **Barge** shall have no liability to **Client**, and **Client** agrees to make no claim for any delay or damage as a result of such suspension. Upon cure of the cause of the suspension, **Barge** shall resume services within a reasonable time, and there shall be an equitable adjustment of the project schedule and fees to reflect the effects of such suspension.
- VI. **STANDARD OF CARE:** Notwithstanding any other provision of this Agreement or any other document describing the services, **Barge** shall perform its services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession in the same locality at the time the services are provided. No warranty, expressed or implied, is made or intended by **Barge**. The parties further agree that **Barge** is not a fiduciary of **Client**.
- VII. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated without cause by either party upon ten (10) days' written notice to the other party. On termination by either the **Client** or **Barge**, **Client** shall pay **Barge** all amounts due for any services performed to the date of termination (plus all reimbursable expenses incurred). Upon such termination by **Client**, it shall immediately return to **Barge** all drawings, reports, documents, and other instruments of professional services prepared by **Barge**, and **Client** shall make no further use thereof.
- VIII. **OWNERSHIP AND REUSE OF DOCUMENTS:** All documents, including without limitation, drawings, specifications, and reports prepared by **Barge** pursuant to this Agreement are instruments of professional service. **Barge** shall own all legal and equitable rights therein, including copyrights. Such instruments are not intended or represented to be suitable for reuse by **Client** or others for additions or modifications of the Project or on any other project. Any reuse without written consent of **Barge** shall be at **Client's** sole risk and without liability to **Barge**; and to the fullest extent permitted by law, **Client** shall indemnify, defend, and hold harmless **Barge** from and against any and all claims, damages, losses, and expenses, including reasonable attorneys' fees and costs of defense arising out of or resulting therefrom. **Barge** shall be entitled to further compensation for services it is requested to perform in connection with any reuse of its instruments of professional service.
- IX. **ACCESS TO THE SITE/JOBSITE SAFETY:** Unless otherwise stated, **Barge** will have access to the site for activities necessary for the performance of its services. **Client** agrees that **Barge** shall have no responsibility for the means, methods, sequences, procedures, techniques, and scheduling of construction, as these decisions are solely the responsibility of the contractors. **Barge** further shall have no authority or duty to supervise the construction workforce and shall not be responsible for jobsite safety or for any losses or injuries that occur at the Project site.
- X. **INSURANCE:** **Barge** shall endeavor to secure and maintain insurance in such amounts as it deems necessary to protect **Barge** from claims of professional negligence arising from the performance of services under this Agreement.
- XI. **RISK ALLOCATION:** In recognition of the relative risks, rewards, and benefits of the Project to both **Client** and **Barge**, to the fullest extent permitted by law, the parties agree to allocate the risks such that **Barge's** total liability to **Client** for any and all injuries, claims, losses, expenses, damages, and/or claim expenses arising out of **Barge's** services under this Agreement from any cause or

causes shall not exceed the amount of **Barge's** fee or **One Hundred Thousand Dollars (\$100,000)**, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

- XII. DISPUTE RESOLUTION:** It is agreed that all claims, disputes, or other matters in question arising out of or related to this Agreement shall be submitted to nonbinding mediation before any legal proceeding is commenced. The parties shall equally bear the fees and expenses charged by the mediator.
- XIII. OPINIONS OF CONSTRUCTION COST:** Any opinion of probable construction cost prepared by **Barge** represents the judgment of one or more **Barge** design professionals and is supplied for general guidance of **Client**. Since **Barge** has no control over the construction marketplace and does not use the same pricing methods used by contractors, **Barge** does not guarantee the accuracy of such opinions.
- XIV. GOVERNING LAW:** Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the State of Tennessee.

City of Murfreesboro, Tennessee	Barge Design Solutions, Inc.
By:	By: 
Printed Name:	Printed Name: RANDY HUDGINGS
Title:	Title: Vice President
Address:	Address: 615 Third Ave. South Suite 700 Nashville, TN 37210
Date Signed:	Date Signed: 11/9/22
Tax I.D. Number:	

Approved to form:
DocuSigned by:



43A2035E51E9401
Adam F. Tucker, City Attorney

Scope of Work

Hangar Site Development Design Phase I

1. The ENGINEER will develop Construction Drawings and Specifications for Site Grading and Utilities within the area shown on Exhibit "A". The Drawing set shall consist of the following drawings:

Cover Sheet

Construction Safety and Phasing Plan

General Notes and Summary of Quantities

Existing Conditions and Demolition Plan

Erosion Prevention and Sediment Control Plan (ESPC)

ESPC Notes and Details

Site Grading and Drainage Plan

Site Utility Plan

Storm Drainage Profiles

Storm Details

Miscellaneous Details

2. The OWNER will provide the ENGINEER with existing topographic survey of the subject area for use in completing design. In the event that existing topographic survey of this area is not available, the ENGINEER may amend this contract as required to obtain the topographic survey.

- ~~3. The ENGINEER will subcontract a qualified firm to perform a topographic survey of the proposed property to be acquired as shown on Exhibit "B" (5 Acres +/-). The topographic information shall be sufficient to provide a one (1) foot contour interval. All above ground features will be located as well as drainage structures and pipe flow lines.~~

~~Survey datum shall be based on the TN state plane coordinate system. It is assumed that permanent control points exist on the field. Existing permanent control points will be used as benchmarks for the project. Temporary control points will also be established during design and utilized during construction.~~

4. The ENGINEER will use the data collected from the topographic survey to evaluate the stormwater drainage plan for the ultimate full development of the site, including the additional 5+/- acres.
5. The ENGINEER will prepare a Stormwater Pollution Prevention Plan (SWPPP) for the proposed development area and coordinate with TDEC for approval.

6. The scope and fee is limited to Design as defined herein. Bidding, Construction Administration, Geotechnical Investigation Services, Construction Testing, and Resident Project Representative Services may be added by amendment to this contract.
7. Designs are based on visual observations from site trips. Unforeseen conditions that require repair may be revealed during construction.

Tentative Project Schedule

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

- | | |
|---|--------------------------|
| • Barge WA Submitted to MBT | October 2022 |
| • Client Approval of WA | November 2022 |
| • Topographic Survey Performed | December 2022 |
| • 90% Design Complete | March 2023 |
| • 90% Design Review Meeting | March 2023 |
| • Final Design Complete | April 2023 |

A & E FEE PROPOSAL

Murfreesboro Municipal Airport
Murfreesboro, Tennessee

**Barge Design Solutions**

October 31, 2022

Project Number:

3741904

TAD Number

HANGAR SITE DEVELOPMENT PHASE I 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	\$87.50	\$0.00	
B. CIVIL ENGINEER (CE)					0	\$66.45	\$0.00	
C. ENGINEER INTERN (EI)					0	\$40.18	\$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	\$55.28	\$0.00	
G. AVIATION PLANNER (AP)					0	\$53.00	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					0	\$46.50	\$0.00	
J. SECRETARIAL/TYPIST (S)					0	\$27.80	\$0.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
PROJECT DEVELOPMENT PHASE DIRECT LABOR:							\$0.00	
COMBINED OVERHEAD:				210.36%			\$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)					0	\$87.50	\$0.00	
B. CIVIL ENGINEER (CE)					88	\$66.45	\$5,847.60	
C. ENGINEER INTERN (EI)					119	\$40.18	\$4,781.42	
D. ELECTRICAL ENGINEER (EE)					0	\$65.69	\$0.00	
E. ARCHITECT (A)					0	\$65.28	\$0.00	
F. SENIOR AVIATION PLANNER (SAP)					32	\$55.28	\$1,768.96	
G. AVIATION PLANNER (AP)					0	\$53.00	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					140	\$46.50	\$6,510.00	
J. SECRETARIAL/TYPIST (S)					0	\$27.80	\$0.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
DESIGN PHASE DIRECT LABOR:							\$18,907.98	
COMBINED OVERHEAD:				210.36%			\$39,774.83	
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:								\$58,722.11
OPERATING MARGIN:				15%				\$8,808.32
FCCM (APPLIED TO DIRECT LABOR ONLY):				0.61%				\$115.34
TOTAL DESIGN PHASE:								\$67,646.00

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	\$87.50	\$0.00	
B. CIVIL ENGINEER (CE)					0	\$66.45	\$0.00	
C. ENGINEER INTERN (EI)					0	\$40.18	\$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	\$55.28	\$0.00	
G. AVIATION PLANNER (AP)					0	\$53.00	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					0	\$46.50	\$0.00	
J. SECRETARIAL/TYPIST (S)					0	\$27.80	\$0.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
BID PHASE DIRECT LABOR:							\$0.00	
COMBINED OVERHEAD:				210.36%			\$0.00	
L. DOCUMENTS	SETS			200		\$0.10	\$0.00	
M. SHIPPING						\$40.00	\$0.00	
N. TRIPS	MILES	70		0		\$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:								\$0.00
OPERATING MARGIN:				15%				\$0.00
FCCM (APPLIED TO DIRECT LABOR ONLY):				0.61%				\$0.00
TOTAL BID PHASE:								\$0.00
4. CONSTRUCTION PHASE								
A. PRINCIPAL (P)					0	\$87.50	\$0.00	
B. CIVIL ENGINEER (CE)					0	\$66.45	\$0.00	
C. ENGINEER INTERN (EI)					0	\$40.18	\$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	\$55.28	\$0.00	
G. AVIATION PLANNER (AP)					0	\$53.00	\$0.00	
H. ENVIRONMENTAL PLANNER (EP)					0	\$48.20	\$0.00	
I. DESIGNER (D)					0	\$46.50	\$0.00	
J. SECRETARIAL/TYPIST (S)					0	\$27.80	\$0.00	
K. RESIDENT PROJECT REP. (RPR)					0	\$33.87	\$0.00	
CONSTRUCTION PHASE DIRECT LABOR:							\$0.00	
COMBINED OVERHEAD:				210.36%			\$0.00	
J. DOCUMENTS	SETS			0		\$0.10	\$0.00	
K. SHIPPING						\$40.00	\$0.00	
L. TRIPS	MILES	70		0		\$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					\$67,646.00	100%		
BID PHASE					\$0.00	0%		
CONSTRUCTION PHASE					\$0.00	0%		
TOTAL SECTION A:							\$67,646.00	
SECTION B: FEES FOR AIRPORT PLANS AND OTHER ITEMS IF INCLUDED AS BASIC SERVICES								
1. TOPOGRAPHIC SURVEY (SUBCONTRACTED)							\$0.00	
2. PREPARE AND COORDINATE SWPPP							\$6,500.00	
3. DBE PLAN UPDATE & REPORTING								
TOTAL SECTION B:							\$6,500.00	
TOTAL BASIC ENGINEERING FEE (Sections A and B):							\$74,146.00	

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									
DAYS OF DESIGN SURVEY									
DAYS OF CONSTRUCTION SURVEY									
TOTAL DAYS OF SURVEY									
1. 2-MAN SURVEY CREW (1 PARTY CHIEF, 1 INSTRUMENT MAN)									
REGULAR			HRS @	\$43.85 / HR =		\$0.00			
OVERTIME		0	HRS @	\$65.78 / HR =		\$0.00			
2. SURVEY MANAGER			HRS @	\$39.48 / HR =		\$0.00			
4. SURVEY PROCESSOR			HRS @	\$39.48 / HR =		\$0.00			
DIRECT LABOR TOTAL SECTION D:									\$0.00
COMBINED OVERHEAD:								210.36%	\$0.00
5. AUTO EXPENSES	DAYS @	70	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):								0.61%	\$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:								210.36%	\$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):								0.61%	\$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)	\$74,146.00
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ADDITIONAL PROJECT EXPENSES (IF REQUIRED)									
1. ADDITIONAL OBSTRUCTION ANALYSIS (QUANTUM SPACIAL)									\$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



PRELIMINARY
NO FOR
CONSTRUCTION

PRELIMINARY HANGAR DEVELOPMENT LAYOUT

MURFREESBORO MUNICIPAL AIRPORT

AT THE
HANGAR DEVELOPMENT

MURFREESBORO, TENNESSEE

[illegible]

LAYOUT

FILE NO. 37419-02

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Titan Aviation Fuels Contract Amendment

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

Amend contract with Titan Aviation Fuels extending term six months.

Staff Recommendation

Approve Amendment No. 4 to contract with Titan Aviation Fuels.

Background Information

Titan Aviation Fuels was selected through a competitive process to provide aviation fuels and equipment to the Airport. The current contract expires on January 1st. Staff is working on completing the RFSP for the next contract period. That process will include the sale of aviation fuels, quality and safety control training, specifications for a fuel farm, and aircraft refueling trucks for the City to lease or purchase. Given the term of the existing contract, the complexity of preparing the RFSP, and the time required to complete the process, extension of to the contract for six months is required.

Council Priorities Served

Expand infrastructure

The Airport manages its contracts and finances to ensure its ability to maintain and expand infrastructure necessary to meet the high level of operational safety and quality of service Airport customers have come to expect.

Fiscal Impact

None. ON-going purchases and sale of aviation fuel is accommodated by existing Airport Operating Budget.

Attachments

Amendment No. 4 to Contract with Titan Aviation Fuels d/b/a Eastern Aviation Fuels, Inc.

**AMENDMENT NO. 4
TO THE
CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
TITAN AVIATION FUELS F/K/A EASTERN AVIATION FUELS, INC
FOR AVIATION FUEL**

This Fourth Amendment ("Fourth Amendment") to the Contract entered July 1, 2017 ("Contract") is effective as of this _____, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Titan Aviation Fuels dba Eastern Aviation Fuels, Inc., a corporation of the State of North Carolina, ("Contractor").

RECITALS

WHEREAS, pursuant to clause 2 of the Agreement, the term of this contract was from July 1, 2017, to June 30, 2020, with two one-year options, unless extended upon agreement of the Contractor and the City; and,

WHEREAS, the parties entered into Amendment No. 1 extending the contract an additional year through June 30, 2021, Amendment No. 2 extending the contract an additional year until June 30, 2022, and Amendment No. 3 extending the contract an additional six months until December 31, 2022; and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to provision 2 of the current Contract for an additional six months, and all other terms of the contract including unit price, shall remain unchanged:

NOW THEREFORE, the Contract is hereby amended as set forth below:

1. The Contract is amended by extending the term of the contract for an additional six months through June 30, 2023.
2. This amendment is hereby effective on January 1, 2023.

City of Murfreesboro

Titan Aviation Fuels

By: _____
Shane McFarland, Mayor

DocuSigned by:
By: Robbie Stallings
Robbie Stallings, President

Approved as to form:

DocuSigned by:
Adam F. Tucker
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Brinkley Road Improvement Project - Change Order #1

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

Change Order #1 Brinkley Road Improvement Project.

Staff Recommendation

Approve change order #1 with Bell and Associates, LLC for the Brinkley Road Phase 1 project.

Background Information

This change order is for the addition of bridge end rails and milling operations to be added to the construction contract. During the construction of this project, it was discovered that these items were needed and not included in the original quantities for the job. The addition of the bridge end rails conflicts with an area of concrete steps designed within the project, therefore these will be eliminated. A breakdown of these changes is included in the attached change order.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

The amount of the change order, \$15,793 increases the construction amount to \$3,855,790, which is within the project budget funded by the FY16, FY21, and FY22 CIP Bonds.

Attachments

Brinkley Rd. Phase 1 – Change Order #1

CHANGE ORDER NO. 1

PROJECT: Brinkley Road Phase 1
Murfreesboro, Tennessee

CONTRACTOR: Bell Construction
1000 Health Park Dr. Suite 150
Brentwood, TN 37027

DATE: August 8, 2022

You are hereby directed to make the following changes in this Contract:

DESCRIPTION:

The addition of guardrail to the bridge ends that were not originally included in the planned quantities. The installation of these guardrails' conflicts with the designed steps in the area, so this item is being removed. Quantities are summarized below:

ITEMS TO BE ADDED/REMOVED

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
415-01.01	COLD PLANING BITUMINOUS PAVEMENT	SY	700	\$11.75	\$8,225.00
705-06.01	W BEAM GR (TYPE 2) MASH TL-3	LF	50	\$39.38	\$1,969.00
705-06.26	THREE BEAM BRIDGE TRANSITION MASH TL-2	EA	4	\$1,586.88	\$6,347.52
705-06.30	GR TERMINAL (ENERGY ABSORBING) MASH TL-2	EA	4	\$3,937.82	\$15,751.28
604-01.01	CLASS A CONCRETE (ROADWAY)	CY	-11	-\$1,500.00	-\$16,500.00

The Original Contract Sum was..... \$3,839,997.40

The Contract Sum will be increased by this Change Order..... \$ 15,792.80

The Final Contract Amount including all Change Orders..... \$3,855,790.20

ENERGY LAND & INFRASTRUCTURE, LLC

ENGINEER

BY: 

DATE: 8/12/22

CITY OF MURFREESBORO

ENGINEERING DEPT

BY: 

Executive Director

DATE: 8-16-22

BELL CONSTRUCTION

CONTRACTOR

BY: 

DATE: 8/12/22

CITY OF MURFREESBORO

OWNER

BY: _____

Mayor

DATE: _____

August 11, 2022

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

**Re: Brinkley Road
Contract Budget Extension**

Dear Mr. Griffith:

This letter serves as recommendation for the Brinkley Road Bridge project to add Bridge End Railing, Milling, and removal of roadway concrete (stairs) to Bell's contract. The requested additional items have been requested due to the drawing not including Bridge End Rail or milling to tie into the existing pavement at the limits of constuction. The roadway concrete is being removed from the project has the stairs will no longer be accasseable due to the bridge end railing. The following items are requested to bed added and removed:

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
415-01.01	COLD PLANING BITUMINOUS PAVEMENT	SY	700	\$ 11.75	\$ 8,225.00
705-06.01	W BEAM GR (TYPE 2) MASH TL-3	LF	50	\$ 39.38	\$ 1,969.00
705-06.26	Thrie Beam Bridge Transition MASH 2	EA	4	\$ 1,586.88	\$ 6,347.52
705-06.30	GR TERMINAL (ENERGY ABSORBING)MASH TL-2	EA	4	\$ 3,937.82	\$ 15,751.28
604-01.01	CLASS A CONCRETE (ROADWAY)	CY	-11	\$1,500.00	\$ (16,500.00)

Total	\$ 15,792.80
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Please see the attached letter from Bell and Associates Construction dated August 8th, 2022. ELI, recommends approval of these additional items and removal of the concrete in the amount of \$15,795.80. If you have any questions, please feel free to give me a call.

Regards,

ENERGY LAND & INFRASTRUCTURE, LLC



Uri Sowell, PE

Attachments



August 8, 2022

Energy Land & Infrastructure, LLC
Uri Sowell, PE
1420 Donelson Pike Suite A-12
Nashville, TN 37127

Re: **Request for Change Order No. 1 – Revision 1**
Contract: Brinkley Road Bridge Over Overall Creek
County: Rutherford

Mr. Sowell:

Upon review of the Brinkley Road Bridge Construction Plans, it was noted that there were no items set up for guardrail or asphalt milling. Per the City of Murfreesboro's request for pricing of these items, below is BELL's pricing to perform the added scope of work:

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
415-01.01	COLD PLANING BITUMINOUS PAVEMENT	SY	700	\$ 11.75	\$ 8,225.00
705-06.01	W BEAM GR (TYPE 2) MASH TL-3	LF	50	\$ 39.38	\$ 1,969.00
705-06.26	THREE BEAM BRIDGE TRANSITION MASH TL-2	EA	4	\$ 1,586.88	\$ 6,347.52
705-06.30	GR TERMINAL (ENERGY ABSORBING) MASH TL-2	EA	4	\$ 3,937.82	\$ 15,751.28
604-01.01	CLASS A CONCRETE (ROADWAY)	CY	-11	\$ 1,500.00	\$ (16,500.00)
				Total	\$ 15,792.80

Enclosed you will find a breakdown of the cost to perform this work.

Thank you and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

BELL & ASSOCIATES CONSTRUCTION, LLC

Mack Richardson
Project Engineer



BELL & ASSOCIATES CONSTRUCTION, LLC
PO BOX 363 (37024)
1000 HEALTH PARK DRIVE, SUITE 150
BRENTWOOD, TN 37027
PHONE: (615) 373-4343 FAX: (615) 373-9224

CHANGE ORDER NO.:	1
JOB:	Brinkley Road Bridge
DESCRIPTION:	Bridge and Approaches Over Overall Creek
DATE:	Monday, August 8, 2022

[illegible]



BELL & ASSOCIATES CONSTRUCTION, LLC
PO BOX 363 (37024)
1000 HEALTH PARK DRIVE, SUITE 150
BRENTWOOD, TN 37027
PHONE: (615) 373-4343 FAX: (615) 373-9224

CHANGE ORDER NO.:	1
JOB:	Brinley Road Bridge
DESCRIPTION:	Bridge and Approaches Over Overall Creek
DATE:	Thursday, August 4, 2022

[illegible]



BELL & ASSOCIATES CONSTRUCTION, LLC
PO BOX 363 (37024)
1000 HEALTH PARK DRIVE, SUITE 150
BRENTWOOD, TN 37027
PHONE: (615) 373-4343 FAX: (615) 373-9224

CHANGE ORDER NO.:	1
JOB:	Brinley Road Bridge
DESCRIPTION:	Bridge and Approaches Over Overall Creek
DATE:	Thursday, August 4, 2022

[illegible]



BELL & ASSOCIATES CONSTRUCTION, LLC
PO BOX 363 (37024)
1000 HEALTH PARK DRIVE, SUITE 150
BRENTWOOD, TN 37027
PHONE: (615) 373-4343 FAX: (615) 373-9224

CHANGE ORDER NO.:	1
JOB:	Brinley Road Bridge
DESCRIPTION:	Bridge and Approaches Over Overall Creek
DATE:	Thursday, August 4, 2022

[illegible]

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Purchase of Automated External Defibrillators

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

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

Summary

Purchase of ZOLL Automated External Defibrillators (AEDs).

Staff Recommendation

Approve the purchase agreement with ZOLL Medical Corporation.

Background Information

MFRD proposes to purchase five AEDs from ZOLL Medical Corporation. ZOLL is the single-source provider of the type of defibrillator that is carried by MFRD and are interoperable with our current FireRMS and ZOLL ePCR software. The AED machines will replace the department's current devices as several are approaching 10 – 12 years of age and close to the end of their service cycle.

Council Priorities Served

Maintain public safety

AED machines are critical pieces of equipment for MFRD personnel to provide lifesaving services to the citizens of Murfreesboro.

Fiscal Impacts

The cost, \$12,775, is funded by American Rescue Plan Act funds.

Attachments

Purchase Agreement with ZOLL Medical Corporation

**AMENDMENT #1
TO
PURCHASE AGREEMENT
DEFIBRILLATOR CAPITAL EQUIPMENT and ACCESSORIES
AGREEMENT NO. CW2233159**

This First Amendment ("First Amendment") to the Purchase Agreement ("Agreement") for Defibrillator Capital Equipment and Accessories, is effective as of _____, by and between ZOLL Medical Corporation, a Massachusetts corporation ("ZOLL"), and City of Murfreesboro on behalf of the Murfreesboro Fire Rescue Department, headquartered at 220 NW Broad St, Murfreesboro, TN 37130 ("Customer").

RECITALS

WHEREAS, on September 20, 2021, Customer entered into the Purchase Agreement with ZOLL for the purchase of Defibrillator Capital Equipment and Accessories, Agreement No. CW2233159; and

WHEREAS, Section 10, of the Agreement provides for modifications to the Agreement through an Amendment mutually agreed to and signed by the parties; and

WHEREAS, the term of the Agreement is from September 20, 2021, to September 19, 2024; and

WHEREAS, the Customer desires to purchase additional defibrillator capital equipment and accessories from ZOLL utilizing American Rescue Plan Act (ARPA) federal grant funds set forth in Quote No. Q-23498 (Attachment A to Amendment 1); and

WHEREAS, the ARPA grant requires that certain clauses are included in contracts utilizing federal grant funds for the procurement of equipment.

NOW THEREFORE, the Customer and ZOLL mutually agree to amend the contract as follows:

1. The Contract is amended to include the purchase of additional items as set forth in Quote No. Q-23498 (Attachment A to Amendment 1) at the price provided in the Purchase Agreement.
2. Section 27 of The Contract is revised to change the Maintenance of Records time period to a full five (5) years instead of three (3) years.
3. The contract is amended by adding the following clauses to be incorporated into the Purchase Agreement entered September 20, 2021, and numbered as set forth below:

31) Title VI of the Civil Rights Act of 1964, as amended. ZOLL, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

32) Debarment and Suspension.

- a) The Customer certifies, to the best of its knowledge and belief, that ZOLL:
 - i. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - ii. has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal 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;
 - iii. is 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
 - iv. has 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.

- b) The Customer will provide immediate written notice to the U.S. Department of Treasury or granting authority, if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, ZOLL is excluded or disqualified, or presently falls under any of the prohibitions of sections i-iv.

- c) ZOLL shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement),” 2 CFR Part 180. ZOLL shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - i. Debarred from participation in any federally assisted Award;
 - ii. Suspended from participation in any federally assisted Award;
 - iii. Proposed for debarment from participation in any federally assisted Award;
 - iv. Declared ineligible to participate in any federally assisted Award;
 - v. Voluntarily excluded from participation in any federally assisted Award; or
 - vi. Disqualified from participation in any federally assisted Award.
 - vii. By signing this Agreement, ZOLL certifies as follows: The certification in this clause is a material representation of fact relied upon by the Customer. If it is later determined by the Customer that ZOLL knowingly rendered an erroneous certification, in addition to remedies available to the Customer, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. ZOLL agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of the awarded Agreement. ZOLL further agrees to include a provision requiring such compliance in its lower tier covered transactions.

33) SAMS.gov Registration and UEI #. All vendors are required to be registered with SAMS.gov and supply their Unique Entity ID (UEI).

34) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. ZOLL shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water

Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

35) Lobbying Certification. (4220.1F.IV.2.a.(4); 49 CFR Part 20).

- a) Contractors that apply or bid for an award exceeding \$100,000 must file the lobbying certification before the awarding of the contract, and if applicable, a lobbying disclosure from a prospective third-party contractor. See, DOT regulations, “New Restrictions on Lobbying” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd “Anti-Lobbying” Amendment, 31 U.S.C. Section 1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- b) The Contractor certifies, to the best of its knowledge and belief, that:
 - i. 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 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.
 - ii. 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.
 - iii. The Contractor 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.
- c) 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.

36) Domestic preferences for procurements. (2 CFR 200.322)

- a) As appropriate and to the extent consistent with law, ZOLL, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- b) For purposes of this section:

- i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

37) Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), ZOLL is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

38) Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ENTERED this day of _____.

ZOLL MEDICAL CORPORATION

CITY OF MURFREESBORO

By: _____
Jeff Roberts, Vice President – US EMS Sales

By: _____
Shane McFarland, Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

**ZOLL Medical Corporation**

269 Mill Road
Chelmsford, MA 01824-4105
Federal ID# 04-2711626

Phone: (800) 348-9011
Fax: (978) 421-0015
Email: esales@zoll.com

Quote No: Q-23498 Version: 3

Murfreesboro Fire & Rescue Department
220 Northwest Broad Street
Murfreesboro, TN 37130

ZOLL Customer No: 185892

Jeff Wright
(629) 201-9056
jwright@murfreesborotn.gov

Quote No: Q-23498
Version: 3

Issued Date: November 3, 2022
Expiration Date: December 31, 2022

Terms: NET 30 DAYS

FOB: Destination
Freight: Free Freight

Prepared by: Adam Britt
EMS Territory Manager
abritt@zoll.com
+1 9012129677

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	1127744	8502-001103-01	ZOLL AED 3® BLS EMS/ FIRE Package Includes: Product Documentation, ZOLL AED 3 Battery Pack, Carry Case, CPR Stat padz, Pedi padz II. Six (6) year factory warranty.	5	\$4,015.00	\$2,555.00	\$12,775.00

Subtotal: \$12,775.00

Total: \$12,775.00

Contract Reference	Description
1127744	Reflects Purchasing Agreement No. CW2233159 pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in Purchasing Agreement No. CW2233159 shall apply to the customer's purchase of the products set forth on this quote.

To the extent that ZOLL and Customer, or Customer's Representative have negotiated and executed overriding terms and conditions ("Overriding T's & C's"), those terms and conditions would apply to this quotation. In all other cases, this quote is made subject to ZOLL's Standard Commercial Terms and Conditions ("ZOLL T's & C's") which for capital equipment, accessories and consumables can be found at <https://www.zoll.com/about-zoll/invoice-terms-and-conditions> and for software products can be found at <http://www.zoll.com/SSPTC> and for hosted software products can be found at <http://www.zoll.com/SSHTC>. Except in the case of overriding T's and C's, any Purchase Order ("PO") issued in response to this quotation will be deemed to incorporate ZOLL T's & C's, and any other terms and conditions presented shall have no force or effect except to the extent agreed in writing by ZOLL.

1. This Quote expires on December 31, 2022. Pricing is subject to change after this date.
2. Applicable tax, shipping & handling will be added at the time of invoicing.
3. All purchase orders are subject to credit approval before being accepted by ZOLL.
4. To place an order, please forward the purchase order with a copy of this quotation to esales@zoll.com or via fax to 978-421-0015.
5. All discounts from list price are contingent upon payment within the agreed upon terms.
6. Place your future accessory orders online by visiting www.zollwebstore.com.

**ZOLL Medical Corporation**

269 Mill Road
Chelmsford, MA 01824-4105
Federal ID# 04-2711626

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: esales@zoll.com

Murfreesboro Fire & Rescue Department
Quote No: Q-23498 Version: 3

Order Information (to be completed by the customer)

☐ Tax Exempt Entity (Tax Exempt Certificate must be provided to ZOLL)

☐ Taxable Entity (Applicable tax will be applied at time of invoice)

BILL TO ADDRESS	SHIP TO ADDRESS
Name/Department:	Name/Department:
Address:	Address:
City / State / Zip Code:	City / State / Zip Code:

Is a Purchase Order (PO) required for the purchase and/or payment of the products listed on this quotation?

☐ Yes PO Number: _____ PO Amount: _____
(A copy of the Purchase Order must be included with this Quote when returned to ZOLL)

☐ No (Please complete the below section when submitting this order)

For organizations that do not require a PO, ZOLL requires written execution of this order. The person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms and prices in this quotation.

Murfreesboro Fire & Rescue Department

Authorized Signature:

Name: _____
Title: _____
Date: _____

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Professional Services Agreements with Tennis Instructors

Department: Parks and Recreation

Presented by: Nate Williams, 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 Agreements (PSAs) with Five Tennis Instructors.

Staff Recommendation

Approve PSAs for Tennis Instructors.

Background Information

Most tennis lessons at the Adams Tennis Complex are taught by independent tennis instructors who are paid a percentage of the fees charged for the lessons. Fees are charged to patrons by the Complex and split with the instructors. Instructors receive 70% of the fees, and the remaining fees are retained by the Complex. Agreements with the instructors are the same as in previous years.

Council Priorities Served

Establish strong City brand

Professional tennis instruction at Adams Tennis Complex is important for engaging all skill levels of the tennis community, and offering instruction advances the brand of Adams Tennis Complex.

Fiscal Impact

Tennis instructor expenses are covered in the Parks and Recreation FY23 operating budget.

Attachments

Five Tennis Instructor PSAs

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
MAGNUS BERGLUND**

This Professional Services Agreement is made by and between the City of Murfreesboro hereafter referred to as "City" through its Parks and Recreation Department and Magnus Berglund hereinafter referred to as "Tennis Pro", this ____ day of _____, 2022.

Whereas, the City is interested in utilizing all available facilities to provide quality recreational instruction at minimal cost; and,

Whereas, Tennis Pro is experienced in the instruction of tennis and is interested in offering programs using the facilities of the City;

Now, therefore, the City and User agree as follows:

1. **Term:** The term of this Professional Services Agreement ("Agreement") shall be between November 1, 2022 and June 30, 2023.
2. **Scope of Services – Tennis Pro:**
 - a. Tennis Pro shall teach tennis through private and semi-private lessons, camps and clinics for youth and adults.
 - b. Tennis Pro should help produce publicity, flyers, etc. for the Adams Tennis Complex (ATC). All informational items must have prior approval from the Director of the Murfreesboro Parks and Recreation Department or designee.
 - c. The Tennis Pro shall receive seventy percent (70%) of the gross revenues of all paid fees, for all private and semi-private lessons. The City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis for funds received during the preceding month.
 - d. The Tennis Pro shall receive seventy percent (70%) of one-day tennis social events (e.g. mixers, round robins, or social play days) that the Tennis Pro runs. Social events must be approved by the Superintendent of the Adams Tennis Complex and will be contingent on availability of courts. Should the Tennis Pro desire to run a Tournament, or other sanctioned, or multi day event, they must adhere to current tournament policies and procedures. All payments shall be made on a monthly basis for funds received during the preceding month.
 - e. Tennis Pro shall receive 70% of the Tennis Pro's hourly private lesson rate for each hour Tennis Pro elects to teach in a Group Tennis class or Tennis Camp program organized by the Superintendent of the Adams Tennis Complex. All payments shall be made on a monthly basis for funds received during the preceding month.
 - f. Tennis Pro shall indemnify and hold harmless the City, its officers, agents, and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement.

- ii. Any claims, damages, costs and attorney fees arising from any failure of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable law, including, but not limited to, labor laws and minimum wage laws.

Tennis Pro shall pay City any expenses incurred as a result of Tennis Pro's failure to fulfill any obligation in a professional and timely manner under the Agreement.

- g. Tennis Pro must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers' compensation insurance as required by the State of Tennessee. Such insurance shall name the City of Murfreesboro (111 W. Vine St., Murfreesboro, TN 37130) as an additional insured for the duration of this Agreement. Proof of such insurance shall be provided to the City by a certificate of insurance and a copy of the policy's additional insured endorsement. User must notify City if the insurance policy is renewed, canceled, or altered in any manner and provide written documentation of such alteration.
- h. Tennis Pro shall provide the City a completed Volunteer Background Check form for himself/herself. It is the Murfreesboro Parks and Recreation Department's policy that all employees/volunteers working with children in their program are subject to background checks at a minimum to the extent set forth in MPRD's Youth Athletic League Background Check Policy (attached).
- i. Tennis Pro shall follow the rules and regulations of the City of Murfreesboro and the Murfreesboro Parks and Recreation Department.
- j. Tennis Pro has inspected the site and agrees to use the site "as is" with no changes or modifications required.
- k. Tennis Pro shall be responsible for leaving the facility clean and orderly.
- l. Any request for use of any MPRD facility outside this agreement must follow MPRD standard rental policy. This requirement shall include any extra classes or demonstrations.
- m. Tennis Pro shall report any unsafe conditions immediately to the appropriate staff at Murfreesboro Parks and Recreation Department and understand that use may be canceled or delayed until such condition is corrected.
- n. Tennis Pro may not schedule lessons, camps, or clinics when the City has reserved the courts for various tournaments and activities. The City will notify Tennis Pro through personal email and other media outlets. (e.g. MPRD website, ATC Calendar, the ATC Facebook page,) of dates at least two weeks prior to said event.
- o. Tennis Pro cannot coach an Adams Tennis Complex member who the Tennis Pro coaches (or has coached at any time) at the Adams Tennis Complex at another location during the Tennis Pro's contract with the City.
- p. Tennis Pro must notify the Superintendent of the Adams Tennis Complex at least twenty-four (24) hours in advance prior to any cancellation and/or rescheduling of classes.
- q. Tennis Pro must adhere to City's Court Cancellation policy. Fee waivers must be requested in writing to the Superintendent for the Adams Tennis Complex. Waivers will be given on an individual basis.

- r. Tennis Pro may donate their services up to three times per year and court fees will be waived upon prior approval by the Superintendent of the Adams Tennis Complex. Approval will be contingent on court availability. Additional requests must be submitted in writing and will be considered by the Superintendent of the Adams Tennis Complex.
- s. Tennis Pros are prohibited from the selling of goods or services that are not specifically outlined in their contract.
- t. It is the responsibility of each teaching Tennis Pro to assist the Adams Tennis Complex in informing all their clients of the facility rules, regulations, and policies.
- u. Tennis Pro may request an exception to any of these requirements by submitting the request in writing to the Superintendent of the Adams Tennis Complex. Approval or disapproval of any such requests shall be issued by the Superintendent of the Adams Tennis Complex in writing.

3. Scope of Services - City:

- a. The City shall provide a site for Tennis Pro to conduct lessons, camps or clinics at the Adams Tennis Complex and Old Fort Park Tennis Facility.
- b. City shall provide a staff member to open and close the facility.
- c. City may enter into other agreements for provision of similar services at any time.
- d. City shall give Tennis Pro two (2) weeks' notice when facility maintenance/cleaning is required.
- e. City shall allow the Tennis Pro's the use of the facility (ATC) stringing machine for personal racquet stringing only. (Pro must provide own string). If a Teaching Pro strings a member or non-member racquet all facility fees apply and will be payable to the Adams Tennis Complex. The Tennis Pro will be compensated 70% of the charged stringing labor fee per racquet; the City shall retain the other 30%. All payments to Tennis pro shall be made on a monthly basis for funds received during the preceding month.
- f. City shall waive non-member fees for personal court time.

4. Fees:

- a. The City shall set fees for lessons, camps or clinics in agreement with Tennis Pro prior to the event. The City shall be responsible for collecting fees and payments shall be made monthly for funds received during the preceding month paid to Tennis Pro.
- b. Any change in the fee structure must have prior approval of the City.
- c. 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 Contract, Contractor certifies and warrants it will comply with this policy.

5. **Allocation of fees.** Of all paid registrations, the Tennis Pro shall receive seventy percent (70%) of the gross revenues and the City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis payable to Tennis Pro for funds received during the preceding month. The City has the right to examine financial records relative to this class and its attendance for up to three years beyond the duration of this agreement.
6. **E-Verify.** Contractor shall complete and submit an IRS tax form W-9 with a copy of the acceptable form of identification set forth in clause 2- attached thereto prior to the Contractor providing labor or services pursuant to this contract.
7. **General Terms and Conditions:**
 - a. Tennis Pro warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with work contemplated or performed relative to this Agreement.
 - b. Tennis Pro shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
 - c. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, Tennis Pro shall be entitled to receive just and equitable compensation from those who have engaged the services of Tennis Pro for themselves for any services or work completed as of the termination date.
 - d. If Tennis Pro fails to fulfill in timely and proper manner its obligations under this Agreement, or if Tennis Pro shall violate any of the terms of this Agreement, the City shall have the right to immediately terminate the Agreement.
 - e. Notwithstanding the above, Tennis Pro shall not be relieved of any liability to the City for damages sustained by virtue of any breach of this Agreement by Tennis Pro.
 - f. Tennis Pro shall not assign this Agreement or enter into sub-contracts for any of the programs or training covered by this Agreement without obtaining the prior written approval of the City.
 - g. Tennis Pro acknowledges that the City has hired a full-time Superintendent for the Adams Tennis Complex to oversee all lessons, camps and clinics taught at City of Murfreesboro Tennis facilities. Tennis Pro further acknowledges that this agreement is subject to the approval of the Superintendent for the Adams Tennis Complex.
8. **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, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.
9. **Cancellation of Agreement.** The City has the right to cancel this Agreement if there is a breach of rules or contract. It will be the duty of City to refund to students a prorated fee if needed.

10. **Amendment.** This Agreement constitutes the entire Agreement between the City and Tennis Pro. This Agreement may be modified by written amendment executed by all parties and their signatories hereto.

In witness whereof, the City and User have executed this use Agreement on the day and date first written above.

CITY OF MURFREESBORO

MAGNUS BERGLUND, TENNIS PRO

By: _____
Shane McFarland, Mayor

Date: _____

By: _____

Title: _____

Date: _____

Address: _____

City, State Zip Code: _____

Phone: _____

Email: _____

APPROVED AS TO FORM:

DocuSigned by:


Adam Tucker, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
SCOTT KATHARY**

This Professional Services Agreement is made by and between the City of Murfreesboro hereafter referred to as "City" through its Parks and Recreation Department and Scott Kathary hereinafter referred to as "Tennis Pro", this ____ day of _____, 2022.

Whereas, the City is interested in utilizing all available facilities to provide quality recreational instruction at minimal cost; and,

Whereas, Tennis Pro is experienced in the instruction of tennis and is interested in offering programs using the facilities of the City;

Now, therefore, the City and User agree as follows:

1. **Term:** The term of this Professional Services Agreement ("Agreement") shall be between November 1, 2022 and June 30, 2023.
2. **Scope of Services – Tennis Pro:**
 - a. Tennis Pro shall teach tennis through private and semi-private lessons, camps and clinics for youth and adults.
 - b. Tennis Pro should help produce publicity, flyers, etc. for the Adams Tennis Complex (ATC). All informational items must have prior approval from the Director of the Murfreesboro Parks and Recreation Department or designee.
 - c. The Tennis Pro shall receive seventy percent (70%) of the gross revenues of all paid fees, for all private and semi-private lessons. The City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis for funds received during the preceding month.
 - d. The Tennis Pro shall receive seventy percent (70%) of one-day tennis social events (e.g. mixers, round robins, or social play days) that the Tennis Pro runs. Social events must be approved by the Superintendent of the Adams Tennis Complex and will be contingent on availability of courts. Should the Tennis Pro desire to run a Tournament, or other sanctioned, or multi day event, they must adhere to current tournament policies and procedures. All payments shall be made on a monthly basis for funds received during the preceding month.
 - e. Tennis Pro shall receive 70% of the Tennis Pro's hourly private lesson rate for each hour Tennis Pro elects to teach in a Group Tennis class or Tennis Camp program organized by the Superintendent of the Adams Tennis Complex. All payments shall be made on a monthly basis for funds received during the preceding month.
 - f. Tennis Pro shall indemnify and hold harmless the City, its officers, agents, and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement.

- ii. Any claims, damages, costs and attorney fees arising from any failure of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable law, including, but not limited to, labor laws and minimum wage laws.

Tennis Pro shall pay City any expenses incurred as a result of Tennis Pro's failure to fulfill any obligation in a professional and timely manner under the Agreement.

- g. Tennis Pro must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers' compensation insurance as required by the State of Tennessee. Such insurance shall name the City of Murfreesboro (111 W. Vine St., Murfreesboro, TN 37130) as an additional insured for the duration of this Agreement. Proof of such insurance shall be provided to the City by a certificate of insurance and a copy of the policy's additional insured endorsement. User must notify City if the insurance policy is renewed, canceled, or altered in any manner and provide written documentation of such alteration.
- h. Tennis Pro shall provide the City a completed Volunteer Background Check form for himself/herself. It is the Murfreesboro Parks and Recreation Department's policy that all employees/volunteers working with children in their program are subject to background checks at a minimum to the extent set forth in MPRD's Youth Athletic League Background Check Policy (attached).
- i. Tennis Pro shall follow the rules and regulations of the City of Murfreesboro and the Murfreesboro Parks and Recreation Department.
- j. Tennis Pro has inspected the site and agrees to use the site "as is" with no changes or modifications required.
- k. Tennis Pro shall be responsible for leaving the facility clean and orderly.
- l. Any request for use of any MPRD facility outside this agreement must follow MPRD standard rental policy. This requirement shall include any extra classes or demonstrations.
- m. Tennis Pro shall report any unsafe conditions immediately to the appropriate staff at Murfreesboro Parks and Recreation Department and understand that use may be canceled or delayed until such condition is corrected.
- n. Tennis Pro may not schedule lessons, camps, or clinics when the City has reserved the courts for various tournaments and activities. The City will notify Tennis Pro through personal email and other media outlets. (e.g. MPRD website, ATC Calendar, the ATC Facebook page,) of dates at least two weeks prior to said event.
- o. Tennis Pro cannot coach an Adams Tennis Complex member who the Tennis Pro coaches (or has coached at any time) at the Adams Tennis Complex at another location during the Tennis Pro's contract with the City.
- p. Tennis Pro must notify the Superintendent of the Adams Tennis Complex at least twenty-four (24) hours in advance prior to any cancellation and/or rescheduling of classes.
- q. Tennis Pro must adhere to City's Court Cancellation policy. Fee waivers must be requested in writing to the Superintendent for the Adams Tennis Complex. Waivers will be given on an individual basis.

- r. Tennis Pro may donate their services up to three times per year and court fees will be waived upon prior approval by the Superintendent of the Adams Tennis Complex. Approval will be contingent on court availability. Additional requests must be submitted in writing and will be considered by the Superintendent of the Adams Tennis Complex.
- s. Tennis Pros are prohibited from the selling of goods or services that are not specifically outlined in their contract.
- t. It is the responsibility of each teaching Tennis Pro to assist the Adams Tennis Complex in informing all their clients of the facility rules, regulations, and policies.
- u. Tennis Pro may request an exception to any of these requirements by submitting the request in writing to the Superintendent of the Adams Tennis Complex. Approval or disapproval of any such requests shall be issued by the Superintendent of the Adams Tennis Complex in writing.

3. Scope of Services - City:

- a. The City shall provide a site for Tennis Pro to conduct lessons, camps or clinics at the Adams Tennis Complex and Old Fort Park Tennis Facility.
- b. City shall provide a staff member to open and close the facility.
- c. City may enter into other agreements for provision of similar services at any time.
- d. City shall give Tennis Pro two (2) weeks' notice when facility maintenance/cleaning is required.
- e. City shall allow the Tennis Pro's the use of the facility (ATC) stringing machine for personal racquet stringing only. (Pro must provide own string). If a Teaching Pro strings a member or non-member racquet all facility fees apply and will be payable to the Adams Tennis Complex. The Tennis Pro will be compensated 70% of the charged stringing labor fee per racquet; the City shall retain the other 30%. All payments to Tennis pro shall be made on a monthly basis for funds received during the preceding month.
- f. City shall waive non-member fees for personal court time.

4. Fees:

- a. The City shall set fees for lessons, camps or clinics in agreement with Tennis Pro prior to the event. The City shall be responsible for collecting fees and payments shall be made monthly for funds received during the preceding month paid to Tennis Pro.
- b. Any change in the fee structure must have prior approval of the City.
- c. 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 Contract, Contractor certifies and warrants it will comply with this policy.

5. **Allocation of fees.** Of all paid registrations, the Tennis Pro shall receive seventy percent (70%) of the gross revenues and the City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis payable to Tennis Pro for funds received during the preceding month. The City has the right to examine financial records relative to this class and its attendance for up to three years beyond the duration of this agreement.
6. **E-Verify.** Contractor shall complete and submit an IRS tax form W-9 with a copy of the acceptable form of identification set forth in clause 2- attached thereto prior to the Contractor providing labor or services pursuant to this contract.
7. **General Terms and Conditions:**
 - a. Tennis Pro warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with work contemplated or performed relative to this Agreement.
 - b. Tennis Pro shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
 - c. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, Tennis Pro shall be entitled to receive just and equitable compensation from those who have engaged the services of Tennis Pro for themselves for any services or work completed as of the termination date.
 - d. If Tennis Pro fails to fulfill in timely and proper manner its obligations under this Agreement, or if Tennis Pro shall violate any of the terms of this Agreement, the City shall have the right to immediately terminate the Agreement.
 - e. Notwithstanding the above, Tennis Pro shall not be relieved of any liability to the City for damages sustained by virtue of any breach of this Agreement by Tennis Pro.
 - f. Tennis Pro shall not assign this Agreement or enter into sub-contracts for any of the programs or training covered by this Agreement without obtaining the prior written approval of the City.
 - g. Tennis Pro acknowledges that the City has hired a full-time Superintendent for the Adams Tennis Complex to oversee all lessons, camps and clinics taught at City of Murfreesboro Tennis facilities. Tennis Pro further acknowledges that this agreement is subject to the approval of the Superintendent for the Adams Tennis Complex.
8. **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, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.
9. **Cancellation of Agreement.** The City has the right to cancel this Agreement if there is a breach of rules or contract. It will be the duty of City to refund to students a prorated fee if needed.

10. **Amendment.** This Agreement constitutes the entire Agreement between the City and Tennis Pro. This Agreement may be modified by written amendment executed by all parties and their signatories hereto.

In witness whereof, the City and User have executed this use Agreement on the day and date first written above.

CITY OF MURFREESBORO

SCOTT KATHARY, TENNIS PRO

By: _____
Shane McFarland, Mayor

Date: _____

By: _____

Title: _____

Date: _____

Address: _____

City, State Zip Code: _____

Phone: _____

Email: _____

APPROVED AS TO FORM:

DocuSigned by:


Adam Tucker, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
BOB KRESSE**

This Professional Services Agreement is made by and between the City of Murfreesboro hereafter referred to as "City" through its Parks and Recreation Department and Bob Kresse hereinafter referred to as "Tennis Pro", this ____ day of _____, 2022.

Whereas, the City is interested in utilizing all available facilities to provide quality recreational instruction at minimal cost; and,

Whereas, Tennis Pro is experienced in the instruction of tennis and is interested in offering programs using the facilities of the City;

Now, therefore, the City and User agree as follows:

1. **Term:** The term of this Professional Services Agreement ("Agreement") shall be between November 1, 2022 and June 30, 2023.
2. **Scope of Services – Tennis Pro:**
 - a. Tennis Pro shall teach tennis through private and semi-private lessons, camps and clinics for youth and adults.
 - b. Tennis Pro should help produce publicity, flyers, etc. for the Adams Tennis Complex (ATC). All informational items must have prior approval from the Director of the Murfreesboro Parks and Recreation Department or designee.
 - c. The Tennis Pro shall receive seventy percent (70%) of the gross revenues of all paid fees, for all private and semi-private lessons. The City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis for funds received during the preceding month.
 - d. The Tennis Pro shall receive seventy percent (70%) of one-day tennis social events (e.g. mixers, round robins, or social play days) that the Tennis Pro runs. Social events must be approved by the Superintendent of the Adams Tennis Complex and will be contingent on availability of courts. Should the Tennis Pro desire to run a Tournament, or other sanctioned, or multi day event, they must adhere to current tournament policies and procedures. All payments shall be made on a monthly basis for funds received during the preceding month.
 - e. Tennis Pro shall receive 70% of the Tennis Pro's hourly private lesson rate for each hour Tennis Pro elects to teach in a Group Tennis class or Tennis Camp program organized by the Superintendent of the Adams Tennis Complex. All payments shall be made on a monthly basis for funds received during the preceding month.
 - f. Tennis Pro shall indemnify and hold harmless the City, its officers, agents, and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement.

- ii. Any claims, damages, costs and attorney fees arising from any failure of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable law, including, but not limited to, labor laws and minimum wage laws.

Tennis Pro shall pay City any expenses incurred as a result of Tennis Pro's failure to fulfill any obligation in a professional and timely manner under the Agreement.

- g. Tennis Pro must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers' compensation insurance as required by the State of Tennessee. Such insurance shall name the City of Murfreesboro (111 W. Vine St., Murfreesboro, TN 37130) as an additional insured for the duration of this Agreement. Proof of such insurance shall be provided to the City by a certificate of insurance and a copy of the policy's additional insured endorsement. User must notify City if the insurance policy is renewed, canceled, or altered in any manner and provide written documentation of such alteration.
- h. Tennis Pro shall provide the City a completed Volunteer Background Check form for himself/herself. It is the Murfreesboro Parks and Recreation Department's policy that all employees/volunteers working with children in their program are subject to background checks at a minimum to the extent set forth in MPRD's Youth Athletic League Background Check Policy (attached).
- i. Tennis Pro shall follow the rules and regulations of the City of Murfreesboro and the Murfreesboro Parks and Recreation Department.
- j. Tennis Pro has inspected the site and agrees to use the site "as is" with no changes or modifications required.
- k. Tennis Pro shall be responsible for leaving the facility clean and orderly.
- l. Any request for use of any MPRD facility outside this agreement must follow MPRD standard rental policy. This requirement shall include any extra classes or demonstrations.
- m. Tennis Pro shall report any unsafe conditions immediately to the appropriate staff at Murfreesboro Parks and Recreation Department and understand that use may be canceled or delayed until such condition is corrected.
- n. Tennis Pro may not schedule lessons, camps, or clinics when the City has reserved the courts for various tournaments and activities. The City will notify Tennis Pro through personal email and other media outlets. (e.g. MPRD website, ATC Calendar, the ATC Facebook page,) of dates at least two weeks prior to said event.
- o. Tennis Pro cannot coach an ATC member who the Tennis Pro coaches (or has coached at any time) at the Adams Tennis Complex at another location during the Tennis Pro's contract with the City.
- p. Tennis Pro must notify the Superintendent of the Adams Tennis Complex at least twenty-four (24) hours in advance prior to any cancellation and/or rescheduling of classes.
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3. Scope of Services - City:

- a. The City shall provide a site for Tennis Pro to conduct lessons, camps or clinics at the Adams Tennis Complex and Old Fort Park Tennis Facility.
- b. City shall provide a staff member to open and close the facility.
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- f. City shall waive non-member fees for personal court time.

4. Fees:

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- c. 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 Contract, Contractor certifies and warrants it will comply with this policy.

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payments shall be made on a monthly basis payable to Tennis Pro for funds received during the preceding month. The City has the right to examine financial records relative to this class and its attendance for up to three years beyond the duration of this agreement.

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7. **General Terms and Conditions:**

- a. Tennis Pro warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with work contemplated or performed relative to this Agreement.
 - b. Tennis Pro shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
 - c. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, Tennis Pro shall be entitled to receive just and equitable compensation from those who have engaged the services of Tennis Pro for themselves for any services or work completed as of the termination date.
 - d. If Tennis Pro fails to fulfill in timely and proper manner its obligations under this Agreement, or if Tennis Pro shall violate any of the terms of this Agreement, the City shall have the right to immediately terminate the Agreement.
 - e. Notwithstanding the above, Tennis Pro shall not be relieved of any liability to the City for damages sustained by virtue of any breach of this Agreement by Tennis Pro.
 - f. Tennis Pro shall not assign this Agreement or enter into sub-contracts for any of the programs or training covered by this Agreement without obtaining the prior written approval of the City.
 - g. Tennis Pro acknowledges that the City has hired a full-time Superintendent for the Adams Tennis Complex to oversee all lessons, camps and clinics taught at City of Murfreesboro Tennis facilities. Tennis Pro further acknowledges that this agreement is subject to the approval of the Superintendent of the Tennis Complex.
8. **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, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.
 9. **Cancellation of Agreement.** The City has the right to cancel this Agreement if there is a breach of rules or contract. It will be the duty of City to refund to students a prorated fee if needed.

10. **Amendment.** This Agreement constitutes the entire Agreement between the City and Tennis Pro. This Agreement may be modified by written amendment executed by all parties and their signatories hereto.

In witness whereof, the City and User have executed this use Agreement on the day and date first written above.

CITY OF MURFREESBORO

BOB KRESSE, TENNIS PRO

By: _____
Shane McFarland, Mayor

Date: _____

By: _____

Title: _____

Date: _____

Address: _____

City, State Zip Code: _____

Phone: _____

Email: _____

APPROVED AS TO FORM:

DocuSigned by:


Adam Tucker, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
JOHN MORRIS**

This Professional Services Agreement is made by and between the City of Murfreesboro hereafter referred to as "City" through its Parks and Recreation Department and John Morris hereinafter referred to as "Tennis Pro", this ____ day of _____, 2022.

Whereas, the City is interested in utilizing all available facilities to provide quality recreational instruction at minimal cost; and,

Whereas, Tennis Pro is experienced in the instruction of tennis and is interested in offering programs using the facilities of the City;

Now, therefore, the City and User agree as follows:

1. **Term:** The term of this Professional Services Agreement ("Agreement") shall be between November 1, 2022 and June 30, 2023.
2. **Scope of Services – Tennis Pro:**
 - a. Tennis Pro shall teach tennis through private and semi-private lessons, camps and clinics for youth and adults.
 - b. Tennis Pro should help produce publicity, flyers, etc. for the Adams Tennis Complex (ATC). All informational items must have prior approval from the Director of the Murfreesboro Parks and Recreation Department or designee.
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 - f. Tennis Pro shall indemnify and hold harmless the City, its officers, agents, and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement.

- ii. Any claims, damages, costs and attorney fees arising from any failure of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable law, including, but not limited to, labor laws and minimum wage laws.

Tennis Pro shall pay City any expenses incurred as a result of Tennis Pro's failure to fulfill any obligation in a professional and timely manner under the Agreement.

- g. Tennis Pro must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers' compensation insurance as required by the State of Tennessee. Such insurance shall name the City of Murfreesboro (111 W. Vine St., Murfreesboro, TN 37130) as an additional insured for the duration of this Agreement. Proof of such insurance shall be provided to the City by a certificate of insurance and a copy of the policy's additional insured endorsement. User must notify City if the insurance policy is renewed, canceled, or altered in any manner and provide written documentation of such alteration.
- h. Tennis Pro shall provide the City a completed Volunteer Background Check form for himself/herself. It is the Murfreesboro Parks and Recreation Department's policy that all employees/volunteers working with children in their program are subject to background checks at a minimum to the extent set forth in MPRD's Youth Athletic League Background Check Policy (attached).
- i. Tennis Pro shall follow the rules and regulations of the City of Murfreesboro and the Murfreesboro Parks and Recreation Department.
- j. Tennis Pro has inspected the site and agrees to use the site "as is" with no changes or modifications required.
- k. Tennis Pro shall be responsible for leaving the facility clean and orderly.
- l. Any request for use of any MPRD facility outside this agreement must follow MPRD standard rental policy. This requirement shall include any extra classes or demonstrations.
- m. Tennis Pro shall report any unsafe conditions immediately to the appropriate staff at Murfreesboro Parks and Recreation Department and understand that use may be canceled or delayed until such condition is corrected.
- n. Tennis Pro may not schedule lessons, camps, or clinics when the City has reserved the courts for various tournaments and activities. The City will notify Tennis Pro through personal email and other media outlets. (e.g. MPRD website, ATC Calendar, the ATC Facebook page,) of dates at least two weeks prior to said event.
- o. Tennis Pro cannot coach an Adams Tennis Complex member who the Tennis Pro coaches (or has coached at any time) at the Adams Tennis Complex at another location during the Tennis Pro's contract with the City.
- p. Tennis Pro must notify the Superintendent of the Adams Tennis Complex at least twenty-four (24) hours in advance prior to any cancellation and/or rescheduling of classes.
- q. Tennis Pro must adhere to City's Court Cancellation policy. Fee waivers must be requested in writing to the Superintendent for the Adams Tennis Complex. Waivers will be given on an individual basis.

- r. Tennis Pro may donate their services up to three times per year and court fees will be waived upon prior approval by the Superintendent of the Adams Tennis Complex. Approval will be contingent on court availability. Additional requests must be submitted in writing and will be considered by the Superintendent of the Adams Tennis Complex.
- s. Tennis Pros are prohibited from the selling of goods or services that are not specifically outlined in their contract.
- t. It is the responsibility of each teaching Tennis Pro to assist the Adams Tennis Complex in informing all their clients of the facility rules, regulations, and policies.
- u. Tennis Pro may request an exception to any of these requirements by submitting the request in writing to the Superintendent of the Adams Tennis Complex. Approval or disapproval of any such requests shall be issued by the Superintendent of the Adams Tennis Complex in writing.

3. Scope of Services - City:

- a. The City shall provide a site for Tennis Pro to conduct lessons, camps or clinics at the Adams Tennis Complex and Old Fort Park Tennis Facility.
- b. City shall provide a staff member to open and close the facility.
- c. City may enter into other agreements for provision of similar services at any time.
- d. City shall give Tennis Pro two (2) weeks' notice when facility maintenance/cleaning is required.
- e. City shall allow the Tennis Pro's the use of the facility (ATC) stringing machine for personal racquet stringing only. (Pro must provide own string). If a Teaching Pro strings a member or non-member racquet all facility fees apply and will be payable to the Adams Tennis Complex. The Tennis Pro will be compensated 70% of the charged stringing labor fee per racquet; the City shall retain the other 30%. All payments to Tennis pro shall be made on a monthly basis for funds received during the preceding month.
- f. City shall waive non-member fees for personal court time.

4. Fees:

- a. The City shall set fees for lessons, camps or clinics in agreement with Tennis Pro prior to the event. The City shall be responsible for collecting fees and payments shall be made monthly for funds received during the preceding month paid to Tennis Pro.
- b. Any change in the fee structure must have prior approval of the City.
- c. 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 Contract, Contractor certifies and warrants it will comply with this policy.

5. **Allocation of fees.** Of all paid registrations, the Tennis Pro shall receive seventy percent (70%) of the gross revenues and the City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis payable to Tennis Pro for funds received during the preceding month. The City has the right to examine financial records relative to this class and its attendance for up to three years beyond the duration of this agreement.
6. **E-Verify.** Contractor shall complete and submit an IRS tax form W-9 with a copy of the acceptable form of identification set forth in clause 2- attached thereto prior to the Contractor providing labor or services pursuant to this contract.
7. **General Terms and Conditions:**
 - a. Tennis Pro warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with work contemplated or performed relative to this Agreement.
 - b. Tennis Pro shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
 - c. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, Tennis Pro shall be entitled to receive just and equitable compensation from those who have engaged the services of Tennis Pro for themselves for any services or work completed as of the termination date.
 - d. If Tennis Pro fails to fulfill in timely and proper manner its obligations under this Agreement, or if Tennis Pro shall violate any of the terms of this Agreement, the City shall have the right to immediately terminate the Agreement.
 - e. Notwithstanding the above, Tennis Pro shall not be relieved of any liability to the City for damages sustained by virtue of any breach of this Agreement by Tennis Pro.
 - f. Tennis Pro shall not assign this Agreement or enter into sub-contracts for any of the programs or training covered by this Agreement without obtaining the prior written approval of the City.
 - g. Tennis Pro acknowledges that the City has hired a full-time Superintendent for the Adams Tennis Complex to oversee all lessons, camps and clinics taught at City of Murfreesboro Tennis facilities. Tennis Pro further acknowledges that this agreement is subject to the approval of the Superintendent for the Adams Tennis Complex.
8. **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, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.
9. **Cancellation of Agreement.** The City has the right to cancel this Agreement if there is a breach of rules or contract. It will be the duty of City to refund to students a prorated fee if needed.

10. **Amendment.** This Agreement constitutes the entire Agreement between the City and Tennis Pro. This Agreement may be modified by written amendment executed by all parties and their signatories hereto.

In witness whereof, the City and User have executed this use Agreement on the day and date first written above.

CITY OF MURFREESBORO

JOHN MORRIS, TENNIS PRO

By: _____
Shane McFarland, Mayor

Date: _____

By: _____

Title: _____

Date: _____

Address: _____

City, State Zip Code: _____

Phone: _____

Email: _____

APPROVED AS TO FORM:

DocuSigned by:

Adam Tucker

Adam Tucker, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
JASON ONTOG**

This Professional Services Agreement is made by and between the City of Murfreesboro hereafter referred to as "City" through its Parks and Recreation Department and Jason Ontog hereinafter referred to as "Tennis Pro", this ____ day of _____, 2022.

Whereas, the City is interested in utilizing all available facilities to provide quality recreational instruction at minimal cost; and,

Whereas, Tennis Pro is experienced in the instruction of tennis and is interested in offering programs using the facilities of the City;

Now, therefore, the City and User agree as follows:

1. **Term:** The term of this Professional Services Agreement ("Agreement") shall be between November 1, 2022 and June 30, 2023.
2. **Scope of Services – Tennis Pro:**
 - a. Tennis Pro shall teach tennis through private and semi-private lessons, camps and clinics for youth and adults.
 - b. Tennis Pro should help produce publicity, flyers, etc. for the Adams Tennis Complex (ATC). All informational items must have prior approval from the Director of the Murfreesboro Parks and Recreation Department or designee.
 - c. The Tennis Pro shall receive seventy percent (70%) of the gross revenues of all paid fees, for all private and semi-private lessons. The City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis for funds received during the preceding month.
 - d. The Tennis Pro shall receive seventy percent (70%) of one-day tennis social events (e.g. mixers, round robins, or social play days) that the Tennis Pro runs. Social events must be approved by the Superintendent of the Adams Tennis Complex and will be contingent on availability of courts. Should the Tennis Pro desire to run a Tournament, or other sanctioned, or multi day event, they must adhere to current tournament policies and procedures. All payments shall be made on a monthly basis for funds received during the preceding month.
 - e. Tennis Pro shall receive 70% of the Tennis Pro's hourly private lesson rate for each hour Tennis Pro elects to teach in a Group Tennis class or Tennis Camp program organized by the Superintendent of the Adams Tennis Complex. All payments shall be made on a monthly basis for funds received during the preceding month.
 - f. Tennis Pro shall indemnify and hold harmless the City, its officers, agents, and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement.

- ii. Any claims, damages, costs and attorney fees arising from any failure of Tennis Pro, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable law, including, but not limited to, labor laws and minimum wage laws.

Tennis Pro shall pay City any expenses incurred as a result of Tennis Pro's failure to fulfill any obligation in a professional and timely manner under the Agreement.

- g. Tennis Pro must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers' compensation insurance as required by the State of Tennessee. Such insurance shall name the City of Murfreesboro (111 W. Vine St., Murfreesboro, TN 37130) as an additional insured for the duration of this Agreement. Proof of such insurance shall be provided to the City by a certificate of insurance and a copy of the policy's additional insured endorsement. User must notify City if the insurance policy is renewed, canceled, or altered in any manner and provide written documentation of such alteration.
- h. Tennis Pro shall provide the City a completed Volunteer Background Check form for himself/herself. It is the Murfreesboro Parks and Recreation Department's policy that all employees/volunteers working with children in their program are subject to background checks at a minimum to the extent set forth in MPRD's Youth Athletic League Background Check Policy (attached).
- i. Tennis Pro shall follow the rules and regulations of the City of Murfreesboro and the Murfreesboro Parks and Recreation Department.
- j. Tennis Pro has inspected the site and agrees to use the site "as is" with no changes or modifications required.
- k. Tennis Pro shall be responsible for leaving the facility clean and orderly.
- l. Any request for use of any MPRD facility outside this agreement must follow MPRD standard rental policy. This requirement shall include any extra classes or demonstrations.
- m. Tennis Pro shall report any unsafe conditions immediately to the appropriate staff at Murfreesboro Parks and Recreation Department and understand that use may be canceled or delayed until such condition is corrected.
- n. Tennis Pro may not schedule lessons, camps, or clinics when the City has reserved the courts for various tournaments and activities. The City will notify Tennis Pro through personal email and other media outlets. (e.g. MPRD website, ATC Calendar, the ATC Facebook page,) of dates at least two weeks prior to said event.
- o. Tennis Pro cannot coach an Adams Tennis Complex member who the Tennis Pro coaches (or has coached at any time) at the Adams Tennis Complex at another location during the Tennis Pro's contract with the City.
- p. Tennis Pro must notify the Superintendent of the Adams Tennis Complex at least twenty-four (24) hours in advance prior to any cancellation and/or rescheduling of classes.
- q. Tennis Pro must adhere to City's Court Cancellation policy. Fee waivers must be requested in writing to the Superintendent for the Adams Tennis Complex. Waivers will be given on an individual basis.

- r. Tennis Pro may donate their services up to three times per year and court fees will be waived upon prior approval by the Superintendent of the Adams Tennis Complex. Approval will be contingent on court availability. Additional requests must be submitted in writing and will be considered by the Superintendent of the Adams Tennis Complex.
- s. Tennis Pros are prohibited from the selling of goods or services that are not specifically outlined in their contract.
- t. It is the responsibility of each teaching Tennis Pro to assist the Adams Tennis Complex in informing all their clients of the facility rules, regulations, and policies.
- u. Tennis Pro may request an exception to any of these requirements by submitting the request in writing to the Superintendent of the Adams Tennis Complex. Approval or disapproval of any such requests shall be issued by the Superintendent of the Adams Tennis Complex in writing.

3. Scope of Services - City:

- a. The City shall provide a site for Tennis Pro to conduct lessons, camps or clinics at the Adams Tennis Complex and Old Fort Park Tennis Facility.
- b. City shall provide a staff member to open and close the facility.
- c. City may enter into other agreements for provision of similar services at any time.
- d. City shall give Tennis Pro two (2) weeks' notice when facility maintenance/cleaning is required.
- e. City shall allow the Tennis Pro's the use of the facility (ATC) stringing machine for personal racquet stringing only. (Pro must provide own string). If a Teaching Pro strings a member or non-member racquet all facility fees apply and will be payable to the Adams Tennis Complex. The Tennis Pro will be compensated 70% of the charged stringing labor fee per racquet; the City shall retain the other 30%. All payments to Tennis pro shall be made on a monthly basis for funds received during the preceding month.
- f. City shall waive non-member fees for personal court time.

4. Fees:

- a. The City shall set fees for lessons, camps or clinics in agreement with Tennis Pro prior to the event. The City shall be responsible for collecting fees and payments shall be made monthly for funds received during the preceding month paid to Tennis Pro.
- b. Any change in the fee structure must have prior approval of the City.
- c. 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 Contract, Contractor certifies and warrants it will comply with this policy.

5. **Allocation of fees.** Of all paid registrations, the Tennis Pro shall receive seventy percent (70%) of the gross revenues and the City shall retain the remaining thirty percent (30%). All payments shall be made on a monthly basis payable to Tennis Pro for funds received during the preceding month. The City has the right to examine financial records relative to this class and its attendance for up to three years beyond the duration of this agreement.
6. **E-Verify.** Contractor shall complete and submit an IRS tax form W-9 with a copy of the acceptable form of identification set forth in clause 2- attached thereto prior to the Contractor providing labor or services pursuant to this contract.
7. **General Terms and Conditions:**
 - a. Tennis Pro warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with work contemplated or performed relative to this Agreement.
 - b. Tennis Pro shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
 - c. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, Tennis Pro shall be entitled to receive just and equitable compensation from those who have engaged the services of Tennis Pro for themselves for any services or work completed as of the termination date.
 - d. If Tennis Pro fails to fulfill in timely and proper manner its obligations under this Agreement, or if Tennis Pro shall violate any of the terms of this Agreement, the City shall have the right to immediately terminate the Agreement.
 - e. Notwithstanding the above, Tennis Pro shall not be relieved of any liability to the City for damages sustained by virtue of any breach of this Agreement by Tennis Pro.
 - f. Tennis Pro shall not assign this Agreement or enter into sub-contracts for any of the programs or training covered by this Agreement without obtaining the prior written approval of the City.
 - g. Tennis Pro acknowledges that the City has hired a full-time Superintendent for the Adams Tennis Complex to oversee all lessons, camps and clinics taught at City of Murfreesboro Tennis facilities. Tennis Pro further acknowledges that this agreement is subject to the approval of the Superintendent for the Adams Tennis Complex.
8. **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, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.
9. **Cancellation of Agreement.** The City has the right to cancel this Agreement if there is a breach of rules or contract. It will be the duty of City to refund to students a prorated fee if needed.

10. **Amendment.** This Agreement constitutes the entire Agreement between the City and Tennis Pro. This Agreement may be modified by written amendment executed by all parties and their signatories hereto.

In witness whereof, the City and User have executed this use Agreement on the day and date first written above.

CITY OF MURFREESBORO

JASON ONTOG, TENNIS PRO

By: _____
Shane McFarland, Mayor

By: _____

Title: _____

Date: _____

Date: _____

Address: _____

City, State Zip Code: _____

Phone: _____

Email: _____

APPROVED AS TO FORM:

DocuSigned by:


Adam Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Contract with GT Distributors for Handguns and Accessories

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

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

Summary

Contract with GT Distributors for handguns and accessories.

Staff Recommendation

Approve the purchase of handguns and accessories.

Background Information

Purchase of handguns and accessories for the Special Operations Unit. This will provide the Unit with equipment designed to work while utilizing night vision capabilities.

Council Priorities Served

Maintain public safety

Providing Special Operations Unit with advanced technology to operate in all environments enhances public safety.

Fiscal Impacts

The cost of the purchase, \$22,746, is funded by the American Rescue Plan Act Funds.

Attachments

Contract with GT Distributors

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
GT DISTRIBUTORS
FOR PISTOL OPTICS AND ACCESSORIES**

This Contract is entered into and effective as of the _____ day of _____ 2022, by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **GT DISTRIBUTORS, INC**, a stock corporation of the State of Texas ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***Contractor's Sales Quote #QTE0161532 dated September 21, 2022***
- ***Any properly executed amendments to this Agreement***

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

- ***First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)***
- ***Second, this Contract***
- ***Finally, Contractor's Sales Quote # QTE0161532 dated September 21, 2022***

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase Twenty-Two (22) Glock 17 Gen5 MOS w FS 9mm FXDSGHT with accessories as listed, as set forth in the Contractor's Sales Quote #QTE0161532 dated September 21, 2022.

2. **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.

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

- a. The price for the goods and other items to be provided under this Contract is set forth in the Contractor's Sales Quote #QTE0161532 dated September 21, 2022, for Twenty-Two (22) Glock 17 Gen5 MOS w FS 9mm FXDSGHT with accessories as listed, reflecting a **Total Purchase Price of \$22,746.90**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. Invoices should be sent to: accountspayable@murfreesborotn.gov.
 - b. Deliveries of all items for the Police Department shall be made within 90-120 days of issuance of Purchase Order to Attn: Cary Gensemer – Police Department – 1004 N. Highland Avenue, Murfreesboro, TN 37130. Contact Person Cary Gensemer (tel. 615-849-2685; email: 0356@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 Contractor's Quote.
 - e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.
4. **Warranty.** Unless otherwise specified, every item quoted shall meet the warranty requirements set forth in the specifications and the manufacturer's standard warranty.

5. **Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- c. **Copyright, Trademark, Service Mark, or Patent Infringement.**

- i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
 - ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 1. Procure for the City the right to continue using the products or services.
 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
 - iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.
6. **Notices.** Notice of assignment of any rights to money due to Contractor under this Contract must be mailed first class mail or hand-delivered to the following:

If to the City of Murfreesboro: City of Murfreesboro Attn: City Manager Post Office Box 1139 111 West Vine Street Murfreesboro, TN 37133-1139	If to the Contractor: GT Distributors, Inc. Attn: Ryan Mowrer 1124 New Meister Ln, Ste 100 Pflugerville, TX 78660 Ryan.mowrer@gtdist.com
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7. **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.
8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of five (5) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
 - 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.

15. **Title VI of the Civil Rights Act of 1964, as amended.** Contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
16. **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.
17. **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
18. **Integration.** This Contract, Sales Quotations, and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
19. **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, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.
20. **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.

21. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
22. **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.
23. **SAMS.gov Registration and UEI #.** All vendors are required to be registered with SAMS.gov and supply their Unique Entity ID (UEI).
24. **Debarment and Suspension.**
 - a) The City certifies, to the best of its knowledge and belief, that the Selected Contractor:
 - i. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - ii. has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal 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;
 - iii. is 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
 - iv. has 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.
 - b) The City will provide immediate written notice to the U.S. Department of Treasury or granting authority, if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, the Selected Contractor is excluded or disqualified, or presently falls under any of the prohibitions of sections i-iv.
 - c) The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - i. Debarred from participation in any federally assisted Award;
 - ii. Suspended from participation in any federally assisted Award;
 - iii. Proposed for debarment from participation in any federally assisted Award;
 - iv. Declared ineligible to participate in any federally assisted Award;
 - v. Voluntarily excluded from participation in any federally assisted Award; or
 - vi. Disqualified from participation in any federally assisted Award.

- vii. By signing this Agreement, Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of the awarded Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

25. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

26. **Lobbying Certification. (4220.1F.IV.2.a.(4); 49 CFR Part 20).**

- a) Contractors that apply or bid for an award exceeding \$100,000 must file the lobbying certification before the awarding of the contract, and if applicable, a lobbying disclosure from a prospective third-party contractor. See, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- b) The Contractor certifies, to the best of its knowledge and belief, that:
 - i. 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 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.
 - ii. 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.
 - iii. The Contractor 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.

- c) 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.

27. **Domestic preferences for procurements.** (2 CFR 200.322)

- a) As appropriate and to the extent consistent with law, the Contractor, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- b) For purposes of this section:
- i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

28. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

29. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

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

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

CITY OF MURFREESBORO

GT Distributors, Inc.

By: _____
Shane McFarland, Mayor

DocuSigned by:
By David Curtis
David Curtis, Bids Manager

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
Adam F. Tucker, City Attorney



GT Distributors - Austin
1124 New Meister Ln., Ste 100
Pflugerville TX 78660
(512) 451-8298 Ext. 0000

Quote	QTE0161532
Date	9/21/2022
Page:	1

Bill To:

Murfreesboro Police Department (TN)
PO Box 1139
Murfreesboro TN 37133

Ship To:

Murfreesboro Police Department (TN)
1004 N Highland Blvd
Murfreesboro TN 37130

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
GLOCKS	007756	JO		NET 15	0/0/0000	2,648,092
Quantity	Item Number	Description	UOM	Unit Price	Ext. Price	
22	GLOCK-PA175S202MO	Glock 17 Gen5 MOS w FS 9mm FXDSGHT 3 I	EA	\$429.00	\$9,438.00	
22	AG-GL-809*	Ameriglo XL Tall(Sight Set-Glock-Green Tritium	EA	\$48.00	\$1,056.00	
22	HOLO-HE509T-RD-X2-L	509 Enclosed Reflex Red Circle Dot/Solar/Titan	Each	\$356.70	\$7,847.40	
22	CH-GL-509T	GLock MOS MIL/LEO to HOLOSON 509T	EA	\$62.25	\$1,369.50	
22	SAF-6360RDS-832-411'	SAF 6360RDS ALS/SLS-L3-G17/22 w/Lt.;STX I	EA	\$138.00	\$3,036.00	

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE
PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR
REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Thank you for your business, Ryan.

Subtotal	\$22,746.90
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Total	\$22,746.90

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Fifth Amendment to TripSpark Agreement
Department: Transportation – Transit
Presented by: Russ Brashear, Assistant Transportation Director
Requested Council Action:

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

Summary

Amendment for the addition of TripSpark MyRide Native Application Software.

Staff Recommendation

Approve Amendment 5 to the TripSpark agreement.

Background Information

Transit systems throughout the United States have specifically designed applications for access on smart phones that provide the user with system information such as vehicle location, arrival times, and trip planning. The MyRide Native App will be designed specifically for Murfreesboro Transit and available for download on mobile devices. The cost of the software is \$26,950 and an annual support service fee of \$1,938.

Council Priorities Served

Expand infrastructure

Improving our transit system and increasing ridership has a direct positive impact on the City's roadway infrastructure.

Fiscal Impact

The expenditure, \$26,950, and annual support service fee, \$1,938, is funded by the Department's FY23 Budget. On-going annual support fees will be included in the Department's future operating budgets.

Attachments

1. Amendment No. 5
2. Contract with TripSpark

**AMENDMENT #5 OF CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
TRAPEZE SOFTWARE GROUP, INC. d.b.a TRIPSPARK TECHNOLOGIES
FOR SYSTEM SUPPLY AND SUPPORT AGREEMENT**

THIS AMENDMENT is made effective this ____ day of _____, 2022 between:

TRAPEZE SOFTWARE GROUP, INC. dba TripSpark Technologies (TripSpark”) with its principal place of business at 5265 Rockwell Dr NE, Cedar Rapids, IA 52402, U.S.A.

And

CITY OF MURFREESBORO (“Customer”) with its principal place of business at 111 West Vine Street, Murfreesboro, Tennessee 37133, U.S.A.

WHEREAS TripSpark and Customer intend to amend the System Supply and Support Agreement made effective July 1, 2017, and as amended (the “Agreement”) to add the TripSpark MyRide Native Application Software product to the scope of the Agreement.

NOW THEREFORE TripSpark and Customer agree as follows:

Amendment to Agreement

- (a) The parties agree to the addition of the TripSpark MyRide Native Application Software product to the scope of the Agreement. Therefore, Exhibit A-5, attached hereto, as added to and incorporated under the Agreement.
- (b) The parties agree the TripSpark MyRide Native Application Software Services will be performed by TripSpark pursuant to the Statement of Work, attached hereto as Exhibit D-5.
- (c) The parties agree following provisions and shall govern Software acceptance by Customer for the TripSpark Streets GTFS Real Time Feed Software, and all future, stand alone, Software purchases under the Agreement (“Software Acceptance”):

Upon completing the delivery, installation, and testing of the individual TripSpark Software component, TripSpark will notify Customer in writing. Customer will then have ten (10) business days in which to conduct acceptance tests in order to ensure that the Software operates in all material respects as specified in the Documentation. At the end of this period, Customer will be deemed to accept the Software unless TripSpark receives prior written notice outlining the nature of the perceived defects in the Software. Notwithstanding the above, Customer will be deemed to accept the Software when the Customer puts the Software into operational and functional use. The Software will be deemed to be in operational and functional use when the Customer first uses the Software to support its then current operations in any capacity.

- (d) The parties agree that there shall be no warranty provided by TripSpark for the TripSpark MyRide Native Application Software.
- (e) The parties agree that the TripSpark MyRide Native Application Software license fee and related Services’ fee shall be invoiced and due in accordance with Exhibit C-5, attached hereto.
- (f) The parties agree TripSpark MyRide Native Application Software maintenance fees shall be invoiced and due in accordance with Exhibit E-5.
- (g) All remaining terms, conditions, and covenants of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have caused this System Supply and Support Agreement Amendment #5 to be signed by their duly authorized representatives as of the date above.

TRAPEZE SOFTWARE GROUP, INC.

CITY OF MURFREESBORO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A-5

Item	TripSpark Software	Application Description	Configuration	License Date
1	MyRide Native Application	Dynamic Passenger Information App for mobile users	Mobile Based	Effective date of this Amendment #5

Notes:

1. Licenses are provided for operations for up to fourteen (14) fixed route vehicles.
2. Licenses provided for software utilization by City of Murfreesboro (Murfreesboro, Tennessee).
3. Third Party runtime, if required, are not included.

EXHIBIT C-5

Software

Item	Software Product	Licenses	Services	Total
Back Office Add-Ons				
	MyRide Native Application	\$7,750	\$19,200	\$26,950
Total USD				\$26,950

Pricing Assumptions

- 1 Pricing expires December 31, 2022.
- 2 Applicable taxes are not included and will be assessed at invoicing.

Payment Schedule

Milestones below will be invoiced and due on a per individual Software component basis.

Milestone	Description	Percentages Due
Milestone 1:	Due upon execution of this Amendment #5	100% of Software License Fees
Milestone 2:	Due upon delivery of MyRide app configuration document	40% of Services Fee
Milestone 3:	Due upon first publication of beta app for iOS or Android	40% of Services Fee
Milestone 4:	Due upon Software Acceptance pursuant to Section (c), page 1 of this Amendment #5	20% of Services Fee

EXHIBIT D-5

MyRide Native Application - Statement of Work

This document defines the implementation services to be provided by TripSpark for the Customer, as well as the roles and responsibilities of the Customer's staff and resources. All services to be provided remotely. Unless otherwise indicated, TripSpark will provide 'standard' implementation services (project management, operational review, testing, installation, training, etc.) as defined by TripSpark. Any services beyond what is defined in this document will be considered out of scope, and a change order outlining any additional costs will be required. Any additional costs uncovered from a change order will be the responsibility of the Customer. All implementation Services, materials, and training will be provided in English, unless otherwise stated.

Overview

This implementation involves the following high-level tasks:

1. Project Management and software configuration
2. Publishing of the MyRide App on the Google Play and Apple App stores

Product Description

The MyRide Application (App) provides end users the benefits of MyRide as a native application on their Android or iPhone devices.

Software Install and Configuration

The TripSpark technical resource will:

- Publish the MyRide App on the Google Play and Apple App stores configured and branded based on the Customers provided marketing material
- Provide technical support to the Customer to address issues associated with the MyRide App until project completion

The Customer will:

- Provide TripSpark with the Google Maps API keys, Google Map Java Script API keys, the Google Server API keys, the Google Browser API keys, the Google Direction API keys, and the Google Places API keys
- Provide TripSpark with the agency's Google analytics tracking ID
- Provide TripSpark with reCAPTCHA site key, reCAPTCHA secret key, and the OneSignal App ID, OneSignal REST API key, and OneSignal Safari Web ID
- Provide TripSpark with a Bit.Ly Access Token
- Complete in full the Customization form provided to them by TripSpark

Note: TripSpark configuration services will not commence until the customization form is completed

User Acceptance Testing – UAT

TripSpark will launch a BETA version of the Application in a controlled environment.

Customer will test for trip planning which will require an up-to-date and active GTFS export, as well as any general functionality testing.

Go-Live

TripSpark will make the app visible to the public upon completion of UAT.

Timeline

This implementation can be completed within approximately three (3) months assuming TripSpark has been provided the necessary prerequisites.

Assumptions

The key assumptions that TripSpark has employed while determining the level of effort involved with this implementation are presented below:

- Software will be provided “off the shelf”. No customizations are included beyond “branding” the MyRide App for the Customer
- All services are to be provided remotely
- Customer will be responsible for marketing the MyRide App to the public, marketing may involve a public education campaign. TripSpark is available for consultation
- Customer must have Google Play and Apple App Store developer Accounts, and are responsible for any related fees
- Customer must have a Privacy Policy and Terms of Use that is compliant with both Apple App and Google Play stores
- Customer is responsible for all images and logos to be utilized in the Application, and must have them scaled appropriately to size
- Customer must have an Apple Device to obtain two-factor authentication, as well as an Apple account to upload and publish the MyRide App to the Apple App store
- Customer is responsible for all charges incurred by using Google’s APIs

EXHIBIT E-5

Maintenance Support

Item	Maintenance Support Services	*Year 1
	TripSpark MyRide Native Application	\$1,938

Note: *Year 1 Software maintenance fee only, shall be due and payable upon Software Acceptance pursuant to Section (c), page 1 of this Amendment #5. Thereafter, annual Software maintenance support shall be subject to TripSpark's then current pricing and program availability.

SYSTEM SUPPLY AND SUPPORT AGREEMENT

This Agreement effectively made this 5th day of JULY 2017, between:

Name and Address of Licensor:

Trapeze Software Group, Inc. d.b.a. TripSpark
Technologies ("TripSpark"), with a place of business at:
5265 Rockwell Drive NE
Cedar Rapids, Iowa 52402

Name and Address of Customer:

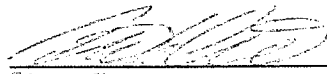
City of Murfreesboro
("Customer") with a place of business at:
111 West Vine Street
Murfreesboro, Tennessee 37133

This Agreement, including its Exhibits (Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G), attached hereto, represents the complete and exclusive agreement between TripSpark and Customer with respect to the subject matter hereof and supersedes all prior agreements, negotiations, or understandings between TripSpark and Customer in any way relating to the subject matter of this Agreement, including but not limited to the Trapeze Software Group, Inc. Ranger/Streets ITS Terms and Conditions of Sale dated August 22, 2013 and amendments thereto under which certain TripSpark Software and Equipment was implemented, accepted and for which warranties have expired (the "Purchase Contract"). No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever. In the event of any conflict or inconsistency between the provisions of this Agreement and the exhibits, the terms and conditions of this Agreement will govern to the extent of such inconsistency. This Agreement may not be modified except by a later written amendment signed by both parties.

The parties acknowledge and agree that the Purchase Contract has no further force or effective as of the effective date of this Agreement.

TRAPEZE SOFTWARE GROUP, INC.

CITY OF MURFREESBORO


Signature: 

Name:

Steve Lewis

Title:

Director, Client Services

Signature: 

Name:

Title:

TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. Definitions In this Agreement the capitalized words set out below will have the following meanings:

- "Agreement" this system supply and support agreement between TripSpark and Customer, and the attached exhibits, all of which form an integral part of this Agreement;
- "Documentation" the user documentation pertaining to the System as supplied by TripSpark;
- "Equipment" means collectively, the TripSpark Equipment and the Third Party Equipment;
- "Hosting Services" the specifications for the hosting services to be provided by TripSpark, attached hereto as Exhibit G;
- "New Product" any update, new feature or major enhancement to the TripSpark Software that TripSpark markets and licenses for additional fees separately from Upgrades;
- "Statement of Work" the specifications for the services to be provided by TripSpark, any subcontractors, and the Customer, attached hereto as Exhibit D;
- "Summary of Pricing" the summary of pricing information related to the System, attached hereto as Exhibit C;
- "System" means the Software products specified in Exhibit A and the Equipment specified in Exhibit B;
- "Third Party Equipment" the computer hardware, system software and any other related items to be provided by TripSpark, as identified in Exhibit B of this Agreement;
- "Trade Secrets" any information proprietary to either party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that (1) is or becomes generally known to the public through no fault of the recipient; (2) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (3) the recipient independently develops through persons who have not had access to such information; or (4) the disclosing party approves for unrestricted release by written authorization.
- "TripSpark Equipment" the TripSpark proprietary equipment units identified in Exhibit B of this Agreement;
- "TripSpark Software" the TripSpark existing and new proprietary software applications identified in Exhibit A of this Agreement;

2. Services TripSpark will provide all services and perform all actions required by, and in accordance with, the Statement of Work (the "Services"), attached hereto as Exhibit D. The Customer will perform all applicable activities and provide all information as required by the Statement of Work.

3. TripSpark Software License

a) TripSpark grants to Customer a personal, non-transferable and non-exclusive license restricted for use by Customer at their place of business:

(i) to use a production copy of the object code version of the Software in the form supplied by TripSpark and on hardware approved by TripSpark as of the License Date referred to in Exhibit A ("License Date"), in accordance with the operational characteristics described in Exhibit A.

(ii) To use the TripSpark Documentation, but only as required to exercise this license.

c) The license to use the Transit Database is granted to Customer solely for the development of internal reports by Customer and for the integrated operation of the TripSpark Software in both Production Environment and Staging Environment. Unless expressly included herein, all other access rights to the Transit Database are excluded from this Agreement, and the Customer shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Transit Database without the express written consent of TripSpark.

d) Customer may make two back-up copies of the TripSpark Software. Customer may use the production copy of the TripSpark Software solely to process Customer's proprietary data. The TripSpark Software may not be used on a service bureau or similar basis to process data of any third parties.

e) Other than the rights of use expressly conferred upon Customer by this paragraph, Customer will have no further rights to use the TripSpark Software or the Documentation. Customer will not copy, reproduce, modify, adapt, translate or add new features to the TripSpark Software or the Documentation without the express written consent of TripSpark. Customer will not permit disclosure of, access to, or use of the TripSpark Software or the Documentation by any third party unless authorized in writing by TripSpark. Customer will not attempt to reverse compile or reverse engineer all or any part of the System.

f) The Equipment may include embedded third party software, including software licensed by:

- a. Microsoft® Corporation.
- b. HERE MAP, territory-specific geographic/map data consisting of data for the North America Territory;
- c. Telogis, Inc. (Geobase™ mapping technology software);
- d. Blacklight Solutions ("Blacklight Solutions");
- e. Nuance/Loquendo S.p.A., (Text to Speech software).

The terms and restrictions of TripSpark's software license grants will apply to the use of the third party software identified above and the licensors of such software are third party beneficiaries of the rights granted under those terms. If required, Customer shall enter into a separate end-user-license agreement depending on the product(s) procured. Customer may only transfer any embedded software product with the Equipment in accordance with the terms and conditions of this Agreement.

4. Title to Equipment and Risk of Loss

It is agreed that title and risk of loss to any Equipment sold hereunder shall pass to Customer at the time of delivery of the Equipment at the premises designated by the Customer.

5. Warranty

Third Party Equipment will be provided by TripSpark with any available manufacturer's warranty only and any corrective or remedial services with respect to such items shall be the exclusive responsibility of the
CITY OF MURFREESBORO

Customer. No warranty, condition or other term which might be implied or incorporated into this Agreement, whether by statute, regulation, common law, equity or otherwise, including without limitation any implied warranties or conditions of quiet usage, merchantability, merchantable quality, fitness for a particular purpose, or from the course of dealing or usage of trade as allowed by law. In particular, TripSpark does not warrant that: (i) the System will meet all or any of Customer's particular requirements; (ii) that the operation of the System will operate error free or uninterrupted; or (iii) all programming errors in the System can be found in order to be corrected.

6. Payment TripSpark will invoice Customer for the TripSpark Software license fees, Services fees, Hosting Services Fees, and Equipment fees as set out in and according to the Summary of Pricing. TripSpark will invoice Customer in accordance with the payment schedule in the Summary of Pricing. The total amounts due for the Services and Expenses, as those fees are set out in the Summary of Pricing, are firm fixed amounts and will be invoiced on that basis. Expenses related to the Services are not to exceed those amounts set out in the Summary of Pricing. In the event that the operational parameters set out in Exhibit A of this Agreement are exceeded, TripSpark reserves the right to charge Customer its standard license fees and maintenance fees applicable to such additional levels of use.

Subject to receipt of an accurate invoice, Customer will pay invoices within thirty (30) days of receipt. Overdue payments will bear interest at the annual rate of fifteen percent (15%) on the amount outstanding from the date when payment is due until the date payment in full is received by TripSpark. Customer will also be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement. If Customer has a tax exemption certificate, a copy of the certificate must be provided to TripSpark upon signing of this Agreement to avoid payment of the applicable tax to TripSpark.

7. Maintenance Services and Extended Warranty

For the purposes of this Section 7 of this Agreement, the following definitions apply:

"Rogue Unit": TripSpark Equipment that exhibits a recurring problem subject to the following: (i) the undesired symptom reported is the same for three (3) sequential removals, and (ii) the undesired interval is seven (7) operating days or less;

"Turnaround Time": Commences on the date of receipt by TripSpark's Service Center, and continues to the date of shipment back to Customer;

No Fault Found ("NFF") / No Trouble Found ("NTF"): TripSpark Equipment which requires no repair, replacement or adjustment by TripSpark in order to return it to a serviceable level in accordance with subsection 7 (B) (iv) below;

"Updates and Upgrades": Those general releases to the TripSpark Equipment or TripSpark Software that TripSpark generally makes available as part of the annual maintenance program;

"Priority One (1) Variance": A TripSpark Equipment or TripSpark Software performance anomaly resulting in the loss or use of critical system functions and system is "down" to the extent that such loss affects the safety of the public and/or personnel;

"Priority Two (2) Variance": A TripSpark Equipment or TripSpark Software deficiency of lesser severity than a Priority One (1) that does not substantially reduce the capability of the System to accomplish its primary system functions (e.g., vehicle communications, and/or AVL, and/or fare collection). A Priority One (1) Variance for which an acceptable workaround has been established shall be reassigned to a Priority Two (2); and

"Service Notification": A notification or bulletin provided by TripSpark that describes a change to TripSpark Equipment or TripSpark Software.

A) TripSpark Software

Upon TripSpark receipt of Customer payment in full of annual maintenance fees, TripSpark agrees to provide the following maintenance and support services:

- (i) TripSpark will maintain the TripSpark Software so that it operates in conformity, in all material respects, with the descriptions and specifications for the TripSpark Software set out in the Documentation;

- (ii) in the event that Customer detects any errors or defects in the TripSpark Software, TripSpark will provide reasonable support services through a telephone software support line from Monday to Friday, 8 am to 5 pm EST (Except North American holidays). Upon registration by Customer, TripSpark will also provide Customer with access to its software support website;
- (iii) TripSpark will provide Customer with Upgrades of the TripSpark Software at no additional license fee charge;
- (iv) Customer shall provide TripSpark with remote access to Customer's computers on which the TripSpark Software is installed. TripSpark shall provide updates and Upgrades to the TripSpark Software via remote connection. Should Customer request any on-site maintenance and support services, TripSpark reserves the right to charge its standard applicable service fees plus expenses related to such services; and
- (v) Upgrades will be provided with updated Documentation where available and appropriate.

B) TripSpark Equipment

Subject to purchase of extended warranty by Customer for additional Equipment only, as outlined in Summary of Pricing, TripSpark agrees to provide the following maintenance and support services

- (i) TripSpark shall provide phone support to Customer's authorized callers to assist with troubleshooting of installation, configuration, and operational problems of covered TripSpark Equipment;
- (ii) Customer shall send all TripSpark Equipment covered by this Agreement directly to the designated TripSpark Service Center outlined in the Return Materials Authorization ("RMA") Request Process, Exhibit F. Upon repair, TripSpark shall return the TripSpark Equipment to Customer's designated receiving facility, or other locations as designated by Customer's applicable Return Order. Cost of shipping to the designated TripSpark Service Center shall be borne by Customer. Cost of shipping the repaired TripSpark Equipment to the Customer's facilities shall be borne by TripSpark unless the TripSpark Equipment is deemed NFF / NTF. TripSpark Equipment returned for repair under this Agreement and subsequently determined by TripSpark to be NTF or NFF or upon warranty expiry is subject to the Time and Material pricing contained in Summary of Pricing. TripSpark reserves the right to substitute functionally equivalent parts for those parts returned to TripSpark for repair. TripSpark will use commercially reasonable efforts to obtain equally functional equivalent parts. Notwithstanding anything to the contrary herein, should equally functional equivalent parts not be available, Customer acknowledges and agrees that TripSpark will have no further obligation to support the TripSpark Equipment and Customer shall be obligated to pay to TripSpark bench fees at the then current TripSpark pricing. The bench fee amount applies to the services performed by TripSpark for testing and assessment of TripSpark Equipment issues whether or not TripSpark Equipment parts are available as described hereunder and whether or not Customer chooses to replace parts as advised by TripSpark.
- (iii) TripSpark shall make commercially reasonable efforts to provide a Turnaround Time of thirty (30) calendar days for TripSpark Equipment listed in Exhibit B, which is returned to TripSpark in accordance with Exhibit F;
- (iv) TripSpark shall apply special testing and repair to any Rogue Unit at no additional charge to Customer. Any special testing and repair shall not be subject to the Turnaround Time specified in subsection (iii) above; and
- (v) TripSpark may issue Service Notifications indicating recommended or mandatory changes to the TripSpark Equipment and Software covered under this Agreement.

C) Documentation for Equipment Difficulty

Prior to delivery to TripSpark of TripSpark Equipment to be repaired, Customer shall provide TripSpark with a return order, which shall include the following information:

- (i) Date of performance anomaly;

- (ii) Vehicle Number;
- (iii) Detailed system description of performance anomaly;
- (iv) Type number, part number, and serial number of the TripSpark Equipment;
- (v) Customer Return / Repair Order Number; and,
- (vi) Ship To address and Contact Name for return of TripSpark Equipment to Customer;

D) Documentation for Software Difficulty

Upon the identification of a possible fault or difficulty within any of the TripSpark Software to be supported hereunder, Customer shall promptly issue a trouble report to TripSpark that shall include the following information:

- (i) Date of performance anomaly;
- (ii) TripSpark Software module in question and location of where TripSpark Software is installed;
- (iii) Detailed system description of performance anomaly;
- (iv) Version number of TripSpark Software and severity/ impact to Customer's operations; and
- (v) Contact name and phone number.

The trouble report information shall also be communicated verbally via 1-877-411-8727 or via email at cc@TripSparkgroup.com or via customer portal www.MyTripSpark.com to TripSpark. TripSpark shall forward the trouble report to the designated repair technician.

E) Equipment and Software Excluded from Maintenance

The parties agree that the above maintenance services shall not apply to include maintenance of Third Party Equipment, and TripSpark shall be under no obligation to provide any maintenance services to the Customer with respect to such Third Party Equipment or third party software. The parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects or performance issues in the TripSpark Software or the TripSpark Equipment which are caused by the actions or omissions of the Customer, its employees, contractors or vehicle riders.

In the event that TripSpark Equipment and Software covered under this Section 7 is subjected to any of the conditions below by Customer or any third parties, such TripSpark Equipment and Software shall be excluded from maintenance service coverage.

- (i) TripSpark Equipment or TripSpark Software subjected to carelessness or negligence;
- (ii) TripSpark Equipment or TripSpark Software subjected to cannibalization or vandalism;
- (iii) TripSpark Equipment or TripSpark Software subjected to alteration or repair in a manner which conflicts with TripSpark's written repair procedures, specifications, and license terms;
- (iv) TripSpark Equipment or TripSpark Software subjected to inadequate packing, shipping, storage or handling;
- (v) TripSpark Equipment or TripSpark Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
- (vi) TripSpark Software altered as a result of third party service bulletins.

F) Disclaimer

During any annual maintenance support or extended warranty period, TripSpark does not represent or warrant that (a) the TripSpark Equipment or TripSpark Software shall meet any or all of Customer's particular requirements; or (b) the operation of the TripSpark Equipment or TripSpark Software shall be error-free or uninterrupted.

8. Payment of Maintenance Fees and Hosting Fees Customer shall pay the annual maintenance fees and Hosting Services fees to TripSpark as provided in Exhibit E. These fees shall be subject to change as set out in Exhibit E. Customer shall issue a Purchase Order annually specifying the amount set forth in the TripSpark invoice for maintenance services and Hosting Services fees in accordance with Exhibit E. The Purchase Order shall be governed by the terms and conditions of this Agreement. In the event that the Customer wishes to terminate the maintenance services or Hosting Services to be provided under this Agreement, Customer must provide TripSpark with no less than ninety (90) days written notice of such termination, during which ninety day period the applicable maintenance fees and Hosting Services fees will remain payable. TripSpark may suspend provision of any maintenance services and Hosting Services fees during any period of time during which the applicable maintenance fees remain unpaid by Customer.

9. Trade Secrets Customer acknowledges that all Trade Secrets relating to or concerning the System, including any modifications made thereto, are owned by TripSpark or TripSpark has the applicable rights of use and Customer will maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without TripSpark's prior written consent. Customer shall prohibit any persons other than Customer employees from using any components of the System and Customer shall restrict the disclosure and dissemination of all Trade Secrets reflected in the System to Customer employees who are bound to respect the confidentiality of such Trade Secrets. These obligations of confidentiality will survive termination of this Agreement.

10. Media and Publication Upon reasonable notice and consultation with the Customer, TripSpark shall be entitled to publish press releases and other general marketing information related to this Agreement and the work done hereunder. Except for the foregoing, and subject to the strict requirements of the law, neither party will communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work performed under this Agreement without the prior written consent of the other party.

11. Intellectual Property Indemnification TripSpark will defend Customer in respect of any claims brought against Customer by a third party based on the claim that the TripSpark Software or the TripSpark Equipment infringes the intellectual property rights of that third party. TripSpark will pay any award rendered against Customer by a court of competent jurisdiction in such action, provided that Customer gives TripSpark prompt notice of the claim and TripSpark is permitted to have full control of any defense. If all or any part of the TripSpark Software or TripSpark Equipment becomes, or in TripSpark's opinion is likely to become, the subject of such a claim, TripSpark may either modify the TripSpark Software or TripSpark Equipment to make it non-infringing, or procure the right for the Customer's use of the System. This is TripSpark's entire liability concerning intellectual property infringement. TripSpark will not be liable for any infringement or claim based upon any modification of any part of the System developed by Customer, or use of the System in combination with software, hardware, or other technology not supplied or approved in advance by TripSpark, or use of any part of the System contrary to this Agreement or the Documentation.

12. Exclusion of Liability

a) TripSpark and Customer do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Customer for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

b) TripSpark does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. TripSpark shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Customer's connection to or use of the internet.

c) TripSpark will not be liable to Customer or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:

(i) Customer's use of map or geographical data, owned by Customer or any third party, in conjunction with the System or otherwise; or

(ii) Customer's use of the System insofar as the System may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.

(d) TripSpark's liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the use of the System (whether or not in the manner permitted by this Agreement), including claims for breach of contract, tort, misrepresentation, or otherwise, will be absolutely limited to the Software license or Equipment hardware fees paid for the individual product that is the subject of the dispute.

(e) TripSpark will not be liable to the Customer or any third party for losses or damages suffered by Customer or any third party which fall within the following categories:

i) incidental or consequential damages, whether foreseeable or not;

ii) special damages even if TripSpark was aware of circumstances in which special damages could arise;

iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

(f) Paragraphs (d) and (e) do not apply to claims arising out of death or bodily injury caused by TripSpark's gross negligence or willful misconduct.

(g) The Customer acknowledges and agrees that it is solely responsible for providing and ensuring the proper training of its drivers, owners or operators in the operation of the motor vehicle or motor vehicles in conjunction with the use or operation of the TripSpark Software, Equipment and Third Party Equipment described in this Agreement. "Motor vehicle" includes any automotive machinery utilized for the transport of persons or goods in which TripSpark Software, Equipment, and Third Party Equipment has been incorporated or installed.

The Customer acknowledges and agrees that TripSpark shall not be liable to the Customer for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by the Customer in conjunction with or separate from the use of the TripSpark Software, Equipment and Third Party Equipment described in this Agreement including any personal injury claim or action and to the extent permitted by Tennessee state law, the Customer shall defend and hold TripSpark harmless from any such claim or action including costs.

13. Termination

(a) This Agreement will remain in effect until terminated.

(b) Either party may terminate this Agreement by providing ninety (90) days written notice.

(c) TripSpark has the right to terminate this Agreement if Customer is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, the following are deemed Customer defaults under this Agreement: (i) Customer fails to pay any amount when due hereunder; (ii) Customer becomes insolvent or any proceedings will be commenced by or against Customer under any bankruptcy, insolvency or similar laws.

(d) If Customer develops software that is competitive with the TripSpark Software, or Customer is acquired by or acquires an interest in a competitor of TripSpark, TripSpark shall have the right to terminate this Agreement immediately.

(e) If this Agreement is terminated, Customer will immediately return to TripSpark all copies of the TripSpark Software and the Documentation and any other Equipment provided to Customer pursuant to this Agreement which have not been paid for in full, and will certify in writing to TripSpark that all copies or partial copies of the TripSpark Software, the Documentation and such other materials have been returned to TripSpark. In the event of termination, TripSpark will be entitled to retain all fees paid by Customer for all license fees, service fees and expenses related to services or deliverables provided up to the termination date.

14. Force Majeure TripSpark will not be responsible for, and its performance of obligations will automatically be postponed as a result of, delays beyond TripSpark's reasonable control, provided that TripSpark notifies the Customer of its inability to perform with reasonable promptness and performs its obligations hereunder as soon as circumstances permit.

15. Assignment This Agreement is for the sole benefit of Customer and may not be assigned by Customer without the prior written consent of TripSpark.

16. Applicable Law This Agreement will be governed by and construed in accordance with the laws of the State of Delaware.

17. Third Parties No party other than Customer shall be licensed to use the TripSpark Software by this Agreement, unless such use is expressly permitted by the terms of this Agreement. In the event that this Agreement does allow for the use of the TripSpark Software by certain designated third party service providers, the Customer shall be responsible for taking all reasonable steps to ensure that the service provider is fully compliant with the terms of this Agreement including without limitation any restrictions on use of the TripSpark Software and obligations of confidentiality. TripSpark does not assume, and hereby expressly excludes, any obligations or duties to any third parties, whether expressly named in this Agreement or not, which may be inferred or implied by statute, regulation, common law, equity or otherwise.

18. Notices All notices must be in writing and will be duly given if delivered personally or sent by registered or certified mail to the respective addresses of the parties appearing on page one of this Agreement. Any notice given will be deemed to have been received on the date it is delivered if delivered personally, or, if mailed, on the fifth business day next following its mailing. Either party may change its address for notices by giving notice of such change, as required in this Section.

19. Purchase Order Upon execution of this Agreement, Customer will issue a Purchase Order specifying the amount of as set out in the Summary of Pricing, (this amount excludes any sales taxes, first year maintenance fees or escrow fees which may apply) for the provision of the System and the Services. The Purchase Order will be governed exclusively by the terms and conditions of this Agreement.

20. Audits TripSpark may perform audit(s) on the use of the System. Customer agrees to make the necessary operational records, databases, equipment, employees and facilities available to TripSpark for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

21. Federal Certifications and Assurances. TripSpark shall comply with all of the required federal certifications and assurances set forth in Attachment H.

EXHIBIT A

Item	TripSpark Software	Application Description	Configuration	License Date
1.	TripSpark Mobile (Fixed Route)	Mobile Application for Fixed Route Bus Operators	Mobile Based	Effective date of this Agreement
2.	TripSpark XGate (Fixed Route)	Wireless Communication Module	Mobile Based	Effective date of this Agreement
3.	TripSpark XMobile Manager (XMM) Fixed Route)	Over the Air Programming Application	Mobile Based	Effective date of this Agreement
4.	TripSpark Streets CAD/AVL Server License (Schedule/Import, Reporting, Web Services/GTFS Export (Google Trip Planner))	Fixed Route Computer Aided Dispatching and Automated Vehicle Location	Server Based	Effective date of this Agreement
5.	TripSpark Streets Route Monitor	Headway Monitoring	Server Based	Effective date of this Agreement
6.	TripSpark Streets-CAD/AVL Client License	Fixed Route Computer Aided Dispatching and Automated Vehicle Location	Server Based	Effective date of this Agreement
7.	TripSpark XGate Server License	Wireless Communication Module	Server Based	Effective date of this Agreement
8.	TripSpark XMobile Manager Server License	Over the Air Programming Application	Server Based	Effective date of this Agreement
9.	TripSpark MyRide Passenger Information	Real Time Passenger Information Module	Mobile Based	Effective date of this Agreement
10.	Transit Database		Included	Included

Note:

1. Licenses are provided for operations up to fourteen (14) fixed route vehicles.
3. Third Party Runtime licenses, if required to operate the TripSpark Software, are not included.
4. Proposed software solution is designed for the Windows operating environments, with an ODBC database infrastructure (the Transit Database) designed by and proprietary to TripSpark, as applicable.
5. Except as may be included in the Equipment or otherwise specifically required in the Agreement, the Customer is responsible for purchasing hardware and any other pre-requisite products.

6. Any software applications may be operated on any of the licensed workstations within a configuration approved by TripSpark. Licenses for additional local or remote workstations may be purchased at the then current rates.

EXHIBIT B

List of TripSpark Equipment:

As identified for future additional Equipment purchases made pursuant to this Agreement.

EXHIBIT C: SUMMARY OF PRICING

As identified for future purchases made pursuant to this Agreement.

EXHIBIT D: STATEMENT OF WORK

As applicable for all future purchases made pursuant to this Agreement.

EXHIBIT E: MAINTENANCE FEES AND HOSTING SERVICES

Long Term Support Fees

Item	TripSpark Software	Maintenance and Hosting Services Period Covered	Maintenance Fee and Hosting Services
1.	Mobile (Fixed Route), XGate (Fixed Route), XMobile Mannager (XXM) (Fixed Route), CAD/AVL Server License (Schedule/Import, Reporting, Web Services/GTFS Export (Google Trip Planner), Streets Route Monitor, Streets-CAD/AVL Client License, XGate Server License, XMobile Manager Server License, MyRide Passenger Information (up to 14 fixed route vehicles)	June 6, 2017 to June 5, 2018	\$31,285.00
2.	Mobile (Fixed Route), XGate (Fixed Route), XMobile Mannager (XXM) (Fixed Route), CAD/AVL Server License (Schedule/Import, Reporting, Web Services/GTFS Export (Google Trip Planner), Streets Route Monitor, Streets-CAD/AVL Client License, XGate Server License, XMobile Manager Server License, MyRide Passenger Information (up to 14 fixed route vehicles)	June 6, 2018 to June 5, 2019	\$32,849.25
3.	Mobile (Fixed Route), XGate (Fixed Route), XMobile Mannager (XXM) (Fixed Route), CAD/AVL Server License (Schedule/Import, Reporting, Web Services/GTFS Export (Google Trip Planner), Streets Route Monitor, Streets-CAD/AVL Client License, XGate Server License, XMobile Manager Server License, MyRide Passenger Information (up to 14 fixed route vehicles)	June 6, 2019 to June 5, 2020	\$34,491.71

Note: The Software maintenance fees and Hosting Services fees stated above apply to the corresponding time frames only and exclude applicable taxes. For all future annual renewals, maintenance fees shall be subject to TripSpark then current pricing. Hosting Services fee assumes up to five (5) user id's.

EXHIBIT F: RETURN MATERIALS AUTHORIZATION ("RMA")

RETURN MATERIAL AUTHORIZATION ("RMA") PROCESS

All items returned to TripSpark must have the following information presented prior to the issuing of a Return Material Authorization ("RMA") number. The reason for return (as specific as possible), the item(s) part number(s), serial number and Customer contact. For vehicle installed TripSpark Equipment please provide the vehicle id, vehicle make/model and vehicle year.

RETURN MATERIAL AUTHORIZATION ("RMA") REQUEST

Customers who have TripSpark Equipment needing repair, having received TripSpark approval for the repair shall follow the procedure outlined below:

Buyer (or authorized representative) has TripSpark Equipment needing repair.

Buyer (or authorized representative) provides to TripSpark: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto www.MyTripSpark.com and selecting "Request an RMA" on the left side. You will need to enter the following information:

- a) Serial number
- b) corresponding problem description for each device being returned
- c) return shipping address
- d) billing address

A complete and accurate description of the condition or problem of the component or unit and the initial trouble shooting shall be done by the Customer (or authorized representative).

The Customer (or authorized representative) shall ship the unit and CRG (Customer Returned Goods) form to:

Trapeze Software Group, Inc. d.b.a. TripSpark Technologies
5265 Rockwell Dr NE
Cedar Rapids, IA 52402
Attention: RMA Department

For International shipments, please include a commercial invoice to prove place of origin for the repair.

Packing

- Customer (or authorized representative) places all TripSpark Equipment (EXCEPT IVLU's) in a nonstatic bag along with a copy of RMA form. IVLU's shall be sent in an ESD static sensitive bag. TripSpark will provide non-static bags at Customer's request. Customer shall place a copy of the CRG Form, which shall be provided by TripSpark at the time of the RMA request, inside the box or taped to the outside of the bag of the unit being returned. Customer (or authorized representative) shall pack all returned units carefully, using packing peanuts and bubble wrap when necessary. All returns are Customer property and must be protected during shipping and through the entire return process.
- Use the values on the commercial invoice for entering the 'Value for Customs' on shipping forms (for International shipments)
- Do not enter a 'Total Declared Value for Carriage'. (For International shipments)
- Mark the RMA number on the top of the outside boxes.
- Attach one copy of the commercial invoice to each box (for international shipments)
- Attach the waybill.

Please note:

- TripSpark will provide proper packaging at a nominal fee if the units are not sent to us in original packaging or if the packaging is damaged.

- Customer is responsible for shipping to and from TripSpark on all non-warranty/non-maintenance repairs and per the agreement on warranty/maintenance repairs.
- If the quantity or serial numbers are not filled out correctly on the commercial invoice, customs may hold the shipment, or the shipment may be refused.

If you have any questions, please contact our Customer Care Department (cc@tripspark.com).

EXHIBIT G: HOSTING SERVICES

Hosting Services

1. OVERVIEW

This Exhibit G describes the hosting services for the Software licensed under Exhibit A of this Agreement ("Hosting Services") to be provided by TripSpark, the respective responsibilities of the parties, the service level objectives ("SLOs"), and the problem management process.

2. HOSTING SERVICES

The general scope of services addressed by this Agreement includes the operation, maintenance, and support of the:

- Database software for the Software hosted under this Agreement
- Database security
- Data Center server operation

The scope of services specifically excludes operation and maintenance of the following:

- Customer hardware, including Customer's servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software
- Customer Local Area Networks ("LAN")
- Customer network infrastructure for connecting to the Internet and to the TripSpark Data Center

All Hosting Services will be provided by TripSpark to and for the Customer's benefit in a manner that will meet the objectives outlined in the Service Level Objectives below.

Support Software

Support Software includes the operating system, utilities, database software, and all necessary licenses required to operate the Software as provided by TripSpark as part of the Hosting Services.

Hardware

Customer shall provide the telecommunications equipment, communication lines, and associated internet services for connection from Customer's site to the Data Center.

Database Instances

TripSpark will maintain a single production database instance up to 50GB. This production database will provide the daily, real-time transaction data to the Software users.

Internet Bandwidth

TripSpark will provide up to 1Mbps pursuant this Agreement. Additional bandwidth is charged at the then current rate.

Backups

Full database backups and incremental database backups are taken on a regular basis. Backup data is retained for 14 days.

Hours of System Operations

The Software will be accessible and available to the Customer and capable of any and all normal operating functions 24 hours a day, seven days a week except for periods of scheduled maintenance and previously approved outages. TripSpark will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the TripSpark side of the router resident at the Data Center, nor will these hours of unavailability be counted as unavailable.

Data Center Maintenance

TripSpark will complete routine maintenance on the Software systems quarterly. TripSpark will provide at least seven (7) business days' notice to these planned outages.

If TripSpark is required to perform additional maintenance outside of the scheduled maintenance window, it will notify the Customer via email of its request. The Customer and TripSpark will mutually agree on the downtime, which will then be considered a period of scheduled maintenance.

Travel Expense

In addition to the fees set forth above, if TripSpark is required by Customer to attend and perform Services on-site, Customer shall reimburse TripSpark for air fare, meals, ground transportation, and other reasonable travel and living expenses incurred by TripSpark in support of this Agreement during provision of support services at the Customer site.

3. SERVICE LEVEL OBJECTIVES

These Service Level Objectives are intended to provide an understanding of the level of service to be delivered by the TripSpark for the Hosting Services specified in this Exhibit G-1. The service levels set forth below apply to the Hosting Services provided by TripSpark under this Agreement.

AVAILABILITY

TripSpark will use commercially reasonable efforts to provide Hosting Services with an average of 95% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, "Availability" during any quarter refers to an Authorized User's ability to log into the Software during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- "x" is the Availability of the Software during the quarter;
- "y" is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Software because of (a) regularly scheduled maintenance windows for the Software and for times in which Customer has been notified in writing (including e-mail) by TripSpark in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by TripSpark or certified by TripSpark for use in conjunction with the Hosting Services (except as such non-performance is directly or indirectly caused by TripSpark).
- "z" is the number of hours in such month during which the Customer is unable to log into the Software (other than for reasons set forth in the definition of "y" above); provided that TripSpark has been notified or is otherwise aware (or reasonably should be aware) of Customer's inability to utilize the Software.

4. CUSTOMER RESPONSIBILITIES

The Customer is responsible for:

- Assigning a primary and alternate Customer representative to coordinate all communications and activities related to TripSpark services.
- Providing contact information for a primary and an alternate contact to TripSpark that will be added to the notification lists upon execution of this Agreement.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Software level.
- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer's sites for the Software being utilized.
- Installation, operation and maintenance of all workstation software (and Customer's LAN, existing data communications configuration, hardware, or software required at the Customer's site. TripSpark network and network responsibility extends from the TripSpark routers at TripSpark's sites to all connected equipment at TripSpark's sites.
- Testing updates and fixes applied by TripSpark to Software used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the TripSpark at the end of the Customer testing period unless specific problems are documented in writing to TripSpark.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the TripSpark for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing TripSpark of any problems encountered in a timely manner.

5. OWNERSHIP OF SOFTWARE AND DATA

Customer shall not obtain any ownership rights, title or interest in the Software, hardware or systems developed or employed by TripSpark in providing any Services under the Agreement. TripSpark shall not obtain any ownership rights, title or interest to Customer's data contained within the Software database. Upon expiration or termination of the Agreement for any reason, TripSpark agrees to, upon a written request by Customer, either provide Customer with a copy of or destroy the Customer's data, as it exists at the date of expiration or termination. If the Customer desires that TripSpark provide a copy of all of the Customer's data at any period other than expiration or termination of the Agreement, TripSpark will provide a quote detailing the scope and cost for such services for Customer's approval.

**AMENDMENT #4
OF
CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
TRAPEZE SOFTWARE GROUP, INC.
d.b.a. TRIPSPARK FOR
SYSTEM SUPPLY AND SUPPORT AGREEMENT**

WHEREAS, the City of Murfreesboro and Trapeze Software Group, Inc. d.b.a. TripSpark, entered into a System Supply and Support Agreement on July 1, 2017; and

WHEREAS, the term of the contract between the City of Murfreesboro and Trapeze Software Group, Inc. d.b.a. TripSpark is from July 1, 2017, until such time that the City provides 90 days written notice of termination of the contract; and


WHEREAS, pursuant to Clause 8, Payment of Maintenance Fees and Hosting Fees, Exhibit E only set forth such fees effective through June 30, 2022; and

WHEREAS, the City desires to continue using the software and services provided by Contractor through June 30, 2023;

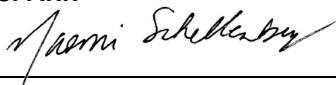
NOW THEREFORE, Exhibit E is amended as follows:

1. The parties agree to extend the pricing through June 30, 2023, as set forth in the following:
 - a. 07/01/2022 – 06/30/2023 in the amount of \$34,315.00 for Streets – Core, Ranger, Route Monitor, MyRide/Web Services Up to 14 fixed route vehicles
 - b. 07/01/2022 – 06/30/2023 in the amount of \$5,620.00 for Hosting Services
2. In all other respects the prior contract between the City of Murfreesboro and Trapeze Software Group, Inc. d.b.a. TripSpark, is affirmed and renewed with no changes or modifications.

CITY OF MURFREESBORO

DocuSigned by:
By: 
Shane McFarland, Mayor

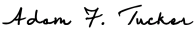
**TRAPEZE SOFTWARE GROUP, INC. D.B.A.
TRIPSPARK**

By: 

Printed: Naomi Schellenberg

Title: Director, Client Services - Transit

Approved as to form:

DocuSigned by:

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: FY23 Budget Amendment Ordinance

Department: Administration

Presented by: Erin Tucker, Budget 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

Amendment to the City's FY23 Budget.

Staff Recommendation

Approve Ordinance 22-O-42, amending the City's budget.

Background Information

GENERAL FUND

Revenues

Property Tax - Actual Property Tax revenues exceed budget by \$321,890. Property Tax Payments in Lieu of Tax (PILOT) revenues exceed budget by \$196,000.

Sales Tax - Due to higher than projected FY22 collections, Local and State Sales Tax budgeted revenues can be increased by \$1,338,500 and \$848,000, respectively. This budget maintains a conservative 6% growth assumption for taxes not yet collected.

Community Development

The Community Development budget is being adjusted to due to the final amount of carryover from the previous years' grant. Revenues and expenditures need to increase by \$609 respectively.

General Pay Plan

Council approved a 4% Cost of Living Adjustment (COLA) for employees in the General Pay Plan at the November 9, 2022, meeting. The impact of this adjustment is \$1.45 million.

Public Safety Pay Plan

Staff surveyed neighboring Middle Tennessee cities to compare the City's Public Safety Pay Plan to peer cities. The results of the surveys determined that the sworn police and fire positions are under market and should be adjusted to better attract and retain public safety employees.

Fire Rescue

The Fire Rescue Department's payroll increases range from 3% to 11% depending on the degree of adjustment made to starting pay, resulting in a recommended increase of \$1,070,000.

Police

The Police Department's payroll increases range from 5% to 13% depending on the degree of adjustment made to starting pay, resulting in a recommended increase of \$1,335,000.

Council approved a 5% COLA for Public Safety Communications employees at the November 9, 2022, meeting.

Airport Fund

Council approved a 4% COLA for employees in the General Pay Plan at the November 9, 2022, meeting. The impact of this adjustment is \$13,916.

Council Priorities Served

Responsible budgeting

The budget amendments reflect General Fund's increased revenues and expenses.

Fiscal Impact

The amendment to the FY23 Budget results in a decrease to General Fund's Unassigned Fund Balance of \$1.3 million and a decrease to Airport Fund's Fund Balance of \$13,916.

Attachments

1. FY23 Budget Ordinance 22-O-42 and Exhibit A

ORDINANCE 22-O-42 amending the 2022-2023 Budget (3rd Amendment).

WHEREAS, the City Council adopted the 2022-2023 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 22-O-11, on June 8, 2022 to implement the 2022-2023 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the 2022-2023 Budget and authorized full-time position counts adopted by this Ordinance to incorporate expenditure and hiring decisions made during the 2022-2023 fiscal year.

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

SECTION 1. The 2022-2023 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. That this Ordinance take effect immediately upon and after its passage upon second and final reading, as an emergency Ordinance, an emergency existing, and it being imperative to provide for the necessary expenses, general and special, of said City of Murfreesboro for the Fiscal Year 2022-2023 at the earliest practicable time, the welfare of the City requiring it.

Passed:

1st reading

2nd reading

Shane McFarland, Mayor

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

43A2035E51F9401...

Adam F. Tucker
City Attorney

SEAL

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
General Fund				
<u>Revenues</u>				
	Property Tax - Real & Personal	65360195	\$ 65,682,085.00	\$ 321,890.00
	Local Option Sales Tax	\$ 69,642,000.00	\$ 70,980,500.00	\$ 1,338,500.00
	State Sales Tax		\$ 848,000.00	\$ 848,000.00
	Payments from Industry	\$ 500,000.00	\$ 696,000.00	\$ 196,000.00
Community Development	Federal Grants		\$ 609.01	\$ 609.01
				<u>\$ 2,704,999.01</u>
<u>Expenditures</u>				
	<u>Unassigned</u>			
Administration	Salaries	\$ 1,655,906.00	\$ 1,715,040.00	\$ 59,134.00
Administration	Social Security & Medicare	\$ 110,331.00	\$ 114,855.00	\$ 4,524.00
Administration	Retirement - Defined Benefit	\$ 203,469.00	\$ 211,609.00	\$ 8,140.00
Administration	Retirement - Defined Contribution	\$ 75,169.00	\$ 76,423.00	\$ 1,254.00
Finance	Salaries	\$ 1,501,060.00	\$ 1,554,940.00	\$ 53,880.00
Finance	Social Security & Medicare	\$ 111,249.00	\$ 115,371.00	\$ 4,122.00
Finance	Retirement - Defined Benefit	\$ 95,085.00	\$ 97,673.00	\$ 2,588.00
Finance	Retirement - Defined Contribution	\$ 77,646.00	\$ 80,554.00	\$ 2,908.00
Purchasing	Salaries	\$ 213,411.00	\$ 221,957.00	\$ 8,546.00
Purchasing	Social Security & Medicare	\$ 15,683.00	\$ 16,337.00	\$ 654.00
Purchasing	Retirement - Defined Benefit	\$ 18,135.00	\$ 18,872.00	\$ 737.00
Purchasing	Retirement - Defined Contribution	\$ 7,084.00	\$ 7,453.00	\$ 369.00
Legal	Salaries	\$ 1,052,072.00	\$ 1,094,618.00	\$ 42,546.00
Legal	Social Security & Medicare	\$ 74,940.00	\$ 78,195.00	\$ 3,255.00
Legal	Retirement - Defined Benefit	\$ 65,913.00	\$ 68,549.00	\$ 2,636.00
Legal	Retirement - Defined Contribution	\$ 60,328.00	\$ 62,606.00	\$ 2,278.00
City Court	Salaries	\$ 431,778.00	\$ 447,092.00	\$ 15,314.00
City Court	Social Security & Medicare	\$ 30,982.00	\$ 32,154.00	\$ 1,172.00
City Court	Retirement - Defined Benefit	\$ 52,183.00	\$ 54,270.00	\$ 2,087.00
City Court	Retirement - Defined Contribution	\$ 9,810.00	\$ 10,144.00	\$ 334.00
IT	Salaries	\$ 782,269.00	\$ 805,632.00	\$ 23,363.00
IT	Social Security & Medicare	\$ 54,046.00	\$ 55,833.00	\$ 1,787.00
IT	Retirement - Defined Benefit	\$ 60,673.00	\$ 63,209.00	\$ 2,536.00
IT	Retirement - Defined Contribution	\$ 33,634.00	\$ 34,419.00	\$ 785.00
GIS	Salaries	\$ 331,413.00	\$ 344,602.00	\$ 13,189.00
GIS	Social Security & Medicare	\$ 22,561.00	\$ 23,570.00	\$ 1,009.00
GIS	Retirement - Defined Benefit	\$ 33,315.00	\$ 34,681.00	\$ 1,366.00
GIS	Retirement - Defined Contribution	\$ 7,209.00	\$ 7,681.00	\$ 472.00
Public Safety IT	Salaries	\$ 631,235.00	\$ 657,036.00	\$ 25,801.00
Public Safety IT	Social Security & Medicare	\$ 44,863.00	\$ 46,837.00	\$ 1,974.00
Public Safety IT	Retirement - Defined Benefit	\$ 57,133.00	\$ 58,602.00	\$ 1,469.00
Public Safety IT	Retirement - Defined Contribution	\$ 14,892.00	\$ 16,328.00	\$ 1,436.00
Communications	Salaries	\$ 521,322.00	\$ 542,342.00	\$ 21,020.00
Communications	Social Security & Medicare	\$ 38,826.00	\$ 40,434.00	\$ 1,608.00
Communications	Retirement - Defined Benefit	\$ 62,945.00	\$ 65,982.00	\$ 3,037.00

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
Communications	Retirement - Defined Contribution	\$ 12,685.00	\$ 13,069.00	\$ 384.00
Employee Services	Salaries	\$ 779,162.00	\$ 811,528.00	\$ 32,366.00
Employee Services	Social Security & Medicare	\$ 58,879.00	\$ 61,355.00	\$ 2,476.00
Employee Services	Retirement - Defined Benefit	\$ 47,263.00	\$ 48,683.00	\$ 1,420.00
Employee Services	Retirement - Defined Contribution	\$ 40,645.00	\$ 42,628.00	\$ 1,983.00
Planning	Salaries	\$ 1,236,998.00	\$ 1,282,409.00	\$ 45,411.00
Planning	Social Security & Medicare	\$ 93,807.00	\$ 97,281.00	\$ 3,474.00
Planning	Retirement - Defined Benefit	\$ 74,166.00	\$ 77,133.00	\$ 2,967.00
Planning	Retirement - Defined Contribution	\$ 68,147.00	\$ 70,513.00	\$ 2,366.00
Maintenance	Salaries	\$ 588,495.00	\$ 612,039.00	\$ 23,544.00
Maintenance	Social Security & Medicare	\$ 46,299.00	\$ 48,100.00	\$ 1,801.00
Maintenance	Retirement - Defined Benefit	\$ 26,551.00	\$ 27,613.00	\$ 1,062.00
Maintenance	Retirement - Defined Contribution	\$ 27,835.00	\$ 29,265.00	\$ 1,430.00
Fleet Services	Salaries	\$ 1,239,496.00	\$ 1,283,951.00	\$ 44,455.00
Fleet Services	Social Security & Medicare	\$ 92,955.00	\$ 96,356.00	\$ 3,401.00
Fleet Services	Retirement - Defined Benefit	\$ 108,687.00	\$ 112,611.00	\$ 3,924.00
Fleet Services	Retirement - Defined Contribution	\$ 43,564.00	\$ 45,444.00	\$ 1,880.00
Police	Salaries	\$ 23,262,971.00	\$ 24,558,106.00	\$ 1,295,135.00
Police	Social Security & Medicare	\$ 2,031,448.00	\$ 2,130,616.00	\$ 99,168.00
Police	Retirement - Defined Benefit	\$ 2,753,453.00	\$ 2,911,641.00	\$ 158,188.00
Police	Retirement - Defined Contribution	\$ 1,018,066.00	\$ 1,025,761.00	\$ 7,695.00
Fire	Salaries	\$ 14,996,525.00	\$ 15,919,106.00	\$ 922,581.00
Fire	Social Security & Medicare	\$ 1,193,568.00	\$ 1,264,146.00	\$ 70,578.00
Fire	Retirement - Defined Benefit	\$ 1,933,384.00	\$ 2,053,265.00	\$ 119,881.00
Fire	Retirement - Defined Contribution	\$ 511,972.00	\$ 512,919.00	\$ 947.00
Building & Codes	Salaries	\$ 1,580,160.00	\$ 1,636,494.00	\$ 56,334.00
Building & Codes	Social Security & Medicare	\$ 115,497.00	\$ 119,807.00	\$ 4,310.00
Building & Codes	Retirement - Defined Benefit	\$ 126,245.00	\$ 130,239.00	\$ 3,994.00
Building & Codes	Retirement - Defined Contribution	\$ 55,059.00	\$ 57,860.00	\$ 2,801.00
Engineering	Salaries	\$ 964,564.00	\$ 1,003,255.00	\$ 38,691.00
Engineering	Social Security & Medicare	\$ 79,225.00	\$ 82,185.00	\$ 2,960.00
Engineering	Retirement - Defined Benefit	\$ 85,040.00	\$ 88,441.00	\$ 3,401.00
Engineering	Retirement - Defined Contribution	\$ 28,178.00	\$ 29,821.00	\$ 1,643.00
Traffic	Salaries	\$ 796,346.00	\$ 825,246.00	\$ 28,900.00
Traffic	Social Security & Medicare	\$ 61,025.00	\$ 63,236.00	\$ 2,211.00
Traffic	Retirement - Defined Benefit	\$ 55,693.00	\$ 57,954.00	\$ 2,261.00
Traffic	Retirement - Defined Contribution	\$ 43,994.00	\$ 45,340.00	\$ 1,346.00
Transportation	Salaries	\$ 898,334.00	\$ 928,571.00	\$ 30,237.00
Transportation	Social Security & Medicare	\$ 79,298.00	\$ 81,611.00	\$ 2,313.00
Transportation	Retirement - Defined Benefit	\$ 18,978.00	\$ 19,737.00	\$ 759.00
Transportation	Retirement - Defined Contribution	\$ 50,291.00	\$ 52,386.00	\$ 2,095.00
Solid Waste	Salaries	\$ 2,400,695.00	\$ 2,493,651.00	\$ 92,956.00
Solid Waste	Social Security & Medicare	\$ 182,271.00	\$ 189,382.00	\$ 7,111.00
Solid Waste	Retirement - Defined Benefit	\$ 238,633.00	\$ 248,115.00	\$ 9,482.00
Solid Waste	Retirement - Defined Contribution	\$ 50,581.00	\$ 53,967.00	\$ 3,386.00
Street	Salaries	\$ 2,566,559.00	\$ 2,658,323.00	\$ 91,764.00
Street	Social Security & Medicare	\$ 208,199.00	\$ 215,219.00	\$ 7,020.00

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
Street	Retirement - Defined Benefit	\$ 142,427.00	\$ 145,355.00	\$ 2,928.00
Street	Retirement - Defined Contribution	\$ 103,814.00	\$ 109,904.00	\$ 6,090.00
Civic Plaza	Salaries	\$ 47,396.00	\$ 49,292.00	\$ 1,896.00
Civic Plaza	Social Security & Medicare	\$ 3,456.00	\$ 3,601.00	\$ 145.00
Civic Plaza	Retirement - Defined Benefit	\$ -	\$ -	\$ -
Civic Plaza	Retirement - Defined Contribution	\$ 1,423.00	\$ 1,575.00	\$ 152.00
Recreation	Salaries	\$ 4,419,597.00	\$ 4,598,529.00	\$ 178,932.00
Recreation	Social Security & Medicare	\$ 540,042.00	\$ 553,730.00	\$ 13,688.00
Recreation	Retirement - Defined Benefit	\$ 332,738.00	\$ 345,890.00	\$ 13,152.00
Recreation	Retirement - Defined Contribution	\$ 168,930.00	\$ 177,627.00	\$ 8,697.00
Sr. Center	Salaries	\$ 516,573.00	\$ 537,239.00	\$ 20,666.00
Sr. Center	Social Security & Medicare	\$ 54,354.00	\$ 55,935.00	\$ 1,581.00
Sr. Center	Retirement - Defined Benefit	\$ 20,123.00	\$ 20,928.00	\$ 805.00
Sr. Center	Retirement - Defined Contribution	\$ 26,630.00	\$ 27,940.00	\$ 1,310.00
OF Golf	Salaries	\$ 752,096.00	\$ 781,179.00	\$ 29,083.00
OF Golf	Social Security & Medicare	\$ 73,304.00	\$ 75,529.00	\$ 2,225.00
OF Golf	Retirement - Defined Benefit	\$ 57,864.00	\$ 60,180.00	\$ 2,316.00
OF Golf	Retirement - Defined Contribution	\$ 32,627.00	\$ 33,964.00	\$ 1,337.00
VA Golf	Salaries	\$ 55,094.00	\$ 57,245.00	\$ 2,151.00
VA Golf	Social Security & Medicare	\$ 9,364.00	\$ 9,529.00	\$ 165.00
VA Golf	Retirement - Defined Benefit	\$ 10,320.00	\$ 10,723.00	\$ 403.00
VA Golf	Retirement - Defined Contribution	\$ -	\$ -	\$ -
Bloomfield Golf	Salaries	\$ 54,801.00	\$ 56,952.00	\$ 2,151.00
Bloomfield Golf	Social Security & Medicare	\$ 6,274.00	\$ 6,439.00	\$ 165.00
Bloomfield Golf	Retirement - Defined Benefit	\$ -	\$ 403.00	\$ 403.00
Bloomfield Golf	Retirement - Defined Contribution	\$ 4,384.00	\$ 4,384.00	\$ -
Non-Departmental	Miscellaneous Expenses	\$ 156,955.00	\$ 322,455.00	\$ 165,500.00
				<u>\$ 4,017,763.00</u>
CHANGE IN ASSIGNED FUND BALANCE (CASH)		\$ (13,546,967.66)	\$ (13,546,967.66)	\$ -
CHANGE IN RESTRICTED FUND BALANCE (CASH)		\$ (10,099,100.00)	\$ (10,099,100.00)	\$ -
CHANGE IN UNASSIGNED FUND BALANCE (CASH)		\$ (10,277,632.00)	\$ (11,590,395.99)	\$ 1,312,763.99
TOTAL CHANGE IN FUND BALANCE (CASH)		\$ (33,923,699.66)	\$ (35,236,463.65)	(1,312,763.99)

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Airport Fund</u>				
<u>Revenues</u>				
				\$ -
				<u>\$ -</u>
<u>Expenditures</u>				
	Salaries	\$	11,627.00	\$ 11,627.00
	Social Security & Medicare	\$	889.00	\$ 889.00
	Retirement - Defined Benefit	\$	820.00	\$ 820.00
	Retirement - Defined Contribution	\$	580.00	\$ 580.00
				<u>\$ 13,916.00</u>
	CHANGE IN FUND BALANCE (CASH)	\$ (226,958.00)	\$ (240,874.00)	(13,916.00)

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Zoning for property along Highway 99
[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

Zoning of approximately 68.25 acres located along Highway 99 south of Clearidge Drive.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the plan of services, annexation, and the zoning request.

Background Information

Patterson Company presented to the City a zoning application [2022-401] for approximately 68.25 acres located along Highway 99 to be zoned PRD (Planned Residential District) simultaneous with annexation. During its regular meeting on April 6, 2022, the Planning Commission conducted a public hearing on this matter and then voted to defer action. At its meeting on May 18, 2022, this item was considered under "Old Business" and recommended for approval.

On September 22, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This zoning request will enable the development of 182 single-family residential lots with lots ranging in size from 6,000 ft² to 16,000 ft². Council has previously conveyed the importance of homeownership and of increasing the City's inventory of single-family residential detached homes.

Attachments:

Ordinance 22-OZ-18

ORDINANCE 22-OZ-18 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 68 acres along Highway 99 south of Clearidge Drive as Planned Residential Development (PRD) District, simultaneous with annexation; Patterson Company, applicant [2022-401].

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 zone the territory indicated on the attached map.

SECTION 2. That from and after the effective date hereof the area depicted on the attached map be zoned and approved Planned Residential Development (PRD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts. The 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:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

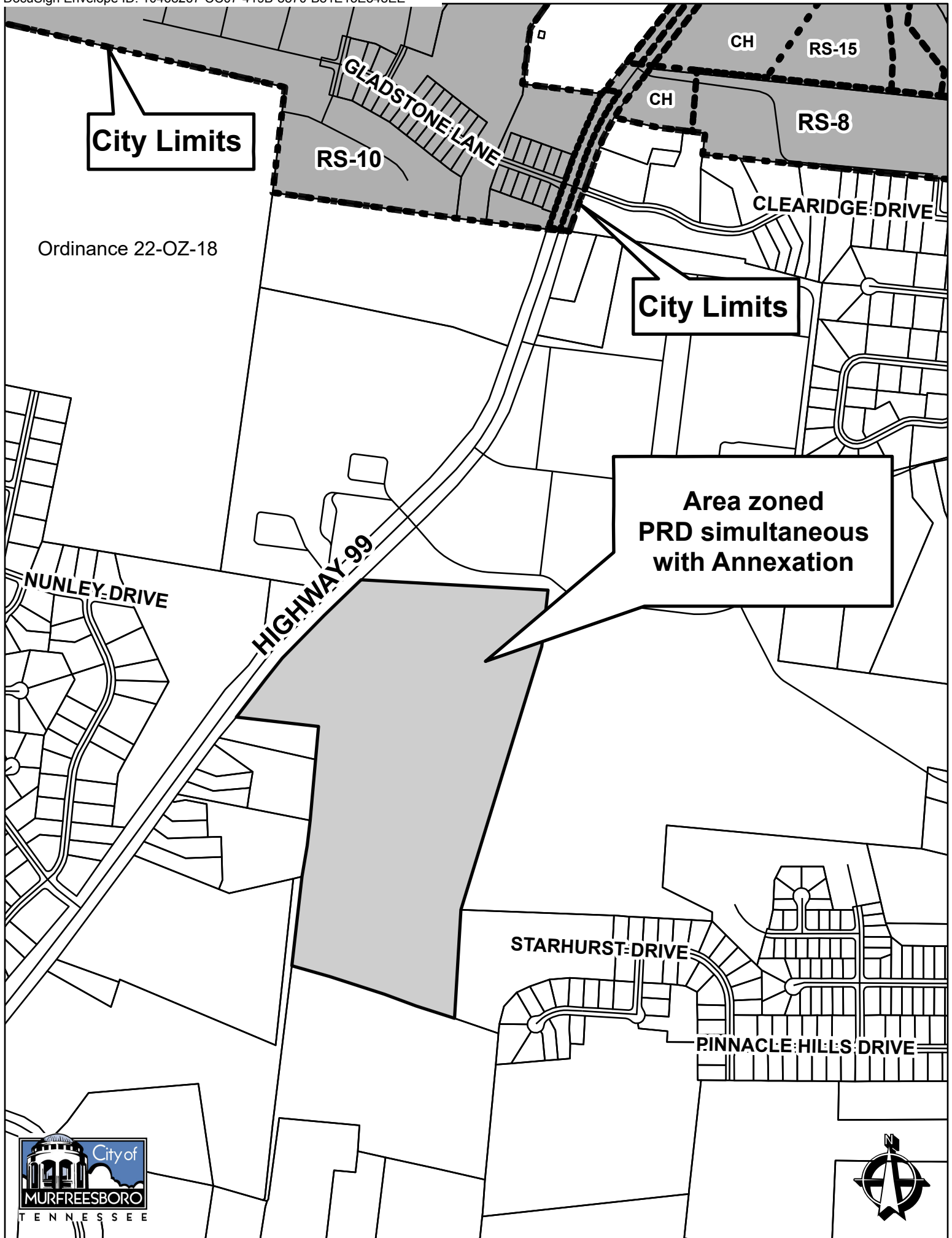
APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

SEAL



City Limits

Ordinance 22-OZ-18

City Limits

**Area zoned
PRD simultaneous
with Annexation**

NUNLEY DRIVE

HIGHWAY 99

GLADSTONE LANE

RS-10

CH

RS-15

RS-8

CLEARIDGE DRIVE

STARHURST DRIVE

PINNACLE HILLS DRIVE



COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Zoning property along North Thompson Lane
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Zone approximately 30 acres located along the east side of North Thompson Lane and along south side of West College Street.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

New Vision Baptist Church presented a zoning application [2022-417] for approximately 30 acres located along the east side of North Thompson Lane to be rezoned from RS-15 (Single-Family Residential District 15) to CM (Medical District Commercial). The existing PSO (Planned Signage Overlay District) zoning on the church property will not be affected by this zoning request. During its regular meeting on September 7, 2022, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On November 3, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

Approval of the rezoning request will help facilitate the expansion of an existing institutional use. Institutional uses, such as places of worship, community facilities, and schools, are essential elements of a growing, vibrant community.

Establish Strong City Brand

The existing RS-15 zoning will not permit the height of the proposed building addition desired by the applicant. However, the property's existing RS-15 zoning is inconsistent with the existing Mixed Use, Commercial, and Industrial zoning in the surrounding area. In an effort to provide excellent customer service, consistent with the core values of the City, Staff recommended that the applicant pursue CM zoning as a means to achieve

its desired outcome without the potential for the wide array of more intense permitted uses allowed in other commercial zoning districts.

Attachments:

Ordinance 22-OZ-39

ORDINANCE 22-OZ-39 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 30 acres located at 1750 North Thompson Lane from Single-Family Residential Fifteen (RS-15) District and Planned Signage Overlay (PSO) District to Medical District – Commercial (CM) District and Planned Signage Overlay (PSO) District; New Vision Baptist Church, applicant, [2022-417].

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

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

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

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

Passed:

1st reading _____
2nd reading _____

Shane McFarland, Mayor

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

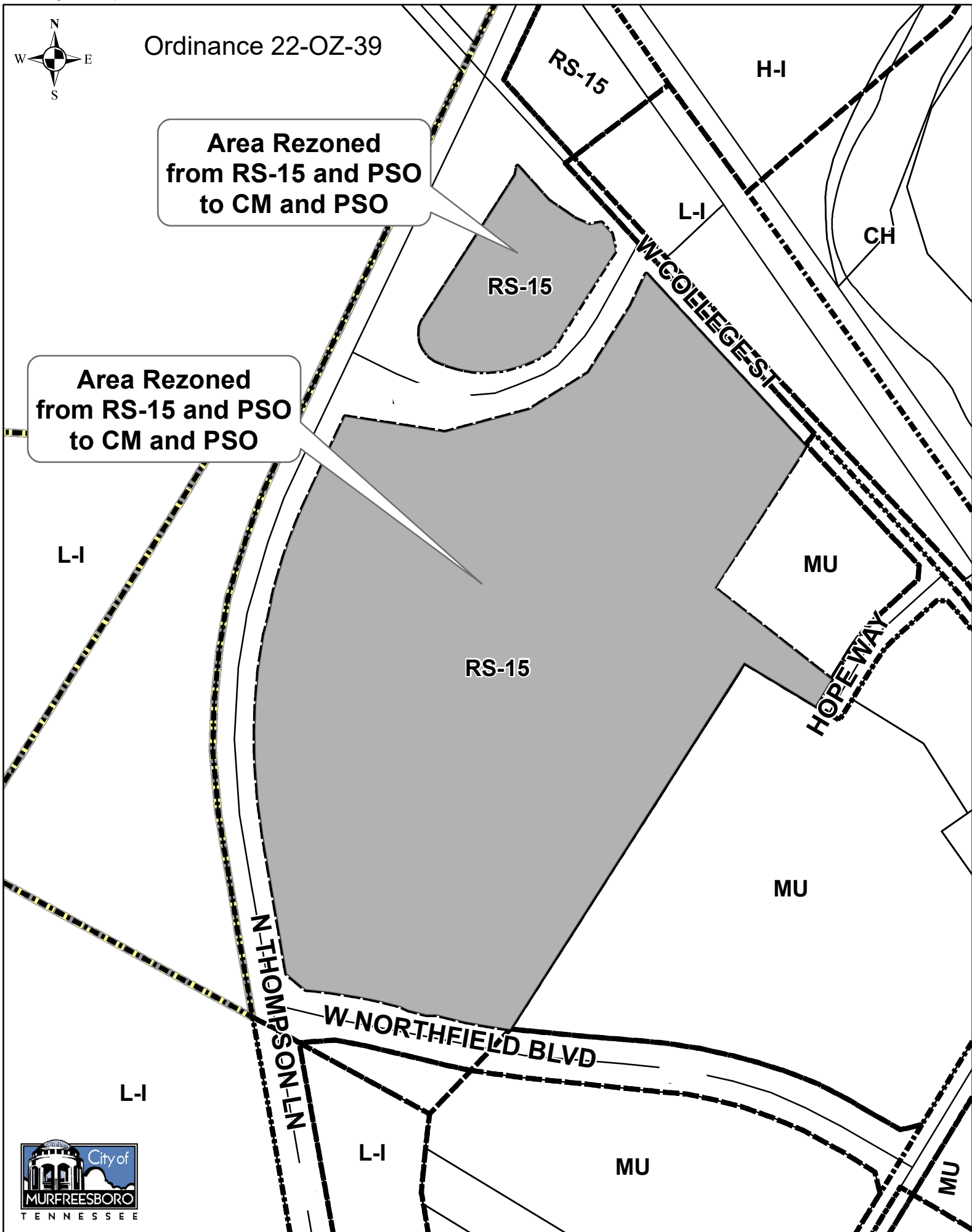
SEAL



Ordinance 22-OZ-39

**Area Rezoned
from RS-15 and PSO
to CM and PSO**

**Area Rezoned
from RS-15 and PSO
to CM and PSO**



COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: FY23 City Schools Budget Amendment #2

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

Amendment # 2 to the FY23 City School budgets to recognize new revenues in the General Purpose Schools (GPS), Federal, Nutrition and Extended School Program (ESP) funds.

Staff Recommendation

Approve Resolution 22-R-24 amending the FY23 City Schools budgets as presented.

Background Information

On October 11, October 25 and November 8, 2022, the MCS Board approved budget amendments totaling \$3,666,819 to recognize new revenues and expenditures.

General Purpose Fund 141 totaling \$935,939:

- Budget \$25,000 donation received from the Jennings and Rebecca Jones Foundation to support the 2022-23 Gifted Academy. Funds are used for teacher stipends, professional development and supplemental materials.
- Budget \$25,000 donation received from Nissan's Better Education Partnership to support the 2022-23 STEM and Robotics programs.
- Budget additional \$102,513 revenue in the FY23 Safe Schools grant to cover the cost of additional safety equipment as determined by school assessments
- Budget \$283,426 for the new School-Based Healthcare Solutions Network grant to fund three full-time mental health Transitional Coaches to provide mental health services, assessments and consultations for students at Bradley Academy, Mitchell-Neilson Elementary and Reeves-Rogers Elementary.

General Purpose and School Federal funds Transfer:

On October 11, 2022, the Board approved a resolution to transfer up to \$500,000 from the General Purpose School (GPS) fund to the Federal fund for cash management of the federal reimbursement grants. This amendment budgets \$500,000 in expenditures (Transfer Out) from Unassigned Fund Balance in the GPS fund, and budgets \$500,000 in revenue (Transfer In) in the School Federal fund.

These federal funds may be transferred back to the General Purpose fund at any time.

School Federal Projects Fund 142:

- Budget \$57,959 for the new Resilient School Communities Grant to provide training focused on student mental health needs and a \$100 training stipend.

Nutrition Fund 143:

- Budget \$3,135 for a new Pandemic-Electronic Benefits Transfer (P-EBT) Administrative Costs grant to reimburse administrative costs incurred in the support and delivery of the P-EBT cards to the schools.

ESP Fund 146:

- Budgets \$2,669,786 for the FY23 ARPA Child Care Stabilization grant from the TN Department of Human Services. This grant funds ESP childcare worker salaries and benefits, instructional supplies, professional development, curriculum and mobile kitchen carts for 13 Edible Education classes. This grant ends September 30, 2023.
- **Council Priorities Served**

Responsible budgeting

Presenting budget amendments ensures compliance with state law, School Board policy and City Council policy.

Fiscal Impact

These funds will be budgeted in the FY23 General Purpose Schools, School Federal Projects, Nutrition and ESP funds to recognize new revenues and expenditures. The \$500,000 transfer to federal funds may be transferred back to the General Purpose fund at any time.

Attachments

1. Resolution 22-R-24
2. Exhibit A MCS Budget Amendments

RESOLUTION 22-R-24 amending the 2022-2023 Murfreesboro City Schools Budget (2nd Amendment).

WHEREAS, the City Council adopted Resolution 22-R-16 on June 8, 2022 to implement the 2022-2023 Murfreesboro City Schools Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the 2022-2023 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 2022-2023 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on attached 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
13A2035E64F8401

Adam F. Tucker
City Attorney

Murfreesboro City Schools Budget Amendment (#2)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 10/25/2022
Exhibit A to Resolution No. 22-R-24

Gifted Academy Donation	BUDGET		AMENDMENT
Account Description	AS PASSED OR	AMENDED	INCREASE
	PREV AMENDED	BUDGET	(DECREASE)
<u>Unassigned Fund Balance</u>			
Unassigned Fund Balance		(25,000)	(25,000)
Total Change in Fund Balance	\$ -	\$ (25,000)	\$ (25,000)
<u>Expenditures Gifted Academy</u>			
Regular Ed Instruction - Teachers	35,266,000	35,273,500	7,500
Regular Ed Instruction - Social Security	2,422,496	2,422,971	475
Regular Ed Instruction - State Retirement	3,193,660	3,194,310	650
Regular Ed Instruction - Medicare	566,560	566,670	110
Regular Ed Instruction - Hybrid Retirement	275,000	275,150	150
Special Ed Support - Other Materials/Supplies	70,000	71,000	1,000
Special Ed Support - Professional Develop	16,500	31,615	15,115
Total Increase in Expenditures	\$ 41,810,216	\$ 41,835,216	\$ 25,000

This amendment budgets the \$25,000 donation received from the Jennings and Rebecca Jones Foundation for the 2022-2023 Gifted Academy. The donation will provide funding for professional development, a stipend of \$250 to participating teachers, and supplemental materials and supplies.

The donation was received in the General Purpose School fund last fiscal year and is budgeted from the Unassigned Fund Balance at June 30, 2022.

Murfreesboro City Schools Budget Amendment (#2)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 10/25/2022
Exhibit A to Resolution No. 22-R-24

Nissan's BEP Foundation - STEM and Robotics

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Donations and Contributions	100,000	125,000	25,000
Total Increase in Revenues	\$ 100,000	\$ 125,000	\$ 25,000

<u>Expenditures</u>			
Regular Ed Support - Other Charges	-	25,000	25,000
Total Increase in Expenditures	\$ -	\$ 25,000	\$ 25,000

CHANGE IN FUND BALANCE (CASH) \$ -

This amendment budgets the \$25,000 donation received from the Nissan's Better Education Partnership Foundation for the 2022-2023 STEM and Robotics programs

MCS designated \$5,000 for the Robotics competition and \$20,000 to be distributed among eight STEM designated schools and an additional school that is going through the process this year.

Murfreesboro City Schools Budget Amendment (#2)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 10/11/2022
Exhibit A to Resolution No. 22-R-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Safe Schools Grant	200,000	302,513	102,513
Total Increase in Revenue	\$ 200,000	\$ 302,513	\$ 102,513
<u>Expenditures</u>			
Regular Instruction Support - Other Salaries	70,010	40,039	(29,971)
Regular Instruction Support - Social Security	97,080	95,222	(1,858)
Regular Instruction Support - Retirement	156,520	155,946	(574)
Regular Instruction Support - Medicare	22,705	22,270	(435)
Regular Instruction Support - Other Contract Serv	110,000	110,700	700
Regular Instruction Support - Materials	12,300	13,100	800
Regular Instruction Support - In-service/Staff Dev	114,000	107,100	(6,900)
Sub-total Regular Instruction Support	582,615	544,377	(38,238)
Maintenance of Plant - Admin Equipment	117,762	258,513	140,751
Sub-total Maintenance of Plant	117,762	258,513	140,751
Total Increase in Expenditures	\$ 700,377	\$ 802,890	\$ 102,513

CHANGE IN FUND BALANCE (CASH) \$ -

This amendment budgets additional revenue in the FY23 Safe Schools grant and re-budgets funds approved during the FY23 budget process. The \$32,838 budgeted in Other Salaries and benefits are now funded in the 21st Century grant.

This amendment covers the additional cost of equipment to meet the needs of security assessments.

Murfreesboro City Schools Budget Amendment (#2)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 11/8/2022
Exhibit A to Resolution No. 22-R-24

School-Based Healthcare Solutions Network Grant

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Donations & Contributions	100,000	383,426	283,426
Total Increase in Revenues	\$ 100,000	\$ 383,426	\$ 283,426
<u>Expenditures</u>			
Student Support - Other Salaries	566,500	761,500	195,000
Student Support - Social Security	135,558	147,658	12,100
Student Support - Retirement	186,091	210,041	23,950
Student Support - Life Insurance	5,500	7,000	1,500
Student Support - Medical Insurance	276,000	310,100	34,100
Student Support - Dental Insurance	9,250	11,200	1,950
Student Support - Medicare	9,250	12,076	2,826
Student Support - Fringe Benefits	6,000	10,500	4,500
Student Support - Other Contract Services	35,000	42,500	7,500
Total Increase in Expenditures	\$ 1,229,149	\$ 1,512,575	\$ 283,426

CHANGE IN FUND BALANCE (CASH)

-

This amendment budgets the School-Based Healthcare Solutions Network grant in the General Purpose Schools fund. The grant funds three full-time mental health and wellness Transitional Coaches who will provide individual and group therapy, assessment and consultation at Bradley Academy, and Mitchell-Neilson and Reeves-Rogers Elementary Schools.

Murfreesboro City Schools Budget Amendment (#2)

General Purpose Schools Fund 141 & Federal Fund 142
Fiscal Year 2022-2023

BOE Approval 10/11/2022
Exhibit A to Resolution No. 22-R-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>General Purpose Schools Budget Amendment</u>			
Unassigned Fund Balance	15,028,448	14,528,448	(500,000)
Total Decrease in Fund Balance	\$ 15,028,448	\$ 14,528,448	\$ (500,000)
<u>Expenditures</u>			
Operating Transfer Out	-	500,000	500,000
Total Increase in GPS Expenditures	\$ -	\$ 500,000	\$ 500,000
CHANGE IN GPS FUND BALANCE (CASH)			\$ (500,000)
<u>Federal Projects Fund Budget Amendment</u>			
Operating Transfer In	\$ -	500,000	500,000
Total Operating Transfers In		\$ 500,000	\$ 500,000
Reserve for Education	\$ -	500,000	500,000
Total Reserve for Education		\$ 500,000	\$ 500,000

On October 11, 2022, the MCS Board of Education approved a Resolution to transfer up to \$500,000 from the General Purpose Schools (GPS) fund to the Schools Federal Projects fund for cash management of the federal reimbursement grants.

This amendment budgets the \$500,000 transfer in GP expenditures (Transfer Out) from Unassigned Fund Balance and budgets \$500,000 in School Federal revenue (Transfer Out) and Reserve account.

The Resolution and budget amendment allows the District to manage cash flow without risking a deficit cash balance and to provide transparency in financial reporting.

Federal funds may be transferred back to the General Purpose Schools fund at any time.

Murfreesboro City Schools Budget Amendment (#2)

Schools Federal Projects Fund 142
Fiscal Year 2022-2023

BOE Approval 10/25/2022
Exhibit A to Resolution No. 22-R-24

Resilient School Communities Grant	BUDGET			AMENDMENT
Account Description	AS PASSED OR	AMENDED		INCREASE
	PREV AMENDED	BUDGET		(DECREASE)
<u>Revenues</u>				
Resilient School Communities Grant	-	57,959		57,959
Total Increase in Revenues	\$ -	\$ 57,959	\$	57,959
<u>Expenditures</u>				
Regular Ed - Substitutes	-	2,850		2,850
Regular Ed - Social Security	-	180		180
Regular Ed - Medicare	-	604		604
Student Support - Contracts with Private Agency	-	6,250		6,250
Student Support - Other Supplies and Materials	-	500		500
Instruction Program - Other Salaries	-	5,000		5,000
Instruction Program - Social Security	-	310		310
Instruction Program - Retirement	-	435		435
Instruction Program - Medicare	-	73		73
Instruction Program - In-Service/Staff Develop	-	41,758		41,758
Total Increase in Expenditures	\$ -	\$ 57,959	\$	57,959

CHANGE IN FUND BALANCE (CASH)

-

This amendment recognizes a new Resilient School Communities grant in the Schools Federal Projects fund in the amount of \$57,959. This grant ends June 30, 2023.

Over \$45,000 in grant funds will provide training for teachers regarding mental health skills, and for staff to attend state and national conferences focused on student mental health. A stipend of \$100 will be paid to participating teachers who attend the Mental Health Skill Building training.

Funds will be used to increase the mental health consultant contract by 10 days, or \$6,250, to provide additional training and support to staff.

School Nutrition Fund 143
Fiscal Year 2022-2023

Exhibit A to Resolution No. 22-R-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Pandemic-EBT Administrative Costs Grant	-	3,135	3,135
Total Increase in Revenues	\$ -	\$ 3,135	\$ 3,135
<u>Expenditures</u>			
Nutrition - Supervisor/Director	74,000	75,000	1,000
Nutrition - Bookkeeper	42,436	43,436	1,000
Nutrition - Social Security	202,000	202,125	125
Nutrition - Retirement	125,000	125,245	245
Nutrition - Medicare	42,500	42,530	30
Nutrition - Travel (Mileage)	4,000	4,100	100
Nutrition - Office Supplies	3,000	3,635	635
Total Increase in Expenditures	\$ 492,936	\$ 496,071	\$ 3,135

CHANGE IN FUND BALANCE (CASH)

-

This amendment budgets a new COVID grant in the FY23 School Nutrition fund. The Pandemic-Electronic Benefits Transfer (P-EBT) Administrative Costs Grant reimburses administrative costs incurred in the support and delivery of the P-EBT cards to schools.

Murfreesboro City Schools Budget Amendment (# 2)

Extended School Program Fund 146
Fiscal Year 2022-2023

BOE Approval 10/11/2022
Exhibit A to Resolution No. 22-R-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
ARP Child Care Stabilization Grant - Round 2	-	2,669,786	2,669,786
Total Increase in Revenues	\$ -	\$ 2,669,786	\$ 2,669,786
<u>Expenditures</u>			
Community Services - ESP Staff	5,043,680	7,293,680	2,250,000
Community Services - Social Security	317,544	457,044	139,500
Community Services - Retirement	137,847	172,847	35,000
Community Services - Medicare	74,764	107,389	32,625
Community Services - Materials & Supplies	309,570	512,231	202,661
Community Services - Inservice/Prof Develop	15,000	25,000	10,000
Total Increase in Expenditures	\$ 5,573,835	\$ 8,568,191	\$ 2,669,786

CHANGE IN FUND BALANCE (CASH)

-

To budget the FY23 ARP Child Care Stabilization grant from the Department of Health and Human Services in the amount of \$2,669,786. This grant funds ESP childcare worker salaries, benefits, instructional materials and supplies, professional development, curriculum and mobile kitchen carts for 13 Edible Education classes.

Funds will also be used to pay a required bonus of \$2,000 to full-time workers and \$1,000 to part-time workers totaling \$287,000.

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Commercial Operator Lease Agreement with Mike Jones Aircraft Sales

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

Approve Commercial Operator Lease Agreement with Mike Jones Aircraft Sales (MJAS) for Hangar One.

Staff Recommendation

Approve Lease Agreement with Mike Jones Aircraft Sales, Inc.

Background Information

In 2019, the City received a \$2 million Airport Economic Development Grant for the construction of hangar, shop, and office space. This grant assists in the expansion of Hangar One. This expansion provides the facility needed by MJAS. This company desires to expand the various aircraft it services, which will add jobs for avionics technicians, aircraft mechanics, and other positions. The hangar rents and fuel sales generated through this Lease Agreement further funds maintenance and improvement of the Airport.

As described in this Lease Agreement the City is to provide an additional bathroom in the hangar area and assist with \$5,000 toward an air compressor. MJAS is installing over 18,000 square feet of epoxy coating on the hangar and shop floor.

Council Priorities Served

Improve economic development

Expansion of the airport infrastructure provides economic development opportunities.

Fiscal Impact

Revenue from the lease, \$107,688 annually with 4% annual escalator, will accrue to the Airport fund.

Attachments

Lease Agreement with Mike Jones Aircraft Sales, Inc.



LEASE AGREEMENT

between

City of Murfreesboro

and

Mike Jones Aircraft Sales, Inc.

Hangar 1

LEASE AGREEMENT

INTRODUCTION

ARTICLE I.	DEFINITIONS
ARTICLE II.	TERM
ARTICLE III.	PRIVILEGES AND OBLIGATIONS OF LESSEE
ARTICLE IV.	RENT, FEES AND CHARGES
ARTICLE V.	IMPROVEMENTS BY CITY
ARTICLE VI.	IMPROVEMENTS BY LESSEE
ARTICLE VII.	OPERATIONAL STANDARDS
ARTICLE VIII.	MAINTENANCE
ARTICLE IX.	COMPLIANCE
ARTICLE X.	ASSIGNMENT AND SUBLEASING
ARTICLE XI.	HOLD HARMLESS AND INDEMNIFICATION
ARTICLE XII.	INSURANCE AND BONDS
ARTICLE XIII.	TERMINATION BY LESSEE
ARTICLE XIV.	TERMINATION BY CITY
ARTICLE XV.	SECURITY
ARTICLE XVI.	HOLDING OVER
ARTICLE XVII.	ATTORNEY'S FEES
ARTICLE XVIII.	AMENDMENT
ARTICLE XIX.	RELATIONSHIP OF PARTIES
ARTICLE XX.	APPROVAL BY CITY
ARTICLE XXI.	ENVIRONMENTAL PROTECTION
ARTICLE XXII.	ENVIRONMENTAL COMPLIANCE
ARTICLE XXIII.	TAXES
ARTICLE XXIV.	GENERAL PROVISIONS
ARTICLE XXV.	ENTIRE AGREEMENT

THIS LEASE AGREEMENT made and entered into as of the ___ day of _____, 2022, by and between the City of Murfreesboro, a municipal corporation existing under the laws of the State of Tennessee, ("City"), and Mike Jones Aircraft Sales, Inc., a Tennessee corporation, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, City is the owner and operator of the Murfreesboro Municipal Airport, Murfreesboro, Tennessee, together with certain air navigational facilities; and,

WHEREAS, Lessee wishes to conduct a commercial activity at the Murfreesboro Municipal Airport as described on **Exhibit "A"** attached hereto and made a part hereof; and,

WHEREAS, City wishes to lease, demise and let unto Lessee, and Lessee wishes to take and lease from City, certain improved real property, located at the Murfreesboro Municipal Airport, Murfreesboro, Tennessee (the "Airport"), as more fully described on **Exhibit "B"**, attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, City and Lessee hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

ARTICLE I.
DEFINITIONS

1.1 "Agreement" as used herein contemplates and includes the lease of City-owned property (referred to henceforth as Leased Premises) and permission for Lessee to use such City-owned property for the operation of a commercial activity as described on **Exhibit A**.

1.2 "Airport" shall mean the Murfreesboro Municipal Airport and the airfield operating area.

1.3 "Airport Director" shall mean the Airport Manager of the Murfreesboro Municipal Airport who may be designated by the City to act for it with respect to any or all matters pertaining to this Agreement.

1.4 "City" shall mean the City of Murfreesboro, Tennessee, which may act through the Murfreesboro City Council, Murfreesboro Airport Commission, its Mayor, its appointed officials, and its employees, and which shall include such public officials and public bodies as may, by operation of law, succeed to any or all of the rights, powers or duties which now lawfully reside in the City of Murfreesboro, Tennessee.

1.5 "Leased Premises" are the areas of Airport designated by this Agreement and **Exhibit B** attached hereto.

ARTICLE II.
TERM

2.1 This Agreement shall become effective as of the date of execution by the last party to sign. The lease term shall commence as set forth in **Exhibit C**.

ARTICLE III.
PRIVILEGES AND OBLIGATIONS OF LESSEE

3.1 The Leased Premises shall be used to conduct and operate the commercial activities described on **Exhibit A** and the offering of related services in compliance with Minimum Standards for Airport Operators as adopted by City ordinance. Lessee shall perform at and provide from the Leased Premises the minimum services and facilities set forth in the Minimum Standards for Airport Operators and as they may hereafter be amended, modified, or supplemented by the City, incorporated herein by reference, and shall comply with all the terms and provisions contained therein. Further, any subsequent changes to applicable Federal regulations and/or City ordinances, rules and regulations shall automatically serve to amend, modify or supplement the Agreement. City shall give notice of any such changes to Lessee and, to the extent permitted by applicable state and federal law, shall provide a reasonable time for compliance with any City changes. It is expressly understood and agreed that Lessee, without prior written approval from City, is not permitted the right to perform any service nor equip facilities that would constitute a business separate and apart from that listed on **Exhibit A**. It is expressly understood that the purpose of the Lease Agreement is to permit Lessee to operate a commercial activity as provided for above. Should any other use be made of the Leased Premises without prior written approval of City, then Lessee agrees that City shall be entitled to seek and obtain an injunction prohibiting such use, as Lessee acknowledges that such unapproved use would cause immediate and irreparable injury to City. Such injunctive relief shall be in addition to any other remedies, including declaring a default, which City may possess.

3.2 City also grants to Lessee, upon and subject to the terms and provisions contained in the Lease and the rules and regulations applicable thereto, the use, in common with others so authorized to use, of the Airport and appurtenances, together with all facilities, equipment, improvements, and services which are now, or may hereafter be, provided at or in connection with, the Airport from time to time, including without limitation, the landing field and any extensions thereof, or additions thereto, roadways, runways, taxiways, flood lights, landing lights, beacons, signals, radio aids, or other conveniences for flying, landing and takeoff of aircraft of Lessee and/or aircraft of any of Lessee's patrons or invitees.

ARTICLE IV.
RENT, FEES AND CHARGES

4.1 Commencing on a date set forth on **Exhibit C**, Lessee covenants to pay to City as rent for the Leased Premises, together with any other additional charges and payments to be made by Lessee, as hereinafter provided, the sum more particularly set forth on **Exhibit C**.

4.2 All rent shall be payable to City in advance and without notice or demand on or before the first (1st) day of each month.

4.3 Lessee shall pay for any utilities which are separately metered to the Leased Premises. In the event that any part of the Leased Premises becomes jointly occupied with another entity. Lessee shall pay its pro rata share of such utilities on a "per square foot" basis.

4.4 As further consideration for the Leased Premises, Lessee agrees to pay City a fuel flowage fee on any fuels and oils sold, dispensed, or consumed from, on, or about the Leased Premises, as such fees may be established by City from time to time, provided however that Lessee is not authorized to sell automobile, aviation, or jet fuel at the Airport, such right belonging exclusively to City. The amount and method of the fuel flowage fee shall be as set forth on **Exhibit C**.

4.5 Without waiving any other right of action available to City in the event of default in payment of any and all fees, charges or taxes hereunder, in the event that Lessee is delinquent for a period of ten (10) days or more in paying to City any fees payable to City pursuant to this Agreement, Lessee shall pay to City interest thereon at the maximum rate allowable by law per annum from the date such item was due and payable until paid. Such interest shall not accrue with respect to disputed items being contested in good faith by Lessee.

ARTICLE V. IMPROVEMENTS BY CITY

5.1 Lessee represents that Lessee has inspected and examined Leased Premises and accepts it in its present condition and agrees that City shall not be required to make any other improvements, repairs or modifications whatsoever in or upon Leased Premises hereby leased or any part thereof.

5.2 All leasehold improvements made by City as defined by Tennessee law, will be considered an integral part of Leased Premises and title to such leasehold improvements will remain in City upon termination or expiration of this Agreement, free and clear of any claims, liens or encumbrances of Lessee whatsoever.

ARTICLE VI. IMPROVEMENTS BY LESSEE

6.1 Lessee shall, without cost to City, provide Leased Premises with all improvements necessary for Lessee's operation.

6.2 Lessee shall have the right to make improvements, alterations, changes, and additions to the Leased Premises provided, however, that any and all such improvements, alterations, changes and additions shall only be commenced after plans and specifications thereof have been submitted to and approved in writing by the Airport Director.

6.3 The Airport Director shall either approve or disapprove the plans and/or specifications submitted by Lessee. The Airport Director's approval of any plans and specifications refers only to the conformity of such plans and specifications for Leased Premises to existing improvements at Airport and such approval shall not be unreasonably withheld. Where required by applicable law or ordinance, such plans and specifications shall be approved by a licensed engineer or architect before they are submitted the Airport Director for approval. Lessee expressly waives any claim against the City and agrees to indemnify, defend, and hold harmless the City for any defect or error in any plans or specifications approved by the Airport Director and for any defect in any structure or improvement constructed according to such plans and specifications. The

Airport Director reserves the right to reject any designs submitted and shall state the reasons for such action.

6.4 In the event of rejection by the Airport Director, Lessee may submit necessary modifications and revisions.

6.5 No changes or alterations shall be made to said plans and specifications after approval by the Airport Director. One reproducible final copy of the plans for all improvements or subsequent changes therein or alternations thereof to Leased Premises shall be signed by Lessee and submitted to the Airport Director within thirty (30) days following completion of the project.

6.6 All improvements and equipment constructed or installed by Lessee, its agents, or contractors, including the plans and specifications shall conform to all applicable statutes, ordinances, building codes, and rules and regulations.

6.7 All improvements made by Lessee to Leased Premises shall be of high quality and appearance. Furthermore, they shall be safe, fire resistant, and acceptable to City. All charges including installation cost, meter deposits and all service charges for water, electricity and other utility services to and within Leased premises shall be paid by Lessee.

6.8 The ultimate control over the quality and acceptability of the improvements in Leased Premises will be retained by City, and all improvements and finishes shall require the written approval of the Airport Director.

6.9 Upon completion of improvements, a duly authorized officer of Lessee must prove to the satisfaction of City by certified written statement, and any other means or devices deemed necessary by City: (1) the amount of total construction costs; (2) that the improvements have been constructed in accordance with plans and specifications previously approved by City and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations including the Americans with Disabilities Act; and (3) that no liens exist on any or all of the construction and that all contractors and subcontractors have been paid all amounts due and owing to them.

6.10 Lessee shall not remove or demolish, in whole or in part, any improvements upon Leased Premises without the prior written consent of the Airport Director, which may be conditioned upon the obligation of Lessee to replace the same by an improvement specified in such consent.

6.11 All improvements, additions, and alterations made to Leased Premises by Lessee shall be and remain the property of Lessee until the expiration of the term of this Agreement, as set forth in Article II, or upon termination of this Agreement (whether by expiration of the term, termination, forfeiture, or otherwise), whichever first occurs; at which time the said improvements shall become the property of City, provided, however, that any trade fixtures, signs and other personal property of Lessee not permanently affixed to Leased Premises shall remain the property of Lessee and shall so remain unless Lessee shall fail within ten (10) days following the termination of this Agreement to remove its trade fixtures, signs and other personal property of Lessee not permanently affixed to Leased Premises in which event, at the option of City, title to same shall vest in City, at no cost to City, or City may elect to exercise its rights set forth in Paragraph 14.6 of this Agreement. Before affixing a fixture, trade fixture, sign, or other personal property to the Leased Premises, Lessee shall notify the Airport Director of its intent to do so in order that Lessee and City may determine prior to its installation whether a particular item is a leasehold improvement, addition, or alteration which will become the property of City upon the expiration or termination

of the Agreement. In the event that Lessee shall fail to obtain the Airport Director's written agreement that an affixed item will be Lessee's, the item shall be the City's.

6.12 Lessee shall be responsible for immediately making repairs at its sole expense for any damage resulting from the removal by Lessee of its said furniture, trade fixtures, etc.

ARTICLE VII. OPERATIONAL STANDARDS

7.1 Lessee agrees to operate and maintain Leased Premises in a safe, clear, orderly and inviting condition.

7.2 The management, maintenance and operation of Leased Premises shall at all times be under the supervision and direction of an active, qualified, competent manager who shall at all times be subject to the direction and control of Lessee.

7.3 The operations of Lessee, its employees, invitees, suppliers, and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of Lessee must conduct themselves at all times in a courteous manner toward the public.

7.4 Lessee shall make its commercial activities available to the public without unlawful discrimination. Lessee shall not charge excessive, discriminatory or otherwise unreasonable charges or fees for its services.

ARTICLE VIII. MAINTENANCE

8.1 City shall not be required to make improvements of any kind beyond those expressly identified in this Article VIII.

8.2 City shall have the right to construct or install over, in, under or through Leased Premises new lines, pipes, mains, and wires, provided however, that such installation or construction shall not unreasonably interfere with Lessee's use of Leased Premises. City will repair, at its sole cost, any damage resulting from such activities.

8.3 Lessee agrees to keep and maintain its Leased Premises in a clean, neat and sanitary condition, and attractive in appearance. Lessee agrees to provide, at its own expense, such janitorial services and supplies as may be necessary or required in the operation or maintenance of Leased Premises.

8.4 Lessee shall be solely responsible for all routine repairs and maintenance within the Leased Premises. This includes but is not limited to cleaning and properly maintaining all floor surfaces, replacing light bulbs and ballasts in the office and shop areas if necessary, clean and occasionally paint walls, clean and maintain all ceiling tiles and vents, clean and maintain windows and any screens, clean and maintain restroom facilities addressing simple repairs, leaks, and clogs and clean and maintain walk through doors and locks which may include access control mechanisms and cameras. Lessee agrees to immediately notify the Airport Director if repair of any airport facility not maintained by Lessee is required. The City will be responsible for replacing the lightbulbs and ballasts in the hangar area of the leased premises and cleaning and conducting routine maintenance of hangar doors as prescribed by the manufacturer.

8.5 Prior to making any structural repairs, modifications, or additions to the interior, Lessee shall submit plans to and obtain the written approval of the City's Airport Director who will contact City Building and Codes Department to arrange for appropriate or required inspections, approvals, and permits. Obtaining such inspections, approvals, and permits will be the responsibility of the Lessee unless other arrangements have been made. All such work performed by or for Lessee must be inspected and approved by the Airport Director and, if necessary, by the City Building and Codes Department.

8.6 All repairs, modifications, or additions done by Lessee or on its behalf to the interior of the Leased Premises shall be of high quality in both materials and workmanship so as to be consistent with the Leased Premises as constructed. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by governments having jurisdiction over the work in the Lessee's Leased Premises.

8.7 Lessee shall provide, in a timely manner, for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of Lessee's operations. Lessee agrees to provide and use suitable covered or sealed receptacles for all garbage, trash and other refuse in Leased Premises. Piling of boxes, cartons, barrels or similar items shall not be permitted.

8.8 Lessee shall have the right, but shall not be obligated, to provide security protection as it may desire at its own cost. Such right, whether or not exercised by Lessee, shall not in any way be construed to limit or reduce the obligations of Lessee hereunder.

8.9 The City, including but not limited to, the Airport Director, shall have the right to enter the Lessee's Leased Premises to:

a. Inspect the Leased Premises at reasonable intervals during Lessee's regular business hours, or at any time in case of emergency, to determine whether Lessee has complied with and is complying with the terms and conditions of this Agreement. The Airport Director may require the Lessee to affect repairs required of Lessee at Lessee's own cost.

b. Perform any and all things which Lessee is obligated to do, but has failed to do after 30-days' notice, including: maintenance and repairs to Lessee's Leased Premises. The cost of all labor and materials required to complete the work will be paid by Lessee to City within ten (10) days following demand by Airport Director for said payment. City's receipts and invoices shall be conclusive and binding on Lessee as to the cost of performance of such obligations by City.

8.10 City agrees to make any necessary structural repairs to the exterior of the Leased Premises and to keep and maintain in the current or an improved condition the electrical, mechanical, heating, plumbing, roofing, and other systems located on Leased Premises, provided that Lessee shall be fully responsible for repairs to any such systems as are damaged by the negligence of Lessee or Lessee's employees. The City shall have no obligation to install or maintain any access control, security, telephone, data, and or communication system wiring.

ARTICLE IX. COMPLIANCE

9.1 Lessee, its officers, agents, servants, employees, contractors, licensees and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America, the State

of Tennessee, Rutherford County, the City of Murfreesboro and their respective agencies, departments, authorities or commissions which may either directly or indirectly affect Lessee or its operations on or in connection with Leased Premises or Airport including specifically the City's Standards for Airport Operators which are incorporated herein as fully as though copied. If the City incurs any fines or penalties due to Lessee's violation of any such present or future laws, ordinances, orders, directives, rules and regulations, it is mutually agreed by both parties that any such fine or penalty shall be directly passed on to Lessee by City, and same shall become the sole responsibility of Lessee. In the event Lessee fails to pay the fine or penalty, Lessee shall reimburse City in full for any such fine or penalty paid by the City. Lessee's failure to pay any for such fine or penalty or to reimburse the City for payment made by the City shall constitute a material breach of this Agreement.

9.2 This Agreement is governed by the laws of Tennessee. Any disputes relating to this Agreement must be resolved in accordance with the laws of Tennessee and Rutherford County.

ARTICLE X. ASSIGNMENT AND SUBLEASING

10.1 Lessee shall not assign this Agreement or allow same to be assigned by operation of law or otherwise, or sublet Leased Premises or any part thereof without the prior written consent of City. No assignment or sublease for the purpose of performing a commercial activity will be approved if the proposed assignee or sublessee does not meet the Airport Minimum Standards, codified in Section 3 of the Murfreesboro City Code. City reserves the right to deny any assignment or subletting by Lessee for any reason it deems in the best interest of City. Any purported assignment or sublease in violation hereof shall be void.

10.2 In no case may the activities, uses, privileges and obligations authorized herein on Leased Premises or any portion thereof be assigned, for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Lessee.

10.3 In the event City consents to any assignment or subletting on the part of Lessee for any rights or privileges granted in this Agreement, Lessee shall be and remain responsible for any and all payments due City as a result of operations from the assignment or subletting and for the performance of any and all of Lessee's obligations hereunder.

10.4 In the event that Lessee subleases or assigns the Leased Premises, or a portion thereof, for an amount of rent which exceeds the amount of rent Lessee pays City for the Leased Premises, City may condition its consent to such assignment or sublease upon receiving an amount equal to up to one half of such excess amount.

ARTICLE XI. HOLD HARMLESS AND INDEMNIFICATION

11.1 Lessee shall protect, defend, indemnify and hold harmless the City and the Murfreesboro Airport Commission, their officers, and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising from or incident to Lessee's performance of this Agreement, its operations in Leased Premises or the acts or omissions of Lessee's officers, employees, agents, contractors,

subcontractors, licensees or invitees regardless of where the injury, death or damage may occur. City shall give Lessee reasonable notice of any such claims or actions. Lessee in carrying out its obligations hereunder shall use legal counsel reasonably acceptable to City. Additionally, the City, at its sole discretion, may select its own legal counsel for defense purposes.

11.2 Lessee acknowledges that City is a governmental entity under the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et. seq. which has governmental immunity for certain acts and a statutory limit on financial liability for those acts for which the government is not immune. Lessee agrees that the City shall be entitled to such immunities and such statutory limits of liability in the event of any claim arising against City.

11.3 The provisions of this article shall survive the expiration or earlier termination of this Agreement.

ARTICLE XII. INSURANCE AND BONDS

12.1 Lessee shall maintain other insurance as specified on **Exhibit E** attached hereto and made a part hereof. Such insurance policies must name the City, the Murfreesboro Airport Commission, City officers, and City employees as additional insureds to the full extent of Lessee's insurance coverage but in no event less than the required minimum coverage limit amount. Such insurance shall include contractual liability insurance to insure Lessee's obligation to indemnify and hold harmless the City, its officers and its employees in accordance with the indemnification provisions of this Agreement. Such insurance shall include coverage of any aircraft present upon the premises for any purpose, including by virtue of any sublease entered into between Lessee and any other party.

12.2 Lessee agrees that all insurance policies shall contain a severability of interest or cross-liability provision endorsement which shall read generally as follows:

"In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase the limits of liability."

12.3 Lessee agrees that all insurance policies shall provide that they will not be altered or canceled without thirty (30) days advance written notice to City. Such insurance must provide that it will be considered primary insurance as respects any other valid and collectible insurance, or self-insured retention, or deductible City may possess. Any other insurance or self-insured retention of City shall be considered excess insurance only.

12.4 Lessee shall obtain all insurance required from an insurance company or companies licensed to do business in the State of Tennessee. The insurance company must be acceptable to City; approval may be denied a company with an A.M. Best's rating that is less than excellent or other indication of financial inadequacy.

12.5 Lessee shall provide to City such evidence of compliance with City's insurance requirements as City may from time to time request. At a minimum Lessee shall provide, at the commencement of this Lease and at least annually thereafter a certificate of insurance. All such certificates shall be completed to show compliance with Lessee's obligations hereunder, specifically

as to the indemnification and notice provisions, and shall include copies of the declaration page, insurance policy, and any endorsements thereto.

12.6 If Lessee or its insurance company fails to promptly respond to City's request for adequate evidence of compliance with the insurance provisions, the City may, in addition to all its other remedies, charge Lessee an additional rent in an amount equal to ten percent (10%) of the rent required hereunder until such evidence is provided.

12.7 If Lessee shall at any time fail to insure or keep insured as aforesaid, or have reason to believe that required insurance will lapse, be cancelled or amended, Lessee shall immediately notify City. The City may do all things necessary to effect or maintain such required insurance, and all monies expended by City for that purpose shall be repayable by Lessee as additional rent in the month or months and premium or premiums are paid by City. If any insurance policies required hereunder cannot be obtained for any reason, City may require Lessee to cease any and all operations until coverage is obtained. If such insurance coverage is not obtained within a reasonable period of time, to be determined solely by City, City may terminate this Agreement.

12.8 Prior to commencing any work or construction in Leased Premises, Lessee agrees to provide, or cause to be provided, City with a Construction Bond and Labor and Materials Bonds, for any construction or capital improvements undertaken by Lessee during the term of this Agreement in a sum equal to the full amount of the construction contract award. City may, at its discretion, waive this requirement for work on construction with a value of Ten Thousand Dollars (\$10,000.00) or less.

12.9 Lessee agrees to keep all insurance policies in effect through surrender of Leased Premises.

ARTICLE XIII.

TERMINATION OR SUSPENSION BY LESSEE

13.1 In addition to all other remedies available to Lessee, this Agreement shall be subject to termination by Lessee should City breach any of the material terms, covenants, or conditions of this Agreement to be kept, performed, and observed by City, provided City fails to cure such breach within sixty (60) days of City's receiving written notice of such breach from the Lessee, or if more than sixty (60) days to cure the breach is permitted under this Agreement due to the nature of such breach, if City shall fail to commence within sixty (60) days of its receiving written notice of such breach to cure such breach and thereafter diligently pursue such cure. Lessee's right to terminate this Agreement is subject to the City's right to challenge the alleged breach by commencing a lawsuit within sixty (60) days of the City's receiving written notice of an alleged breach. The City's cure period and Lessee's right terminate shall be automatically stayed until any such litigation is resolved by order of the court or agreement of the parties.

13.2 In the event any condition of breach as described in Sec.13.1 shall occur (notwithstanding any waiver, license or indulgence granted to City with respect to any condition of breach in any form or instance) Lessee, then, or at any time thereafter, while such condition of breach is continuing, shall have the right, at its election, to terminate this Agreement by giving at least thirty (30) days written notice to City at which time Lessee will then quit and surrender Leased Premises to City, and this Agreement will terminate, but Lessee shall remain liable for rent and obligations incurred prior to termination as herein provided.

13.3 This Agreement shall be subject to suspension by Lessee in the event any one or more of the following suspension event(s) occur:

a. The issuance by any court of competent jurisdiction of any injunction that remains in force for at least sixty (60) days and prevents or restrains the use of Airport in such a manner as to substantially restrict Lessee's use of Leased Premises, provided only the issuance of such injunction is not based on or arise from any act or omission of Lessee; or

b. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of Airport and its facilities in such a manner as to substantially restrict Lessee's use of Leased Premises if such restriction be continued for a period of sixty (60) days.

13.4 In the event of any occurrence provided for in Section 13.4, Lessee shall be released from its obligation to pay the rent, fees and charges as identified in Article IV, until the cessation of the suspension event, at which time this Lease Agreement will resume and continue under the existing terms and conditions.

ARTICLE XIV. TERMINATION BY CITY

14.1 This Agreement shall be subject to termination by City should any one or more of the following conditions of default occur:

a. If Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Lessee's part to be performed and observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by Lessee of written notice or such neglect or failure (except for the failure or neglect to pay any installment of monthly rent or additional rent wherein such neglect or failure must be cured within ten (10) days after receipt by Lessee of written notice of such neglect or failure) or, if more than thirty (30) days is permitted under this Agreement because of the nature of the default, if Lessee shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default; or

b. If the estate hereby created shall be taken by execution or by other process of law; or

c. The taking by a court of jurisdiction of Lessee and its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act; or

d. If any court shall enter a final order with respect to Lessee, providing for modification or alteration of the rights of creditors; or

e. If Lessee shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, the State of Tennessee, Rutherford County, or the City of Murfreesboro; or

f. If Lessee shall fail to take possession of Leased Premises; or

g. If Lessee shall abandon all or any part of Leased Premises or shall discontinue the conduct of its operations in all or any part of Leased Premises for a period in excess of ten (10) days.

14.2 In the event any condition of default shall occur (notwithstanding any waiver, license, or indulgence granted by City with respect to any condition of default in any form or instance) City, then, or at any time thereafter, while such breach is continuing, shall have the right, at its election, after giving at least thirty (30) written notice to Lessee either: (a) give written notice of termination after which Lessee shall immediately quit and surrender Leased Premises to City, but Lessee shall remain liable as hereinafter provided; or (b) enter upon and take possession of Leased Premises (or any part thereof in the name of the whole), without further demand or notice, and repossess the same as of the City's former estate, expelling Lessee and those claiming under Lessee, forcibly, if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Lessee or those claiming under Lessee for such repossession.

14.3 City's repossession of Leased Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rent or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention is given to Lessee, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any default by Lessee, City may at any time after such reletting elect to terminate this Agreement for any such default.

14.4 Upon repossession, City shall in good faith attempt to relet Leased Premises or any part thereof for such period or periods (which may extend beyond the term of this Agreement) at such rent and upon such other terms and conditions as City may, in good faith, deem advisable. City shall in no event be liable (and Lessee's liability shall not be affected or diminished) in any way whatsoever for failure to relet Leased Premises, or in the event same are relet, for failure to collect any rent or other sums due under such reletting.

14.5 In the event that City shall elect to relet, then rent received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Lessee to City; second, to the payment of any cost of such reletting; and third, any remaining amount shall be held by City and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rent received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rent received from such reletting of Leased Premises.

14.6 If City shall terminate this Agreement or take possession of Leased Premises by reason of a condition of default, Lessee, and those holding under Lessee, shall forthwith remove their personal property from Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, City, at its option and without liability to Lessee or those claiming under Lessee remove such goods and effects and may store the same for the account of Lessee or of the owner thereof at any place selected by City, or, at City's election, and upon given fifteen (15) days written notice to Lessee of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as City may in good faith deem advisable. If, in City's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale

price thereof, as the case may be, City shall have the right to dispose of such goods in any manner City may deem advisable.

14.7 Lessee shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds shall remain after such reimbursement City may deduct from such surplus any other sum due to City hereunder and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder.

14.8 If City shall enter into and repossess Leased Premises for reason of default of Lessee in the performance of any of the terms, covenants or conditions herein contained, then and in that event Lessee hereby covenants and agrees that Lessee will not claim the right to redeem or re-enter Leased Premises to restore its operations hereunder and Lessee hereby waives the right to such redemption and re-entrance under any present or future law, and hereby further, for any party claiming through or under Lessee, expressly waives its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.

14.9 All rights and remedies of City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.

14.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Lessee shall be permitted to retain possession of Leased Premises, then such proceeding shall not constitute a waiver of any condition or Agreement contained herein or of any subsequent breach thereof.

14.11 Any amount paid or expense or liability incurred by City for the account of Lessee may be deemed to be additional rent and the same may, at the option of City, be added to any rent then due or there after falling due hereunder.

14.12 Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of City obtaining possession of Leased Premises by reason of the violation by Lessee of any of the covenants and conditions of this Agreement or otherwise. The rights given to City herein are in addition to any rights that may be given to City by any statute or otherwise.

14.13 Lessee agrees that title to all permanent improvements constructed on Leased Premises by Lessee shall vest in City, free and clear, without further process of law, upon expiration or termination of this Agreement.

ARTICLE XV. SECURITY

Upon issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy, and prior to moving equipment into the Hangar, Tenant shall install, at Tenant's sole expense, epoxy coating on all the Hangar floors (office and shop areas excepted). The epoxy shall be of a quality and type acceptable to the Airport Director and described in **Exhibit D**. In consideration of completion of

this installation by Tenant, the City waives the usual requirement of a cash security deposit or a personal guaranty by Tenant.

ARTICLE XVI. HOLDING OVER

Any holding over by Lessee after the expiration or termination of this Agreement, without the written consent of City, except for the period provided for herein for removal of property, shall not be deemed to operate as an extension or renewal of this Agreement, but shall only create a tenancy from month to month which may be terminated by City at any time. In the event of such holding over, City shall be entitled to collect from Lessee, as liquidated damages for such holding over, double the amount of the monthly rent in effect immediately prior to the commencement of such holding over.

ARTICLE XVII. ATTORNEY'S FEES AND LITIGATION EXPENSES

In the event that City brings any action under this Agreement, and prevails in said action, then City shall be entitled to recover from Lessee its reasonable expenses incurred as a result of said action. Such fees shall include, but not be limited to, expert witnesses fees, court reporter fees, court costs, and the value of reasonable attorney's fees.

ARTICLE XVIII. AMENDMENT

This Agreement constitutes the entire Agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

ARTICLE XIX. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

ARTICLE XX. APPROVALS BY CITY

Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the City Council, City Manager, or Airport Director as City policy may require.

ARTICLE XXII ENVIRONMENTAL COMPLIANCE AND PROTECTION

22.1 Lessee shall not cause or permit any "Hazardous Substance" as defined in Paragraph 22.4 of the Agreement to be used, stored or generated on the Leased Premises, Airport, or City property, except for Hazardous Substances of types and quantities customarily used or found in

Lessee's business so long as said Hazardous Substances are used, stored and/or generated in full compliance with all laws. Lessee shall not cause or permit the release [as "Release" is defined in 42 U.S.C. Section 9601 (22) (as amended)] of any Hazardous Substance, contaminant, pollutant, or petroleum product in, on or under the Leased Premises, Airport, or City property, or into any ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located thereon. Lessee shall fully and timely comply with all applicable federal, state, and local statutes and regulations relating to protection of the environment, including, without limitation, 42 U.S.C. Sections 6991-6991i.

22.2 Compliance Upon Termination - Upon the termination of this Agreement or vacation of the Leased Premises, Lessee shall, at Lessee's sole expense, remove or permanently clean all Hazardous Substances that Lessee, or anyone for whom Lessee is responsible, including, but not limited to, a customer, invitee, employee, agent, or person having a contractual relationship with the Lessee, caused to be situated on, at, in or under the Leased Premises. This shall be done in compliance with all applicable federal, state and local laws, regulations and ordinances and shall include the performance of any necessary cleanup or remedial action. Lessee shall provide City with copies of all records related to any Hazardous Substances that are required to be maintained by any applicable federal, state, or local laws or regulations.

Lessee shall, at Lessee's sole expense, clean up, remove and remediate (1) any Hazardous substances in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the Leased Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulation, standard or order. This obligation does not apply to a Release of Hazardous Substances, pollutants, contaminants or petroleum products that existed on the Leased Premises prior to the execution of the Agreement or caused solely by the act or omission of City or a third party for whom the Lessee is not responsible, e.g., not a customer, invites, employee, agent, or person having a contractual relationship with the Lessee.

22.3 Indemnity for Non-Compliance - Lessee shall defend, indemnify and hold harmless the City and its consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses, whether direct, indirect or consequential, including but not limited to attorneys' and consultants' fees, arising out of or resulting from the Lessee's use of the Leased Premises or acts or omissions of others on the Leased Premises for whom Lessee is responsible. Without limiting the generality of the foregoing, the above indemnification provision extends to liabilities, damages, suits, penalties, judgments, and environmental cleanup, removal, response, assessment, or remediation costs, arising from actual, threatened or alleged contamination of the Leased Premises or actual, threatened or alleged release of any Hazardous Substances, pollutant, contaminant or petroleum in, on or under the Leased Premises, provided that said actual, threatened or alleged contamination or release occurs after execution of the Agreement and is not caused by contamination that existed at the Leased Premises prior to execution of the Agreement. Lessee's obligations under this paragraph shall survive termination or expiration of the Agreement.

22.4 Definition of Hazardous Substances - As used herein, the term "Hazardous Substances" means and includes any and all substances, chemicals, wastes, sewage or other materials which are now or hereafter regulated, controlled or prohibited by any local, state, or federal law or regulation requiring removal, warning or restrictions on the use, generation, disposal or transportation thereof including, without limitation, (a) any substance defined as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", or "air pollutant" in the Comprehensive Environmental Response Compensation and Liability Act (CERLA), 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. Section 1801,

et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901, et seq., the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. Section 7401, et seq., all as amended and amended hereafter, and (b) any hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical, or compound described in any other federal, state, or local statute, ordinance, code, rule, regulation, order, decree or other law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous substance, chemical, material, compound, or waste. As used herein, the term "Hazardous Substances" also means and includes, without limitation, asbestos; flammable, explosive or radioactive materials; gasoline, oil; motor oil; waste oil; petroleum (including without limitation, crude oil or any fraction thereof); petroleum-based products; paints and solvents; lead, cyanide; DDT, printing inks; acids; pesticides, ammonium compounds; polychlorinated biphenyls; and other regulated chemical products.

22.5 City's Representation - To the best of the City's current actual knowledge and belief as of the date of Agreement execution, the City is not aware of any disposal of any Hazardous Substances in the Leased Premises or on the underlying land prior to the date of Agreement execution. City has provided Lessee with an opportunity to inspect the Leased Premises prior to the as shown on Exhibit D and date of possession.

22.6 Lessee agrees to comply with all laws, and to obey all rules, regulations, or administrative orders of agencies of the City of Murfreesboro, Rutherford County, the State of Tennessee, and the United States as these laws, rules, regulations and administrative orders may now exist and as they may be hereafter adopted relating to protection of the environment.

ARTICLE XXIII.

TAXES

23.1 Lessee shall pay on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon Leased Premises, or upon Lessee, or upon the business conducted on Leased Premises or upon any of Lessee's property used in connection therewith; and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee.

23.2 Lessee has the right to legally protest to any proper taxing authority, at its own expense, by whatever legal means, any tax, levy, assessment or other governmental or similar charge it deems inappropriate or unlawful.

23.3 Lessee covenants to furnish to City, promptly upon request, proof of the payment of any tax, assessment, and other governmental or similar charge, which is payable by Lessee as provided herein.

ARTICLE XXIV.

GENERAL PROVISIONS

24.1 Exclusive Right - Nothing herein contained shall be deemed to grant Lessee any exclusive right or privilege to conduct any activity on Airport, except that, subject to the terms and provisions hereof, Lessee shall have the exclusive right to possess the Leased Premises under the provisions of this Agreement.

24.2 Subordination to Agreements With the United States Government - This Agreement is subject and subordinate to the provisions of any Agreement heretofore or hereafter made between City and the United States Government or the State of Tennessee relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport. City covenants that it has no existing Agreements with the United States Government in conflict with the express provisions hereof.

24.3 Nonwaiver of Rights - No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

24.4 Notices - All notices to City required by this Agreement shall be in writing addressed to:

**Airport Director
Murfreesboro Municipal Airport
P. O. Box 4145
Murfreesboro, Tennessee 37133-4145**

copies sent to:

**City of Murfreesboro
City Attorney
111 West Vine Street
Murfreesboro, TN 37130**

and all notices to Lessee so required shall be addressed to:

**Mike Jones Aircraft Sales, Inc.
1932 Memorial Boulevard
Murfreesboro, Tennessee 37129**

or any other address furnished to the City, in writing, by Lessee. Any notice required or desired to be given under this Agreement may be personally served or given by mail. Any notice given by mail shall be sent certified mail with return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party and shall be deemed served on the date that such notice shall be deposited in the United States mail in the manner described herein.

24.5 Captions - The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

24.6 Severability - If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, the parties hereto agree that the material rights of either party shall not be affected thereby.

24.7 Waiver of Claims - The Lessee hereby waives any claim against City and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.

24.8 Right to Develop Airport - The parties hereto further covenant and agree that City reserves the right to further develop or improve Airport as it may see fit, regardless of the desires or view of Lessee and without interference or hindrance.

24.9 Incorporation of Exhibits - All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

24.10 Incorporation of Required Provisions - The parties incorporate herein by this reference all provisions lawfully required to be contained herein by applicable federal, state, or local law, regulation, or ordinance.

24.11 Nonliability of Agents and Employees - No official, agent, or employee of the City shall be charged personally or held contractually liable by or to the other party under the terms of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

24.12 Successors and Assigns Bound - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

24.13 Right to Amend - In the event that the Federal Aviation Administration, or its successors, or the State of Tennessee, requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, or otherwise, Lessee shall make such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Any expenses resulting from such amendments, modifications, revisions, supplements or deletions, shall be borne solely by Lessee.

24.14 Time of Essence - Time is of the essence in the performance and/or satisfaction of the duties and/or conditions of this Agreement.

24.15 Gender - Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

24.16 Force Majeure - Neither City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, terrorism, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, epidemics, pandemics, or any other circumstances for which it is not responsible or which are not within its control.

ARTICLE XXV.
ENTIRE AGREEMENT

25.1 The parties hereto understand and agree that this instrument contains the entire Agreement between the parties hereto. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability for cause for termination shall be asserted by either party against the other, and such party shall not be liable by reason of, the making of any representations or promise not expressly stated in this Agreement, any other written or oral Agreement with the other party being expressly waived.

25.2 The individuals executing this Agreement personally warrant that they have full authority to executed this Agreement on behalf of the entity for whom they are acting herein.

25.3 The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received competent advice and counsel which was necessary for them to form a full and complete understanding of all rights and obligations herein.

25.4 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first written above.

CITY OF MURFREESBORO

ATTEST:

BY: _____

Shane McFarland, Mayor

By: _____

Jennifer Brown , City Recorder

DATE: _____

APPROVED AS TO FORM:

By: _____

Adam Tucker City Attorney

MIKE JONES AIRCRAFT SALES, INC.

By: _____

Name/Title: _____

DATE: _____

APPROVED BY CITY COUNCIL: _____

RECOMMENDED BY AIRPORT COMMISSION: _____

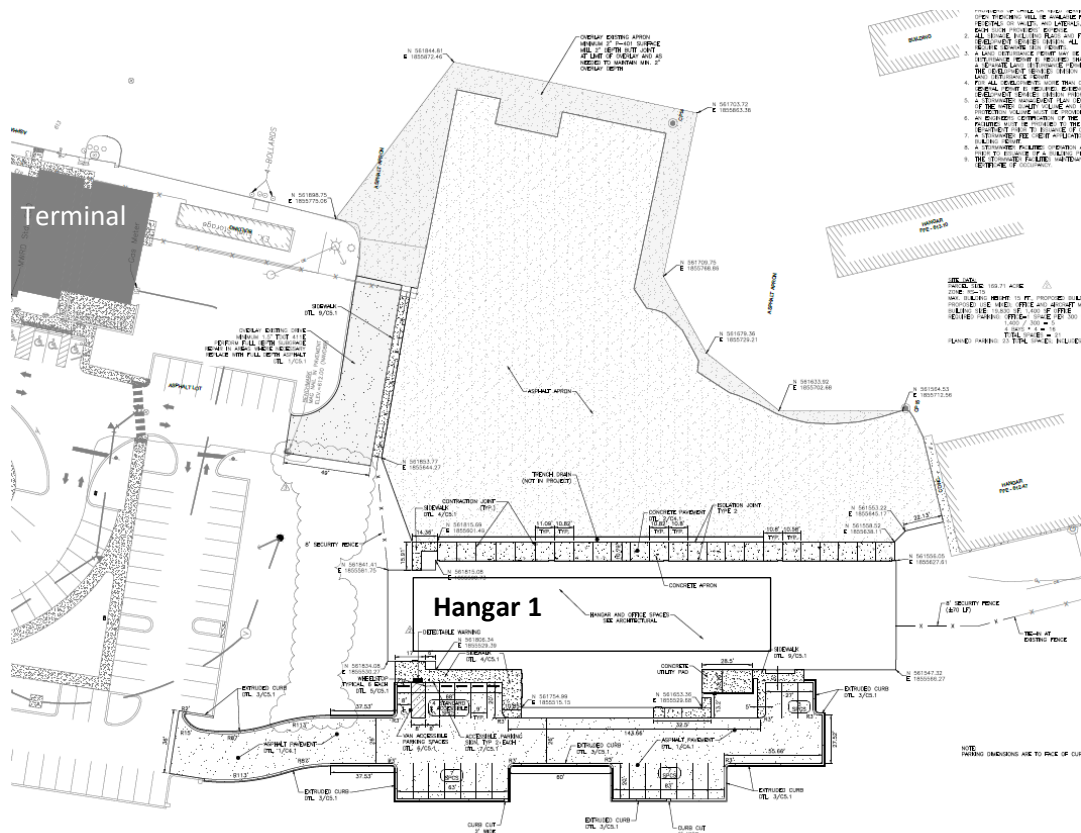
XHIBIT A

COMMERCIAL OPERATOR BUSINESS DESCRIPTION

1. City hereby grants Lessee approval to conduct the following Commercial Activities on the Leased Premises:
 - a. Aircraft Sales
 - b. Aircraft Storage
 - c. Aircraft Radio and Instrument Services
 - d. Aircraft Maintenance and Repair
2. City's approval is contingent upon Lessee's continuing compliance with applicable laws and regulations.
3. Lessee has a duty to promptly inform the Airport Director of any material change in the information on the Aeronautics Economic Development Fund Application submitted to the City or which relates to its ability to perform the permitted commercial activities.
4. Lessee shall promptly provide Airport Director with such evidence as Airport Director may reasonably request as to Lessee's continuing qualifications to perform any activity (e.g. information on personnel, licenser, certification, equipment, supplies, and financial capacity).
5. Lessee shall not perform any commercial activity not specified on this Exhibit A without the advance written approval of the City as evidence by amendment of this Agreement approved by the Airport Commission and City Council.
6. Annual Reports: The Project is being funded through an Airport Economic Development Grant from the Tennessee Department of Transportation - Division of Aeronautics which requires annual reports which requires that specific information regarding annual gross sales, annual fuel purchased, number of employees, and other information that may be provided. These reports will be completed in July at the completion of each fiscal year. Lessee has an affirmative obligation to provide information necessary to formulate the reports as requested by the Airport Director.

EXHIBIT B

AREA LEASED - PREMISES



Hangar One has a total square footage of 19,750 square feet and includes the following areas:

- Office Area: 1,394 square feet (Consisting of three offices, lobby area, 2 restrooms, janitor's closet, data closet, mechanical room, and hallway area)
- Shop Space: 2,163 square feet
- Hangar Bays: 4,048 square feet per bay, 16,192 square feet all four bays

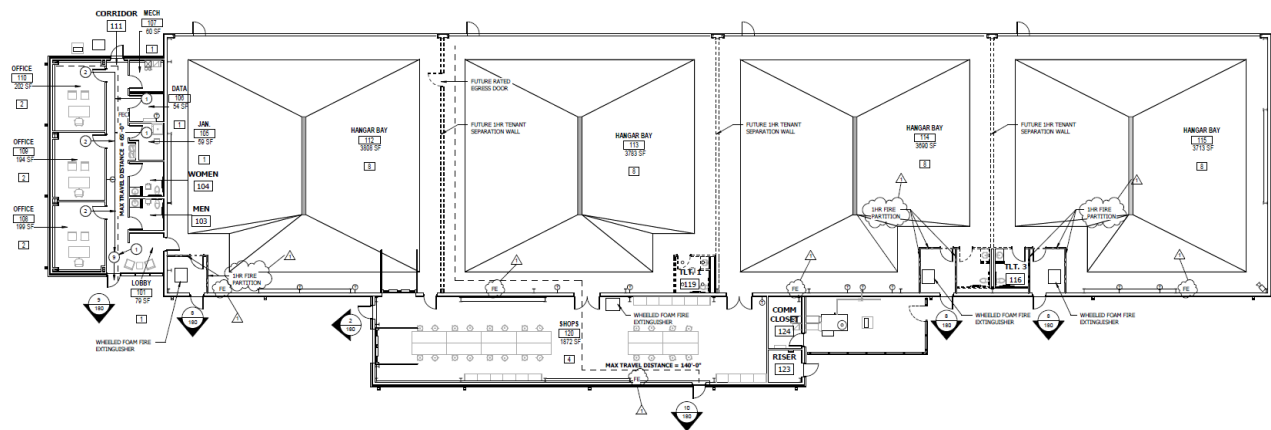


EXHIBIT C
PAYMENTS DUE CITY

1. Rent: Hangar 1 is as follows:

Year	Rent Per Month	Hangar 1		
		Hangar Space Shop and Storage Areas	Office	Corporate Box Hangar Units #1 and #2 (Separate Lease Agreement)
1	\$ 8,974	\$7,474	\$1,500	
2	\$ 9,333	\$7,773	\$1,560	
3	\$ 9,705	\$8,083	\$1,622	
4	\$10,094	\$8,407	\$1,687	
5	\$10,498	\$8,743	\$1,755	

2. Any tie down spaces or T-hangar units used by Lessee are the subject of separate agreements and payment amounts.
3. Term: The term shall be for five (5) years with a five-year option. The term will commence when occupancy is established and conclude June 30, 2028, unless the option is exercised for an additional five (5) year term and agreed to by both parties.
4. Rental Rate adjustments: The rental rate adjustment shall be 4% per fiscal year during the initial term.
5. Fuel Flowage: Payable in arrears in accordance with the City ordinance and rules on fuel brought onto the Airport by Lessee for use in Lessee's own aircraft, if any, and on oil brought onto the Airport by Lessee.
6. Utilities: Hangar 1: Lessee is responsible for all electrical, water, and sewer fees.

EXHIBIT D
CITY IMPROVEMENTS TO RENTAL SPACE

The City is responsible for the construction of building and the associated airside apron area and landside automobile parking areas.

The City will include the following equipment in Hangar 1 shown in Exhibit B:

- 4 exhaust fans, one for each hangar bay
- 1 fire sprinkler system throughout building
- Office area
- Shop and storage area
- Restroom facilities, number and location to be determined later according to the following options:
 - Option 1: City will fund complete construction of one bathroom using existing plumbing stub outs and install plumbing stub outs in interior wall and roof vents penetrations for future second bathroom.
 - Option 2: City will fund complete construction of one bathroom using existing plumbing stub outs and Lessee in equal share will fund the addition of a second bathroom in its entirety. Both Bathrooms to be constructed at the same time.
 -
- Hangar ceiling and walls to be insulated
- Three phase electricity to be available throughout hangar building
- Bi-fold electric doors, or equivalent, will be installed on airside of hangar
- Install hard surface and fence for exterior storage area on south end of hangar
- City will contribute \$5,000 toward installation of an air compressor for Hangar 1.

EXHIBIT E
INSURANCE REQUIREMENTS

Lessee is required to maintain the minimum insurance as stated below:

SERVICE	INSURANCE	AMOUNT
Aircraft Sales	Premises Liability	\$1,000,000.00
	Hangar Keepers	\$250,000.00 per aircraft \$500,000.00 aggregate
	Building Insurance	Full Replacement Cost of Hangar One
Aircraft Maintenance and Radio and Instrument Services	Premises Liability	\$1,000,000.00
	Hangar Keepers	\$250,000.00 per aircraft \$500,000.00 aggregate
	Products Liability	\$1,000,000.00
	Building Insurance	Full Replacement Cost of Hangar One

COUNCIL COMMUNICATION

Meeting Date: 06/16/2022

Item Title: Change Order #1 to Construction Contract at Siegel Soccer Complex

Department: Administration

Presented by: Scott Elliott, Project manager

Requested Council Action:

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

Summary

Change Order #1 for the construction of restrooms and concession stand at the ancillary fields at Siegel Soccer Complex located on the former Jordan Farms.

Staff Recommendation

Approval for Change Order#1 to the contract amount with Hawkins & Price, LLC.

Background Information

Change Order#1 includes additional cost for post curbing, additional soffit lighting, installation of a weatherproof transformer electrical disconnect, and providing storm water collection piping for 10 downspouts. The total for this change order is \$27,708.

Council priorities Served

Responsible Budgeting

Modifications to that are designed to extend the life of a structure or decrease the costs associated with long-term maintenance is consistent with responsible project budgeting.

Fiscal Impact

The amount of the change order, \$27,707, can be accommodated within the Project budget that is funded by FY21 CIP and LPRF Grant.

Attachments

Change Order #1 for contract with Hawkins & Price, LLC

Proposed Change Order

Change Order #: 1

Combined Project Changes

General Contractor:



Contact: Chris Chase

M: 931/808-0609

E: cchase@hpmail.us

Date: November 4, 2022

Project Name: Jordan Farms Restroom

Designer: Griggs & Maloney
PO Box 2968
Murfreesboro, TN 37133

Subcontractor: Various

Changes to the work are as follows:

- 1) Delete ~166 LF of extruded curb from project and replace with post curb
Additional Project Cost: **\$7,263.00**

- 2) Provide and install 6 additional can lights in the soffit of the building to illuminate north (2), west (2) and south (2) walls
Note: Lead time on additional new fixtures is 10 weeks. Each of 6 additional light fixture locations will be prepped and ready for the new fixture installation when available.

Additional Project Cost: **\$10,009.00**

- 3) Locate transformer disconnect in weatherproof enclosure on outside wall of restroom building in lieu of in the mechanical room
Additional Project Cost: **\$2,060.00**

- 4) Provide and install storm water collector pipe and fittings for 10 downspouts from roof gutter per plan
Additional Project Cost: **\$8,376.00**

- Total) \$27,708.00**

CHANGE ORDER

Change Order No.

Date of Issuance:	11/4/2022	Effective Date:	
Owner:	City of Murfreesboro, Tennessee	Owner's Contract No.:	226-175
Contractor:		Contractor's Project No.:	
Engineer:	Griggs & Maloney, Inc.	Engineer's Project No.:	226-175
Project:	2016 LPRF Jordan Farms New Public Restroom, Pump Station, and Forcemain	Contract Name:	2016 LPRF Jordan Farms New Public Restroom, Pump Station, and Forcemain


The Contract is modified as follows upon execution of this Change Order:

Description: The following additions to the Jordan Farm Restroom include:

1. Furnish and install 8 additional can lights in the north (2), south (2), and west (2) soffit of the building (cost \$10,009.00);
2. Delete 166 linear feet of extruded curbing as originally scoped and replace with 6" post curb (cost \$7,263.00), complete in place;
3. Install downspout collector piping along north and south sides of the building including pop up drains and cleanouts (cost \$8,376.00);
4. Relocate transformer disconnect in weatherproof enclosure outside of the mechanical room (cost \$2,060.00)
5. Adjustment of contract time for delays due to material and equipment lead times.

Attachments: *Hawkins & Price proposal costs*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ 713,616.00	Original Contract Times: Substantial Completion: <u>July 28, 2022</u> Ready for Final Payment: <u>August 28, 2022</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ 0.00	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: <u>NA</u> Ready for Final Payment: <u>NA</u> days
Contract Price prior to this Change Order: \$ 713,616.00	Contract Times prior to this Change Order: Substantial Completion: <u>July 28, 2022</u> Ready for Final Payment: <u>August 28, 2022</u> days or dates
Increase of this Change Order: \$ 27,708.00	Increase of this Change Order: Substantial Completion: <u>November 23, 2022</u> Ready for Final Payment: <u>February 1, 2023</u> days or dates
Contract Price incorporating this Change Order: \$ 741,324.00	Contract Times with all approved Change Orders: Substantial Completion: <u>November 23, 2022</u> Ready for Final Payment: <u>February 1, 2023</u> days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By:		By:		By:	
	Engineer (if required)		Owner (Authorized Signature)		Contractor (Authorized Signature)
Title:	Principal	Title:		Title:	
Date:	11/4/2022	Date:		Date:	

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

END OF SECTION 00941

COUNCIL COMMUNICATION

Meeting Date: 11/17/2023

Item Title: Contract for Governmental Affairs—2023 Session of the General Assembly

Department: Administration

Presented by: Craig Tindall, City 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

governmental affairs consulting contract with Ramsey, Farrar, Bates (RFB) for the General Assembly's 2023 Session

Staff Recommendation

Approve agreement with Ramsey, Farrar, Bates, Russel & Smith, LLC.

Background Information

For the last several years, RFB has provided the City with invaluable consulting and lobbying services during the General Assembly's legislative sessions. RFB keeps the City timely informed of bills that impact municipalities generally and, having worked close with the City over several session, RFB has gained a strong understanding of the City's specific legislative concerns. RFB has worked effectively to bring the City's interests to the General Assembly attention.

The proposed contract and the associated fee are the same as the previous year.

Council Priorities Served

Responsible budgeting

Legislative measures can significantly impact the City's finances and effectively addressing legislative issues is critical to maintaining the City's financial position.

Improve economic development

Legislation that promotes or allows the City to promote economic development is crucial for the City's growth.

Expand infrastructure

State funding for roadway improvements is important to the City's continuing efforts to address growth and it is prudent for the City to have a strong voice in this aspect of the General Assembly's responsibilities.

Maintain public safety

State funding assistance for public safety matters as well as legislation related to criminal matters are important to the maintaining public safety in the City.

Fiscal Impact

This expense, \$50,000, is funded by the Administration Department's operating budget.

Attachments

Professional Services Agreement with Ramsey, Farrar, Bates, Russel & Smith, LLC

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF MURFREESBORO
AND RAMSEY FARRAR RUSSELL & SMITH, L.L.C.**

This agreement (the "Contract") entered into this 30th day of September, 2021 by and between **CITY OF MURFREESBORO**, and **RAMSEY FARRAR RUSSELL & SMITH, L.L.C.**, hereinafter referred to as "CONSULTANT."

I. SCOPE OF WORK

The CONSULTANT shall assist designated agents of **CITY OF MURFREESBORO** in informing elected officials of the Tennessee General Assembly as well as the administration about their programs and services and advocate its position on issues. Any additional services and fees for such services shall be in writing and attached as amendments hereto.

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence January 1, 2022 and terminate on December 31, 2022, unless otherwise extended by mutual agreement of the parties.

2. **CITY OF MURFREESBORO** agrees to compensate the CONSULTANT for the provision of Services herein the sum total of Fifty Thousand Dollars (\$50,000) (the "Fee"). In satisfaction of this fee, payment shall be due to CONSULTANT pursuant to the following schedule:

- \$4,166.67 on January 15, 2022;
- \$4,166.67 on February 1, 2022;
- \$4,166.67 on March 1, 2022;
- \$4,166.67 on April 1, 2022;
- \$4,166.67 on May 1, 2022;
- \$4,166.67 on June 1, 2022;
- \$4,166.67 on July 1, 2022;
- \$4,166.67 on August 1, 2022;
- \$4,166.66 on September 1, 2022;
- \$4,166.66 on October 1, 2022;
- \$4,166.66 on November 1, 2022;
- \$4,166.66 on December 1, 2022.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONSULTANT'S PERSONNEL

The CONSULTANT certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONSULTANT. The CONSULTANT further certifies that all of its

employees assigned to serve **CITY OF MURFREESBORO** have such knowledge and experience as required to perform the duties assigned to them.

2. INDEPENDENT STATUS

a. Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT's employees or agents, are the agents, representatives, or employees of **CITY OF MURFREESBORO**. The CONSULTANT will be deemed an independent contractor over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give **CITY OF MURFREESBORO** the right to direct the CONSULTANT as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT will follow the desires of **CITY OF MURFREESBORO** only as to the intended results of the scope of this Contract.

b. It is further expressly agreed and understood by CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of **CITY OF MURFREESBORO** and that CONSULTANT has been retained by **CITY OF MURFREESBORO** to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages). CONSULTANT shall establish its own place, time, conditions and methods of work. **CITY OF MURFREESBORO** shall not be responsible and will not be liable for payments of any federal, state or local taxes or fees that arise out of this Contract and the work contemplated herein.

3. TERMINATION OR ABANDONMENT

Either **CITY OF MURFREESBORO** or the CONSULTANT may terminate the Contract upon ninety (90) days written notice to the other party for any cause or no cause. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any work performed as of the Termination Date. All work accomplished by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of **CITY OF MURFREESBORO** prior to payment for the Services rendered.

4. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of **CITY OF MURFREESBORO** as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

5. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

To the extent permitted by Tennessee law, **CITY OF MURFREESBORO** shall indemnify, defend, save and hold harmless the CONSULTANT, and its partners, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages arising out of or resulting from any negligent or intentionally wrongful actions or inactions caused by **CITY OF MURFREESBORO**, its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

6. GENERAL COMPLIANCE WITH LAWS

- a. The CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services.
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the parties agree that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Davidson County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Davidson County, Tennessee.

7. ENTIRE AGREEMENT

This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral contracts between the parties.

8. AMENDMENT

This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

9. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

10. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

11. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

12. INCORPORATION OF OTHER DOCUMENTS

CONSULTANT shall provide Services pursuant to this Contract and in accordance with the Scope of Work identified herein. It is understood and agreed between the parties that, in the event of a variance between the terms and conditions of this Contract and any amendment thereto and any other proposals offered by either the CONSULTANT or **CITY OF MURFREESBORO**, the terms and conditions of this Contract, as well as any amendment, shall take precedence and control the relationship and understanding of the parties.

13. OWNERSHIP AND USE OF DOCUMENTS

The CONSULTANT warrants that all work produced under this Contract, whether in written or electronic form, shall be the original work of CONSULTANT unless otherwise stated in writing. Ownership of all results and documents delivered shall pass to **CITY OF MURFREESBORO** upon delivery.

14. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

CITY OF MURFREESBORO:

Craig Tindall
111 West Vine Street
Murfreesboro, Tennessee 37133


CONSULTANT:

RAMSEY FARRAR SMITH & RUSSELL
L.L.C.
Attn: J. Russell Farrar, Esq.
12 Cadillac Drive, Suite 480
Brentwood, TN 37027

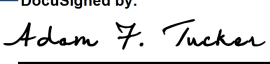
IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this PROFESSIONAL SERVICES AGREEMENT BETWEEN **CITY OF MURFREESBORO AND RAMSEY, FARRAR RUSSELL & SMITH, L.L.C.** as of the date above written.

CITY OF MURFREESBORO

**RAMSEY, FARRAR RUSELL & SMITH,
L.L.C.**

DocuSigned by:
BY: 
A2F6A4BF7CD74E7
SHANE MCFARLAND,
MAYOR

BY: 
J. RUSSELL FARRAR,
FOUNDING PARTNER

APPROVED AS TO FORM
DocuSigned by:

42A2035E51F840F
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Amendment to Rules of Procedure of the Disciplinary Review Board

Department: Employee Services

Presented by: Randolph Wilkerson, 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

Change the title of the person assigned as the Clerk of the Disciplinary Review Board (DRB) to reflect the right position and add more communication options.

Staff Recommendation

Approve amendment to Rules 2.09 and 3.01 of the Rules and Procedures of the Disciplinary Review Board.

Background Information

On October 26, 2022, the DRB approved a change in its Rules of Procedure to reflect the correct job title of the position assigned as the DRB Clerk and update the means of communications.

Rule 2.09 is amended to read: "The Clerk of the Disciplinary Review Board shall be the City's Employee Services Director, or such other person as may be designated by the City Manager."

Rule 3.01 is amended to read: "The address is City of Murfreesboro, Employee Services Department, Attn: Disciplinary Review Board Clerk, 111 West Vine Street, P.O. Box 1139 Murfreesboro, Tennessee 37133-1139. A party may send documents to the Clerk by email at: disciplinaryreviewboard@murfreesborotn.gov."

Fiscal Impact

None

Attachments

Updated Rules of Procedure of the Disciplinary Review Board Rules of Procedure

**RULES OF
PROCEDURE OF THE
CITY OF
MURFREESBORO
DISCIPLINARY REVIEW
BOARD**

City Council Approved:
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RULES OF PROCEDURE OF THE CITY OF MURFREESBORO

DISCIPLINARY REVIEW BOARD

Rule 1. Scope.

- .1 *Application.* Subject to any superseding federal law, state law, or city ordinance, these rules shall govern appeals to the Disciplinary Review Board which was created pursuant to Section 36 of the Charter of the City of Murfreesboro, Tennessee (Private Chapter 104, 1993 Private Acts).
- .2 *Suspension for Justice.* Any provision of these rules may be suspended where clearly warranted in the interest of justice.
- .3 *Uniform Administrative Procedures Act.* In any situation that arises that is not specifically addressed by these rules, reference may be made to the Uniform Administrative Procedures Act - Contested Cases, T.C.A. §4-5-301, et seq. Rules of Tennessee Department of State Administrative Procedure Division (§1360-4-1-.01 et. seq.) and the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand. It is the intent of the City that these Rules of Procedure before the Disciplinary Review Board meet the minimum standards of the Uniform Administrative Procedures Act for contested cases as necessary for judicial review of the Board's decisions under T.C.A. §4-5-322 in accordance with T.C.A. §27-9-114. To the extent that any section of the Tennessee Code Annotated cited in these Rules is renumbered or otherwise modified, such renumbering or modification shall be deemed to be incorporated in these Rules so that the procedures of the Disciplinary Review Board shall meet then applicable state law requirements.

Rule 2. Definitions.

- .01 *Pleadings.* "Pleadings" are written statements of the facts and law which constitute a party's position or point of view in a contested case and issues which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form - as for

example, a "Notice of Hearing and Specification of Charges", "Petition for Hearing" or "Answer" - or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.

- .2 *Filing.* Unless otherwise provided by law or by these rules, "filing" means actual receipt by the Clerk, City of Murfreesboro at the City Hall, 111 West Vine Street.
- .3 *City.* The "City" is the City of Murfreesboro, Tennessee.
- .4 *Employee.* The "employee" is the employee appealing the decision of the City Manager.
- .5 *Hearing Officer.* Wherever the term "Hearing Officer" is used in these rules, it is intended to refer to a Hearing Officer appointed by the Disciplinary Review Board. The Hearing Officer shall perform all functions assigned to administrative judges or hearing officers in contested cases under the Uniform Administrative Procedures Act, T.C.A. §4-5-301. The panel of available Hearing Officers, with names, addresses and phone numbers(s) is on file with the City Recorder and Personnel Director of the City. (See Chapter 94, 1997 Private Acts for the legislation authorizing the appointment of a Hearing Officer.)
- .6 *Disciplinary Review Board.* The "Disciplinary Review Board" is the collective group of members and individual members of the board created by the City Council pursuant to Section 36 of the Charter of the City of Murfreesboro to conduct hearings when requested by non-probationary City employees whose employment has been terminated by the City Manager as a form of discipline. The Disciplinary Review Board does not have jurisdiction over terminations of employees for reasons which are not disciplinary in nature, including a reduction in work force or an inability to return to work because of injury or illness.
- .7 *Burden of Proof.* The "burden of proof" is the duty of a party to present evidence and to show by a preponderance of the evidence that an

allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The Hearing Officer makes all decisions regarding which party has the burden of proof on any issue.

- .8 *Transcript.* Transcript is the transcribed [typed] verbatim testimony before the Disciplinary Review Board or the transcribed testimony of a witness. Exhibits to a witness's testimony is part of the transcript. The "transcript" from the due process hearing before the City Manager is considered a part of the "record" should it be transcribed and filed with the Clerk by either party.
- .9 *Clerk or Clerk of the Board* - The clerk of the Disciplinary Review Board shall be the City's Employee Services Director, or such other person as may be designated by the City Manager.

Rule 3. Filing and Service of Pleadings and other materials.

- .1 All pleadings, petitions for review, and any other materials required to be filed by a time certain shall be filed by delivering such materials in person or in any other manner, including by mail, so long as they are actually received by the Clerk within the required time period. The address is, City of Murfreesboro, Employee Services Department, Attn: Disciplinary Review Board Clerk, 111 West Vine Street, Murfreesboro, P.O. Box 1139, Tennessee 37133-1139. A party may send documents to the Clerk by email at Disciplinaryreviewboard@murfreesborotn.gov.
- .2 All pleadings and other materials required to be filed or submitted prior to the hearing shall be filed with the Clerk, where they will be stamped with the date and hour of their receipt.
- .3 Discovery materials that are not actually introduced as evidence need not be filed, except as provided by Rule 11.03.
- .4 Copies of any and all materials filed with the Clerk shall also be served upon all parties, or upon their counsel, once counsel has made an appearance and upon the Hearing Officer once a Hearing Officer has

been appointed in the case. Any such material shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery.

Rule 4. Time.

- .1 In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- .2 Except in regard to petition for review under T.C.A. §§4-5-315, 4-5- 317 and 4-5-322, or where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the Disciplinary Review Board or the Hearing Officer may, at any time, (a) with or without motion or notice order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. §4-5-304.

Rule 5. Commencement of Proceedings.

- .01 *Commencement of Action.* A proceeding may be commenced by an employee filing a written Notice of Appeal with the Clerk with a copy to the City Attorney within ten (10) days of the action of the City Manager terminating the employee. The Notice of Appeal should contain the employee's address where the employee is to receive pleadings

throughout the appeal or until the employee employs an attorney. The Clerk shall notify the City Manager of the Notice of Appeal.

- .2 *Appointment of Hearing Officer.* After receiving a Notice of Appeal, the Clerk will notify the Board's Chairperson that appointment of a Hearing Officer will be necessary. The Chairperson shall promptly select a Hearing Officer based on equal rotation amongst the Hearing Officers and, after the Clerk has verified that the selected Hearing Officer does not have a conflict or other disqualification, the Clerk shall promptly notify the employee, the City Manager and the attorney representing the City which Hearing Officer has been selected.
- .3 *Notice of Hearing and Specification of Charges.* Within thirty (30) days of the filing of a Notice of Appeal, the City Attorney or other attorney representing the City shall file a Notice of Hearing and the Specification of Charges in compliance with T.C.A. §4-5-307(b). A Notice of Hearing shall be filed even if the actual date and time of the hearing is not known or is tentative; in such event, a Supplemented Notice shall be filed when the final date and time of the hearing is set.
- .4 *Supplemented Notice.* In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings.
- .5 *Filing of Documents.* The Clerk shall provide the Hearing Officer with all the papers that make up the Notice of Appeal, Notice of Hearing, and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the parties unless it appears from a Certificate of Service or otherwise the document(s) was sent to the Hearing Officer by a party. Legible copies may be filed in lieu of originals.
- .6 *Answer.* The employee must respond to the Specification of Charges set out in the Notice of Hearing by filing a written Answer with the Clerk within twenty (20) days after service of the Specification of Charges. In the Answer, the employee may:
 - (a) Object on the basis of insufficiency of the Notice of Hearing.

- (b) Object on the basis of insufficiency of service of the Notice of Hearing.
- (c) Generally deny all the allegations contained in the Specification of Charges or state that the employee is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
- (d) Admit in part or deny all the allegations contained in the Specification of Charges or state that the employee is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
- (e) Assert any available defense.

.7 *Motion for More Definite Statement.* Within twenty (20) days after service of the Specification of Charges in a matter, or at any later time with the permission of the Hearing Officer for good cause shown, a party may file a motion for more definite statement pursuant to T.C.A. §4-5-307 on the ground that the Specification of Charges, or other original pleading is so indefinite or uncertain that one cannot reasonably identify the transaction or facts at issue or prepare a defense. The Hearing Officer may order a more definite statement to be provided by a date certain and may continue the hearing until at least ten (10) days after a more definite statement is provided.

.8 *Amendment to Notice.* The City may amend the Notice of Hearing or Specification of Charges. No amendment may introduce a new violation without original service and running of times applicable to service of the original Notice or Specification. The Hearing Officer may grant a continuance if necessary to assure that a party has adequate time to prepare for a hearing in response to an amendment.

.9 *Amendments to Conform to the Evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to

conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the Hearing Officer may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would unfairly prejudice the party. The Hearing Officer may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

Rule 6. Service of Notice of Hearing.

- .01 Following an appeal to the Disciplinary Review Board, if the employee has provided the Disciplinary Review Board with an address, a copy of the Notice of Hearing shall, pursuant to Rule 5.02, be delivered to the employee at the address provided, by certified or registered mail, personal service, or service upon employee's attorney by mail, facsimile, or delivery to employee's attorney's office. The City may send the Notice of Hearing to the employee's last known address if the employee fails to furnish an address in the Notice of Appeal as provided in Rule 5.01.

Rule 7. Preliminary Matters; Prehearing Conferences.

- .1 All preliminary matters filed by parties for ruling prior to the hearing before the Disciplinary Review Board shall be decided by the Hearing Officer.
- .2 Hearings on preliminary matters shall be in the City Court, City Hall, 111 West Vine Street, Murfreesboro, Tennessee 37130, or at such other place designated by the Hearing Officer. Hearings on preliminary matters may be by telephone conference upon agreement of the parties and the Hearing Officer.
- .3 Prehearing conferences may be held in accordance with T.C.A. §4-5-306.

Rule 8. Representation By Counsel.

- .1 The employee may be represented at the employee's own expense by a licensed attorney.
- .2 An employee may represent himself or herself.

- .3 An employee may not be represented by a non-attorney, unless there is good cause shown.
- .4 An appearance by an employee at a hearing without counsel may be deemed a waiver of the right to counsel.
- .5 Entry of an appearance by counsel shall be made by-
 - (a) the filing of pleadings;
 - (b) the filing of a formal or informal notice of appearance; or
 - (c) appearance as counsel at any pre-hearing conference or a hearing.
- .6 After appearance of counsel has been made, all pleadings, motions, and other documents shall be served upon such counsel.
- .7 Counsel wishing to withdraw shall give written notice to the other party and to the Clerk . The matter shall be considered by the Hearing Officer or Disciplinary Review Board .
- .8 Out-of-state counsel shall comply with T.C.A. §23-3-103(a) and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the Clerk with a copy to the City Attorney.

Rule 9. Pre-hearing Motions.

- .1 *Scope.* This rule applies to all motions made prior to a hearing on the merits. This rule does not preclude the Hearing Officer from convening a hearing or converting a pre-hearing conference to a hearing at any time pursuant to T.C.A. §4-5-306(b) to consider any question of law.
- .2 *Motions.* Parties are encouraged to resolve matters on an informal basis; however, if efforts at informal resolution fail, any party may request relief in the form of a motion by serving a copy on all parties and the Hearing Officer and filing a copy with the Clerk . Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- .3 *Time Limits; Argument.* A party may request oral argument on a motion; however, a brief memorandum of law submitted with the motion is preferable to oral argument. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days

of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the Hearing Officer

.4 *Oral Argument.* If oral argument is requested, the motion may be argued by conference telephone call upon agreement of the parties and the Hearing Officer.

.5 *Affidavits; Briefs and Supporting Statements.*

(a) Motions and responses thereto shall be accompanied by supporting affidavits and briefs. All motions and responses thereto shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of judicial notice. Such affidavits shall set forth only facts which are admissible in evidence under T.C.A. §4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto.

(b) In the discretion of the Hearing Officer, parties may be required to submit briefs or supporting affidavits pursuant to a schedule established by the Hearing Officer.

.6 *Disposition of Motions; Drafting the Order.*

(a) When a pre-hearing motion has been made in writing or orally, the Hearing Officer shall render a decision on the motion by issuing an order or by instructing the prevailing party to prepare and submit an order in accordance with (b) below.

(b) The prevailing party on any motion shall draft an appropriate order, unless waived by the Hearing Officer. This order shall be submitted to the Hearing Officer within five (5) days of the ruling on the motion or as otherwise ordered by the Hearing Officer.

(c) The Hearing Officer after signing any order shall cause the order to be served forthwith upon the parties.

.7 *Scheduling the Hearing.* A hearing of the appeal by the Disciplinary Review Board should be scheduled expeditiously in order to give the

employee a ruling on the employee's appeal. It is unfair to the employee to leave the employee's employment status unsettled. The parties should endeavor to schedule the hearing on the appeal as soon as reasonably possible. Since members of the Disciplinary Review Board are volunteer citizens and a quorum is five (5) if there are seven (7) members, the Clerk should attempt to coordinate the hearing with the members of the Disciplinary Review Board, the Hearing Officer and the parties .

Rule 10. Hearings and Continuances.

- .1 *Continuance for cause.* Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the Hearing Officer or Disciplinary Review Board as soon as practicable.
- .2 *Continuance by consent.* Any case may be continued by mutual consent of the parties when approved by the Disciplinary Review Board or Hearing Officer.
- .3 *Hearing Location.* The hearing before the Disciplinary Review Board shall be in Room 218, City Hall, 111 West Vine Street, Murfreesboro, Tennessee, unless otherwise provided in the Order setting the case.
- .4 *Hearing Time.* Hearings before the Disciplinary Review Board shall start at the time specified in the Notice of Hearing.
- .5 *Absence of a Board Member.* If a member of the Disciplinary Review Board can not continue to hear an appeal due to sickness, conflict of schedule, or otherwise, the hearing may continue without that member provided there remains a quorum. If a member of the Disciplinary Review Board does not attend all of a hearing on appeal and deliberations, the board member may not participate in the decision.

Rule 11. Discovery.

- .1 Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery

is not practicable, discovery shall be sought and effectuated in accordance with T.C.A. §4-5-311 and the Tennessee Rules of Civil Procedure.

- .2 Upon motion of a party or upon the Hearing Officer's own motion, the Hearing Officer may order that the discovery be completed by a certain date.
- .3 Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:
 - (a) quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a disposition which shows the question and objection or response, if applicable;
 - (b) state the reason or reasons supporting the motion; and
 - (c) be accompanied by a statement certifying that the moving party or counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- .4 The Hearing Officer shall decide any motion relating to discovery under the Uniform Administrative Procedures Act, T.C.A. §4-5-101 et seq., or the Tennessee Rules of Civil Procedure. The procedures for the consideration of a motion are set forth at Rule 9.
- .5 Other than as provided in subsection .03 above, discovery materials need not be filed with either the Clerk or the Hearing Officer, unless introduced and admitted into evidence.

Rule 12. Records to Disciplinary Review Board.

- .01 A copy of the Specification of Charges and Answer thereto shall be furnished members of the Disciplinary Review Board by the Clerk one week or more before the hearing on the appeal, unless the Hearing Officer shall rule otherwise or the parties agree otherwise. The transcript of the hearing before the City Manager, if it is transcribed by either party, and letters of employment termination from the City Manager, shall also be furnished to the Disciplinary Review Board and Hearing Officer. The

Disciplinary Review Board and Hearing Officer should not discuss the merits of the case with anyone before the hearing. See Rule 20.

Rule 13. Subpoena.

- .01 The Hearing Officer, Chairperson of the Disciplinary Review Board, or Clerk at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure. Service may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas. A sample subpoena is attached as Appendix 1.

Rule 14. Proceedings.

- .1 *Order of Proceedings.* Order of proceedings for the hearing of employee appeals:
- (a) The Hearing Officer may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) The hearing is called to order by the Hearing Officer.
 - (c) The Hearing Officer introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the Hearing Officer's role of making legal rulings and as a fact finder when sitting without the Board.
 - (d) Hearing Officer introduces the members of the Disciplinary Review Board and states that the final decision in the proceedings will be made by the Disciplinary Review Board alone, after being charged on the law by the Hearing Officer. Should the hearing be conducted by the Hearing Officer without the Disciplinary Review Board, the Hearing Officer shall make Findings of Fact and Law and render a decision. The ruling of the Hearing Officer shall be final unless appealed to the Disciplinary Review Board within 30 days by filing a notice of appeal with the Personnel Director. The appeal before the Disciplinary Review Board will be on the record and without additional witnesses.

- (e) Hearing Officer then calls on the employee to ask if the employee is represented by counsel, and if so, counsel is introduced. The Hearing Officer then introduces the city's counsel and any other city officials who may be present at the hearing.
- (f) The Hearing Officer states what documents the record contains.
- (g) Reserved.
- (h) Reserved.
- (i) The Hearing Officer swears the witnesses.
- (j) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of the witnesses, the employee will be permitted to stay in the hearing room, and the city may have one individual, who may also be a witness, act as its party representative.
- (k) Any preliminary motions, stipulations, or agreed orders are entertained.
- (l) Opening statements are allowed by both the City and the employee.
- (m) The City calls witnesses and questioning proceeds as follows:
 - 1. City questions.
 - 2. Employee cross-examines.
 - 3. City redirects.
 - 4. Employee re-cross-examines.
 - 5. Disciplinary Review Board questions (or Hearing Officer questions when sitting without the Disciplinary Review Board).
 - 6. Further questions by City and employee. (Questioning proceeds as long as necessary to provide all pertinent testimony.)
- (n) The employee calls witnesses and questioning proceeds as follows:

1. Employee questions.
 2. City cross-examines.
 3. Employee redirects.
 4. City re-cross-examines.
 5. Disciplinary Review Board questions (or Hearing Officer questions when sitting without the Disciplinary Review Board).
 6. Further questions by employee and City. (Questioning proceeds as long as is necessary to provided all pertinent testimony.)
- (o) City and employee allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (p) Closing arguments are allowed to be presented by the City and employee. In closing argument, the employee should identify what disciplinary measure (if any) the employee believes is more appropriate than termination for the employee's conduct.
- (q) When the Disciplinary Review Board is participating,
1. The Hearing Officer prepares to turn proceedings over to the Disciplinary Review Board by charging the Disciplinary Review Board as to the applicable law, requisites of the final order, voting procedure, and other pertinent matters. The Hearing Officer will take no part in any finding of fact when the Board is participating in the hearing, although the Hearing Officer may advise as to the legal sufficiency of the Disciplinary Review Board decision and other questions of law. The Chairperson of the Disciplinary Review Board may ask the Hearing Officer questions of law during deliberations. The Hearing Officer shall make rulings of law.
 2. The Hearing Officer then turns the proceedings over to the chair of the Disciplinary Review Board for deliberation and the decision. A break may be taken before deliberation for

the purpose of reflection, study of notes, and review of exhibits and not for the purpose of discussion of the case.

3. All persons have the right to remain during deliberations as it is a public meeting. The City and the employee both have the option of withdrawing from the hearing room during deliberations. A failure to withdraw by either the City or the employee shall not in any way be considered during the deliberation or decision. The Disciplinary Review Board may deliberate and decide the matter immediately after conclusion of the evidence or closing argument or may schedule such deliberation for a later date.
- .2 *Evidence in Proceedings.* The Board shall admit and give probative effect to evidence admissible in a court and, when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records. The Board shall exclude evidence which is irrelevant, immaterial or unduly repetitious. The Board shall consider affidavits submitted as evidence and documentary evidence, and shall take official notice in accordance with the provisions of T.C.A. §4-5-313.
- .3 Subparagraph .01 of this rule is intended to be merely a general outline as to the conduct of a hearing before the Disciplinary Review Board and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.
- .4 The Disciplinary Review Board may discuss the issues, and each Board member may state his or her position, before or after a motion is made. The Board may sustain or may overrule the decision to dismiss the employee made by the City Manager. The Board may order other

disciplinary measures it deems appropriate. The Board may order the employee reinstated with or without back pay.

- .5 The Disciplinary Review Board may vote to reopen the evidentiary portion of the hearing if, after deliberation has begun, the Board has additional questions. If the evidence is reopened to allow Board members to ask additional questions of the City, the employee or a witness, the City and the employee may also ask additional questions of the witness(es) called by the Board but only on the same subject.

Rule 15. Default Judgment or Failure to Appear.

.1 *Default Judgment.*

- (a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of an appeal after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309. Failure to comply with any lawful order of the Hearing Officer or Disciplinary Review Board, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.
- (b) Grounds for the granting of default judgment shall be stated and shall thereafter be set forth in a written order. If a default judgment is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.
- (c) The Hearing Officer shall serve upon all parties written notice of entry of default judgment for failure to appear. The defaulting party may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The Hearing Officer may make any order in regard to such motion as is deemed appropriate, pursuant to T. C.A. §4-5-317.

.2 *Effect of Entry of Default Judgment.*

- (a) Upon entry into the record of the default judgment against the City at a hearing, the charges shall be dismissed as to all issues on which the City bears the burden of proof, unless the proceedings are adjourned.
- (b) Upon entry into the record of the default judgment against the employee at a hearing, the matter shall be tried as uncontested as to such employee, unless the proceedings are adjourned.

Rule 16. Evidence.

- .1 It shall be the joint responsibility of the parties, their counsel, the Hearing Officer, the Clerk and the members of the Disciplinary Review Board to ensure that documents or information made confidential by state law are not made public as part of the Disciplinary Review Board process. Such documents and information include but are not limited to information regarding City mandated drug and alcohol testing, employee medical records, and employee banking records. When a party files a document with the Clerk which contains information which is not a public record because of its statutory classification as confidential, the party shall identify the section or document, for the Clerk, state the applicable grounds for the assertion of confidentiality and shall also provide a version of the document which has been redacted to exclude the confidential information. The Hearing Officer shall adjudicate any dispute about whether a particular document or portion thereof should not be classified as a public record. When evidence or testimony is to be presented in a hearing and said information is confidential, the party presenting the information shall advise the Hearing Officer and the opposing party in advance and the Hearing Officer shall take such measures as the Hearing Officer believes are necessary and appropriate to comply with the applicable law.
- .2 In all Disciplinary Review Board hearings, the testimony of witnesses shall be taken in open hearings. In the discretion of the Disciplinary Review Board, or at the motion of any party, witnesses may be excluded prior to

their testimony. The standard for admissibility of evidence is set forth at T.C.A. §4-5-313.

- .3 The City Attorney or attorney representing the City shall arrange for the attendance of a Court Reporter at all hearings before the Disciplinary Review Board. If there is an appeal of the decision of the Disciplinary Review Board to Chancery Court, the City shall have the proceedings before the Disciplinary Review Board transcribed. The Clerk shall file the original transcript and record before the Disciplinary Review Board (or Hearing Officer) with the Clerk and Master of Rutherford County. Before the transcript and record are filed with the Clerk and Master, the Hearing Officer or Chairperson of the Disciplinary Review Board shall review and approve the transcript and record of proceedings before the Disciplinary Review Board, and certify same to be accurate. The record shall contain documents as described in T.C.A. §4-5-319.

Rule 17. Clerical Mistakes.

- .01 Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions may be corrected by the Hearing Officer or Chairperson of the Disciplinary Review Board at any time on the initiative of either the Hearing Officer or the Chairperson of the Disciplinary Review Board or on motion of any party. The entering of a corrected order will not affect the dates of the original appeal time period.

Rule 18. Initial and Final Orders; Petitions for Reconsideration.

- .1 When the Hearing Officer hears the appeal without the Disciplinary Review Board, the Hearing Officer shall render an Initial Order as described in T.C.A. §4-5-314. The Initial Order shall become a Final Order, unless either party seeks review of the Initial Order by the Disciplinary Review Board; the review process is described in T.C.A. §4-5-315.
- .2 Either party may file a petition for reconsideration in accordance with T.C.A. §4-5-317.

Rule 19. Filing of Final Orders and Appeal.

- .1 After the Disciplinary Review Board or Hearing Officer has made a decision, whichever party is assigned the responsibility for drafting the final order shall, after the order is signed by the Chair of the Disciplinary Review Board or Hearing Officer on behalf of the Disciplinary Review Board, file the order by filing the original of the order with the Clerk. The order may sustain, modify or overrule the action of the City Manager, may order the employee reinstated with or without back pay, or may order such other disciplinary action as it deems appropriate. The order shall be deemed entered upon the date that it is filed with the Clerk after it has been signed by the Chair of the Disciplinary Review Board or Hearing Officer. The person responsible for drafting and filing the final order with the Clerk shall assure that a copy of the final order with its filing/ entry date filled in by the Clerk is mailed to the opposing party, or if such party is represented by counsel, to counsel for the opposing party. All final orders shall contain a clear and concise statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.
- .2 A party may appeal the decision of the Disciplinary Review Board by filing a petition for judicial review in accordance with T.C.A. 4-5-322 in the Chancery Court of Rutherford County within sixty (60) days of entry of the Disciplinary Review Board's final order or decision.

Rule 20. Code of Judicial Conduct.

- .01 Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons I through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to the Disciplinary Review Board and Hearing Officer.

Rule 21. Hearing Officers.

- .01 A Hearing Officer appointed by the Disciplinary Review Board of the City of Murfreesboro shall be (i) a licensed attorney in the state of Tennessee

who is in good standing, (ii) at least thirty (30) years of age before the appointment, (iii) have been a resident of the State of Tennessee for five (5) years immediately preceding the appointment, and of Rutherford County a minimum of one (1) year. The term of service shall three (3) years, except the initial terms shall be staggered.

- .2 There shall be a pool of not more than three (3) Hearing Officers, whose terms of office shall be staggered. The initial terms of office shall be one (1) year, two (2) years and three (3) years respectively.
- .3 The pay of Hearing Officers shall be based upon the hourly compensation set by the City Council following recommendation from the Disciplinary Review Board. The rate of hourly compensation may not be changed during the term of office, except for any across the board employee percentage pay raises granted by the City Council for City employees.
- .4 A Hearing Officer is disqualified from representing a City employee in an employment claim against the City of Murfreesboro during the term of office as Hearing Officer. However, a Hearing Officer shall be free to file a claim for workers' compensation on behalf of a City employee against the City and to represent a City employee in claims against third parties during the term of office. A Hearing Officer may handle general liability and automobile claims against the City while serving as a Hearing Officer. Principles of conflict of interest shall apply and appropriate disclosure shall be made by the Hearing Officer when the Hearing Officer has represented the employee or a close family member of the employee.
- .5 A Hearing Officer may not represent the City in any matter during the term of office.
- .6 Customary standards relating to conflicts of interest of Judges apply to Hearing Officers during their terms of office.
- .7 The following canons of the Judicial Code shall be applicable to Hearing Officers:
 - Canon 1. A Hearing Officer shall uphold the integrity and independence of the Position of Hearing Officer.

Canon 2. A Hearing Officer shall avoid impropriety and appearances of impropriety in all of the Hearing Officer's activities.

Canon 3. A Hearing Officer shall perform the duties of Hearing Officer impartially and diligently.

- .8 A violation of paragraph six (6) or seven (7) shall constitute grounds for dismissal by the City Council, upon recommendation of the Disciplinary Review Board which shall afford the Hearing Officer the right to a hearing.
- ..09 The chairperson shall select the Hearing Officer based on a system of equal rotation. A Hearing Officer shall be subject to disqualification in accordance with T.C.A. §4-5-302. Any petition for disqualification shall be filed not later than ten (10) days after the discovery of facts establishing grounds for disqualification.
- .10 If the Disciplinary Review Board determines in advance or during testimony that a contested personnel case involves complicated issues of law or is likely to require more than five (5) hours of testimony, the Disciplinary Review Board may appoint the Hearing Officer already serving to hear such case on the facts, as well as the law.
- .11 Such hearings on contested personnel cases shall be conducted in accordance with Tennessee Code Annotated, §4-5-301 through §4-5-319, except that: (i) any reference therein to "administrative judge or hearing officer employed in the office of the secretary of state" or similar language shall mean a licensed attorney as described in Section 36(d)(2)(A); (ii) the Hearing Officer shall be appointed by the Disciplinary Review Board rather than the Governor; and, (iii) subpoenas may be issued by the Hearing Officer, Chairperson of the Disciplinary Review Board or Clerk. In addition to the record provided for in Tennessee Code Annotated, §4-5-319, with notice to the Hearing Officer, the testimony may also be videotaped.
- .12 The judgment and the findings of the Board, or of a Hearing Officer appointed by the Board, upon hearing on Specification of Charges against any employee shall be final and subject to review only for illegality or want of jurisdiction, except that any employee whose dismissal had been

ordered or sustained by judgment of the Board or a Hearing Officer appointed by the Board may, within sixty (60) days after entry of the Board's or Hearing Officer's final order, file a petition for review in the Chancery Court of Rutherford County, Tennessee, where the case may be heard denovo upon the certified record. In cases of alleged irregularities in procedure before the Board or Hearing Officer not indicated in the record, proof of such alleged irregularities may be taken in consideration on appeal.

Rule 22. Disciplinary Review Board.

- .1 A majority of the board members shall constitute a quorum for the transaction of business unless the board consists of seven (7) members in which case a quorum shall be five (5) members.
- .2 A majority vote of those present and voting is required and, in cases of a tie, the appeal shall fail.
- .3 The members shall select one (1) of the members to serve as Chairperson.
- .4 If a member of the board becomes a candidate for an elective office, or accepts public or political office, or ceases to be a bona fide resident of the City, such member's membership shall be automatically vacated.

SUBPOENA (ORDER TO APPEAR) BEFORE THE CITY OF MURFREESBORO DISCIPLINARY REVIEW BOARD		
DISCIPLINARY REVIEW BOARD HEARING FOR (Name of Employee):		
TO: (Name, Address & Telephone Number of Witness)		
You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. Failure to appear may be punished by fine and/or imprisonment as provided by law. (Private Chapter 104, 1993 Private Acts)		
TIME:	DATE:	ITEMS TO BRING:
PLACE:		If necessary, additional list is attached.
This Subpoena is being issued on behalf of Employee: _____ City of Murfreesboro: _____ Attorney: (Name, Address & Telephone No.)		DATE ISSUED: _____ BY: _____ Hearing Officer _____ Chairperson DRB _____ Clerk
RETURN ON SERVICE BY WITNESS: I acknowledge being served with this Subpoena on the date indicated below:		
_____ Date of Service		_____ Signature of Witness
RETURN OF SERVICE BY AUTHORIZED OFFICER OR ATTORNEY.		
I certify that I served a copy of the Subpoena on the witness by: _____ _____ _____		
I certify that I failed to serve a copy of the Subpoena on the witness because: _____ _____ _____		
_____ Signature of Officer or Attorney	_____ Print Name of Officer or Attorney	_____ Date
If Attorney, Attorney's signature must be notarized. Sworn and subscribed to before me on this _____ day of _____, 20____.		
_____ Notary Public		My Commission Expires: _____

COUNCIL COMMUNICATION

Meeting Date: 11/17/2022

Item Title: Purchase of Roll-Out Garbage Carts
Department: Solid Waste
Presented by: Russell Gossett, Director of Solid Waste
Requested Council Action:

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

Summary

Purchase of 1,404 roll-out garbage carts for new customers and replacement for the damaged carts of existing customers.

Staff Recommendation

Approval purchase agreement with Rehrig Pacific Company.

Background Information

Solid Waste Department requires new roll-out carts for new residents and to replace carts with existing customers that are damaged. The Department delivered or replaced 1,169 carts this year to date.

Equipment will be purchased from Rehrig Pacific through a Cooperative Purchasing Omnia Contract, allowing for competitive pricing and a quality product.

Council Priorities Served

Responsible Budgeting

Maintaining services with equipment purchased through cost-effective cooperative purchasing agreement is a responsible use of budgeted funds.

Fiscal Impact

The expense, \$93,390, is funded by FY23 Solid Waste operating budget.

Attachments

1. Purchasing contract with Rehrig Pacific Company
2. Rehrig Pacific quote

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
REHRIG PACIFIC COMPANY FOR
95 GALLON ROLL OUT CARTS**

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 **Rehrig Pacific Company**, a Corporation of the State of Delaware ("Contractor").

This Agreement consists of the following documents:

- This document;
- Rehrig Pacific Company Order #563096 SO Dated 10/18/2022;
- Omnia/NJPA Contract No. Contract #00254; and,
- 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, Rehrig Pacific Company Order #563096 SO Dated 10/18/2022; and,
- lastly, Omnia/NJPA Contract No. Contract #00254 ("Omnia/NJPA Contract").

- 1. Duties and Responsibilities of Contractor.** Contractor agrees to provide and City agrees to purchase 1404 95-Gallon EG Carts from Rehrig Pacific Company in accordance with Omnia/NJPA Contract and Rehrig Pacific Company Order #563096 SO dated 10/18/22.
- 2. Term.** Contractor's performance may be terminated in whole or in part:
 - a. Contract expires 10/31/2026, concurrent with the expiration of Omnia/NJPA Contract.
 - b. Upon 30-day prior notice, for the convenience of the City.
 - c. 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.
 - d. 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 (d) 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.
 - e. 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.
 - f. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. 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 Rehrig Pacific Company Quote #563096 SO for 1404 95-gallon carts at \$65.00 each with freight at \$2,130.00, which reflects a **total purchase price of \$93,390.00**. 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, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. **Payment Terms:** Net 30 days after receipt of goods. Upon the City's failure to timely pay an invoice properly issued pursuant to this Section 2, late fees shall accrue on all unpaid amounts the rate of one percent (1%) per month from the initial date due until the date paid, plus interest from the initial date due until the date paid at a rate of one and one-half percent (1.5%) per month, or the maximum rate allowed under applicable law, whichever is less.
- c. Deliveries of all items shall be made within 30 days of issuance of Purchase Order to Attn: Joey Smith - Solid Waste Dept. 4765 Florence Rd., Murfreesboro TN 37130 (email: jsmith@murfreesborotn.gov - phone: 615.893.3681). City 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.
- d. Deliveries of all items shall be made as stated in the quote. 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.
- e. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- f. 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.

4. Warranty. Unless otherwise specified, every item bid shall meet the warranty requirements set forth in the specifications and by the manufacturer.

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 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. 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. Notwithstanding anything to the contrary in this Section 5, nothing herein shall confer any right, title, or interest in or to any intellectual property of Contractor, including, but not limited to, any intellectual property contained or reflected in the goods contemplated to be sold pursuant to this Agreement, and Contractor shall retain all right, title, and interest in and to all such intellectual property.

7. Indemnification.

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

- c. Copyright, Trademark, Service Mark, or Patent Infringement.

1. 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.

2. 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:

- i. Procure for the City the right to continue using the products or services.

- ii. 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.
- iii. 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.

3. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

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

If to Contractor:
Rehrig Pacific Company
Attn: Thomas Delfino
1000 Raco Court
Lawrenceville, GA 30046

9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
10. **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.
11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
12. **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.

13. **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.
14. **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.
15. **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.
16. **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.
17. **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.
18. **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.

19. **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, epidemic, pandemic, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
20. **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.
21. **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.
22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, each party will be responsible for its own expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
23. **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 amendment as of _____, 2022.


CITY OF MURFREESBORO, TENNESSEE

REHRIG PACIFIC COMPANY

By: _____
Shane McFarland, Mayor

By: 
Marc Scott, VP Environmental Sales

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker, City Attorney



Order Acknowledgement

Order #: 563096 SO

Date: 10/18/2022

Sold To: 208053
Customer Name: CITY OF MURFREESBORO
Billing Address: 4765 FLORENCE RD
 MURFREESBORO TN 37129-2926

Phone: **Email Inv to:**
Attn: MURFREESBORO CITY OF : TENNESSEE

Ship To: 208053
Company Name: CITY OF MURFREESBORO
Shipping Address: 4765 FLORENCE RD
 MURFREESBORO TN 37129-2926

Phone: 615 8933681
Attn: JOEY SMITH

Freight Terms: AGREED BILLABLE BY
 TRUCKLOAD

Purchase Order #: FORTHCOMING

Payment Terms : Net 30 Days

Special Instructions:


Quantity	Cust. SKU	Prefix	Prom Delivery	Part #	Description	Unit Price	Total
702		RPC	11/15/22	315854	95G EG GARBAGE ROC BLACK	65.0000	45,630.00
702		RPC	11/15/22	315854	95G EG GARBAGE ROC BLACK	65.0000	45,630.00




This acknowledgement is to confirm that your order has been received and processed. Delivery dates and freight rates are estimated and are subject to change. Rehrig Pacific will advise you of any changes to your order status as soon as these are known. Please notify of any changes to avoid a restocking fee.

Sub Total:	91,260.00
Freight:	2,130.00
Tax:	
Total: USD	93,390.00

Thank you for your partnership.

RPC ATLANTA., 1000 RACO CT , LAWRENCEVIL

ITEM SPECIFIC FORM		ITEM #: 315854	
Product Family: Roll Out Carts Pallet Label: Size/Quantity: 95G Surface Finish: Product/Style: EG Garbage Primary Color: ROC Black Required Regrind Type: Required Regrind Percent: Subcomponent: 236371 Primary Tech: RFID UHF Special Instructions:		Components Grab Bar/Reinforcement: MCB Axle: 95 Gal Snap on Axle 22.625" Wheel: 10" BMSO - 1.4" Spacer	
13 Eaches per stack 2 Stacks per layer Pallets per Unit Load Trays per Unit Load Lids Closed:NO Bags:NO		Pallet/Packaging: Floor Loaded 26 Eaches per Unit Load SlipSheet/Type of Tray: Stretch Wrap: None Banding:	
Decoration Name/Identifier: D173176 Decoration Description: CITY OF MURFREESBORO, TN Location: Side 2 & 4 - Standard Type: HS (Hot Stamp) Rotation: Color: White Proof Hyperlink: Special Instructions:			

SUB-COMPONENT		 PARENT #: 315854 ITEM: 236371	
Product Family: Roll Out Carts Size/Quantity: 95G Product Style: Lid Primary Color: ROC Black Sub-Component Color: Subcomponent: 236371 - 95GLIDPLACE WITH ARROWS TOWARD Primary Tech: Special Instructions:		Pallet Label: Surface Finish:	Components
Decoration Name/Identifier: D157200 Decoration Description: PLACE WITH ARROWS TOWARD STREE Location: Side 5 - Standard Type: HS (Hot Stamp) Rotation: Color: White Proof Hyperlink: Special Instructions:		 Place with arrows toward street. Place no more than 2 feet from street. 	



Order Acknowledgement

Order #: 563096 SO

Date: 10/18/2022

Sold To: 208053

Customer Name: CITY OF MURFREESBORO
Billing Address: 4765 FLORENCE RD
MURFREESBORO TN 37129-2926

Phone: **Email Inv to:**
Attn: MURFREESBORO CITY OF : TENNESSEE

Freight Terms: AGREED BILLABLE BY TRUCKLOAD

Purchase Order #: FORTHCOMING

Payment Terms : Net 30 Days

Special Instructions:

Ship To: 208053

Company Name: CITY OF MURFREESBORO
Shipping Address: 4765 FLORENCE RD
MURFREESBORO TN 37129-2926

Phone: 615 8933681
Attn: JOEY SMITH



Quantity	Cust. SKU	Prefix	Prom Delivery	Part #	Description	Unit Price	Total
702		RPC	11/15/22	315854	95G EG GARBAGE ROC BLACK	65.0000	45,630.00
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Decoration Name/Identifier: D173176 Decoration Description: CITY OF MURFREESBORO, TN Location: Side 2 & 4 - Standard Type: HS (Hot Stamp) Rotation: Color: White Proof Hyperlink: Special Instructions:				

SUB-COMPONENT			PARENT #: 315854 ITEM: 236371
Product Family: Roll Out Carts Size/Quantity: 95G Product/Style: Lid Primary Color: ROC Black Sub-Component Color: Subcomponent: 236371 - 95GLIDPLACE WITH ARROWS TOWARD Primary Tech: Special Instructions:		Pallet Label: Surface Finish:	Components
Decoration Name/Identifier: D157200 Decoration Description: PLACE WITH ARROWS TOWARD STREE Location: Side 5 - Standard Type: HS (Hot Stamp) Rotation: Color: White Proof Hyperlink: Special Instructions:		<div style="text-align: center;">  Place with arrows toward street. Place no more than 2 feet from street.  </div>	