

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
December 1, 2022

PRAYER

Madelyn Scales Harris

PLEDGE OF ALLEGIANCE

New Business

On Motion

1. Professional Services Contract (Administration)
2. Fountains at Gateway – Phase II (Administration)
3. Appointment of the Committee on Contributions for the Board of Trustees of the Community Investment Trust (Administration)
4. Wellness Service Agreement (Employee Services)
5. Stop Loss Insurance Agreement (Employee Services)
6. Use of Competitive Sealed Proposals for Banking Services for the City of Murfreesboro (Purchasing)
7. Transportation Investment Report – Lascassas Highway Widening (Transportation)
8. Transportation Investment Report - Old Fort Pkwy Widening (Transportation)
9. Rollins Contract for Brush and Limb Collection (Solid Waste)
10. Salem Barfield Sewer Improvements Award of Contract (Water Resources)
11. Solid Waste Management WastAway Project Agreement (Water Resources)

Board & Commission Appointments

12. Parks and Recreation Commission

Licensing

Payment of Statements

Other Business

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Professional Services Contract for Renovation of City Schools Ceilings

Department: Administration

Presented by: Scott Elliott, Project Development Manager

Requested Council Action:

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

Summary

Professional Services Contract for design of ceiling renovations at Hobgood and Mitchell Neilson elementary schools.

Staff Recommendation

Approve the contract with Johnson + Bailey Architects P.C.

Background Information

Design services are required to renovate ceilings at Hobgood and Mitchell Neilson school. The full scope of work properly abates existing asbestos waterline insulation, removal of existing splined wood ceiling, installation of new acoustical ceilings, relocate electrical conduits and communication cabling, and install new waterline insulation and thermal insulation around eaves at predetermined locations. Additional work is required to remove the original ceiling that needed to be removed but was merely covered some time ago.

Given the degree of construction and the disruption of existing asbestos materials, work is projected during the next summer when the school is vacant. The construction renovation contracts for each schools will bid separately.

Council Priorities Served

Maintain public safety

Renovating the school ceilings will continue to maintain a safe environment for students and staff.

Fiscal Impact

The contract cost, \$128,751, is accommodated within the project budget of \$2,100,000 which is funded by County Shared Bonds proceeds.

Attachments

1. Professional Services Contract with Johnson + Bailey Architects P.C.
2. County Shared Bond Proceeds Transfer Request

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Seventeenth (17th) day of October in the year Two Thousand Twenty Two (2022)

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

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

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

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

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

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

Ceiling Renovations at
Hobgood & Mitchell Neilson Elementary Schools
Murfreesboro, Tennessee
J+B No. 2212

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

See attached Johnson + Bailey Architects P.C. letter dated September 16, 2022.

§ 1.1.2 The Project's physical characteristics:

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

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

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

One Million, Eight Hundred Eighty Five Thousand, Three Hundred Fifty Eight Dollars (\$1,885,358.00)

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

.1 Design phase milestone dates, if any:

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As noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

.2 Construction commencement date:

As noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

.3 Substantial Completion date or dates:

As noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

(Paragraph deleted)

(Paragraphs deleted)

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Asbestos Abatement Consultant:

Kam Environmental, Inc.

(Paragraphs deleted)

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

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

None

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

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

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

§ 2.5.4 Workers' Compensation at statutory limits.

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

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

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional

insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations

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

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

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

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

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

3.1.8 In accordance with the standard of care, the Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants. Architect is responsible for coordination

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and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3 Design Development Phase Services

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

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

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

§ 3.4 Construction Documents Phase Services

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

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

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

§ 3.5.3 Negotiated Proposals

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

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

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

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

§ 3.6 Construction Phase Services**§ 3.6.1 General**

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

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

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

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

§ 3.6.2 Evaluations of the Work

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

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

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to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

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

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

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take

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appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

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

§ 3.6.5 Changes in the Work

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

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.21 Telecommunications/data design	Not Provided
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

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

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

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

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

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

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

§ 4.2 Architect's Additional Services

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b)

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contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

(Paragraphs deleted)

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

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

(Paragraphs deleted)

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

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

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

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

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

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

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ARTICLE 8 CLAIMS AND DISPUTES**§ 8.1 General**

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

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

(Paragraph deleted)

§ 8.2 Mediation

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

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

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

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

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

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

(Paragraphs deleted)

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect

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for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

(Paragraph deleted)

A Fixed Fee of \$128,751.00

(Paragraphs deleted)

.3 Other

(Describe the method of compensation)

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

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

Hourly Rates for services indicated in this Agreement.

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

Hourly Rates for services indicated in this Agreement.

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

Hourly Rates for services indicated in this Agreement.

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

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

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

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

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

Employee or Category	Rate (\$0.00)
Architectural Services	
Principal Architect	\$200.00 Per Hour
Staff Architect	\$150.00 Per Hour
Intern Architect	\$125.00 Per Hour
Field Representative	\$100.00 Per Hour
Draftsman	\$100.00 Per Hour
Administrative Personnel	\$ 65.00 Per Hour

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§ 11.8 Compensation for Reimbursable Expenses

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

(Paragraphs deleted)

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

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

(Paragraphs deleted)

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

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

(Paragraphs deleted)

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

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

(Paragraphs deleted)

§ 11.10 Payments to the Architect**§ 11.10.1 Initial Payments**

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

(Paragraph deleted)

§ 11.10.2 Progress Payments

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

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

Three Percent per annum

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

Init.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

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

Johnson + Bailey Architects P.C. letter dated September 16, 2022

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

City of Murreesboro

Johnson + Bailey Architects P.C.

OWNER (Signature)

Shane McFarland, Mayor

Date:

(Printed name and title)

ARCHITECT (Signature)

James Richard Pettit, President

Date: 10.21.22

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

Owner

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

(Signature)

Adam Tucker, City Attorney

Date: 11/7/2022

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

Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:15:28 ET on 10/17/2022.

PAGE 1

AGREEMENT made as of the Seventeenth (17th) day of October in the year Two Thousand Twenty Two (2022)

...

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

...

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

...

Ceiling Renovations at
Hobgood & Mitchell Neilson Elementary Schools
Murfreesboro, Tennessee
J+B No. 2212

PAGE 2

See attached Johnson + Bailey Architects P.C. letter dated September 16, 2022.

...

One Million, Eight Hundred Eighty Five Thousand, Three Hundred Fifty Eight Dollars (\$1,885,358.00)

PAGE 3

Noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

...

Noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

...

Noted in Johnson + Bailey Architects P.C. letter dated September 16, 2022

~~4 — Other milestone dates:~~

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

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

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

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

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

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

~~.1 — Geotechnical Engineer:~~

~~.2 — Civil Engineer:~~

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

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

...

.1 ~~Structural Engineer:~~ Asbestos Abatement Consultant:

Kam Environmental, Inc.

...

None

...

None

PAGE 4

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

...

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

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

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

...

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

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

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

operations

PAGE 5

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

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

...

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

...

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

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

PAGE 6

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

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

...

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's ~~approval~~ approval thereof. Owner's approval of the documents must be in writing to be binding against either party.
PAGE 7

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

...

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point of time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents and any adjustments or actions suggested by the Architect must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding.
PAGE 8

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

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

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

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

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

and assistance from the Architect, shall make final decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents: effect, Contract Sum and Contract Time..

PAGE 9

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

PAGE 10

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

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

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

PAGE 11

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

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

...

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

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User Notes:

(961491506)

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

PAGE 12

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

PAGE 13

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

...

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

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

...

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

...

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

...

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

PAGE 14

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

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

PAGE 15

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

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

substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

...

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

...

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

PAGE 16

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

...

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

...

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

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

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

PAGE 17

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

...

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

...

☒ Litigation in a court of competent jurisdiction

...

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

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

~~§ 8.3.4 Consolidation or Joinder~~

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

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

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

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

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

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

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

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

~~.1~~ — Termination Fee:

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

...

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

PAGE 19

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

...

.1 — Stipulated Sum
—— (Insert amount) A Fixed Fee of \$128,751.00

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

—— () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

...

Hourly Rates for services indicated in this Agreement.

PAGE 20

Hourly Rates for services indicated in this Agreement.

...

Hourly Rates for services indicated in this Agreement.

...

Schematic & Design	Thirty Five	percent (35	%)
Development Phase				
Design Development Phase		percent (%)
	Forty	percent (40	%)
Construction Documents				
Phase				
Procurement Phase	Five	percent (5	%)
Bidding or Negotiation Phase				
	Twenty	percent (20	%)

Construction Phase

...

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

...

Architectural Services

<u>Principal Architect</u>	<u>\$200.00 Per Hour</u>
<u>Staff Architect</u>	<u>\$150.00 Per Hour</u>
<u>Intern Architect</u>	<u>\$125.00 Per Hour</u>
<u>Field Representative</u>	<u>\$100.00 Per Hour</u>
<u>Draftsman</u>	<u>\$100.00 Per Hour</u>
<u>Administrative Personnel</u>	<u>\$ 65.00 Per Hour</u>

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

...

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

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

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

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

...

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

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

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

...

~~%—Three Percent per annum~~

PAGE 22

~~2 — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~— (Insert the date of the E203-2013 incorporated into this agreement.)~~

~~3 — Exhibits:~~

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

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

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

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

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

...

Johnson + Bailey Architects P.C. letter dated September 16, 2022

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

City of Murreesboro

Johnson + Bailey Architects P.C.

...

Shane McFarland, Mayor

Date:

James Richard Pettit, President

Date:

...

Owner

APPROVED AS TO FORM:

(Signature)

Adam Tucker, City Attorney

Date:

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James Richard Pettit, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:15:28 ET on 10/17/2022 under Order No. 2529373163 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)



Johnson + Bailey Architects P.C.

September 16, 2022

Mr. Scott Elliott
Manager of Project Development
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Re: Ceiling Renovations at
Hobgood & Mitchell-Neilson
Elementary Schools
J+B No. 2212

Dear Mr. Elliott:

It is our understanding that the City of Murfreesboro intends to renovate the ceilings at Hobgood Elementary School and Mitchell-Neilson Elementary School. Both schools have similar ceiling systems and were constructed and renovated at similar times. The current planned scope of work for each school building is as follows.

- 1) Remove existing suspended ceiling system, including tiles, grid and hanging wires. Existing 2x4 light fixtures are to be removed and stored for installation in new ceiling grid.
- 2) Remove existing spline ceiling and wood framing.
- 3) Properly abate existing water pipe insulation that is an asbestos containing material.
- 4) Install new 2X4 suspended acoustical tile ceiling system. Install existing light fixtures in new grid.
- 5) Install new acoustical batts on top on new suspended ceilings to reduce sound transmission between classrooms.
- 6) Detach existing electrical conduit, water piping, and low voltage (computer) wires at corridor ceilings from existing spline ceiling. Install new trapeze system above corridor ceilings. Attach these items to the new supports.
- 7) Install new water pipe insulation at locations where asbestos containing water pipe insulation was removed.
- 8) Close soffit vents and install thermal insulation at eaves (Hobgood only).

This scope of work is applicable at portions of each building that has a spline ceiling located above suspended ceilings (original building construction areas).

Work should be phased so that classroom contents may be moved to nearby classrooms for Phase 1, and reversed for Phase 2. The Owner will be responsible for moving these items at the appropriate times.

We understand that this work is to be performed during the 2023 summer break. Based on this information, we propose the following Project Schedule.

11-21-22 thru 1-2-23 (42 calendar days)	Prepare Bidding Documents
1-3-23 thru 1-24 & 26-23 (23 calendar days)	Bidding
1-27-23 thru 2-16-23 (20 calendar days)	City Council Approval of Low Bid
2-17-23 thru 3-10-23 (21 calendar days)	Execution of Contract
3-13-23 thru 5-26-23 (74 calendar days)	Procurement of Materials
5-29-23 thru 8-4-23 (67 calendar days)	Construction



Mr. Scott Elliott
Ceiling Renovations at
Hobgood & Mitchell-Neilson
Elementary Schools
September 16, 2022
Page 2

In order to complete this work within the 67 calendar days of summer break, we recommend that each school be bid separately, one on a Tuesday and the other on the following Thursday. This will allow the successful bidder on the first school to not bid the second. It is our opinion that two separate General Contractors will be needed to complete the work during summer break.

If you should have any questions concerning the above or attachments, please do not hesitate to call.

Sincerely,

JOHNSON + BAILEY ARCHITECTS, P.C.

A handwritten signature in black ink, appearing to read 'R. Lyle Lynch', written over a horizontal line.

R. Lyle Lynch, Architect

cc: Trey Duke
Ralph Ringstaff
Larry Willeford
Brandon Richardson

encl: Spreadsheet titled Ceiling Replacement Proposed Budget - Mitchell-Neilson
Elementary School, dated 9-16-22
Spreadsheet titled Ceiling Replacement Proposed Budget - Hobgood Elementary
School, dated 9-16-22

[illegible]

Ceiling Replacement Proposed Budget - Mitchell-Neilson Elementary School



... creating a better quality of life

County Shared Bond Proceeds Transfer Request

Mr. Tindall:

Submitted for your approval is the following request to transfer County Shared Bond Proceeds.

Transfer funds from:

Cooling Towers \$ (117,127.40)

Playgrounds \$ (928,875.00)

Transportation Building \$ (1,109,508.60)

Transfer funds to:

Ceiling & Window Replacements \$ 2,155,511.00

TOTAL TRANSFER \$ (2,155,511.00)

TOTAL TRANSFER \$ 2,155,511.00

Explanation: CIP projects for Murfreesboro City Schools included on the FY22 CIP Summary Schedule are funded by County Shared Bond proceeds. It has been requested that \$2,155,511.00 be reallocated from the three projects listed above to a new project - Ceiling & Window Replacements.

Budget Director Signature

Date

11-28-22

Reviewed by Finance

Date

11/22/2022

Approved



City Manager

Declined



Date

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

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Fountains at Gateway – Phase II

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

Prepare for Closing the conveyance of Phase 2A property to Fountains at Gateway.

Staff Recommendation

Approve Pre-Closing Memorandum, Fourth Amendment to Agreement for Conveyance of Real Estate – Modification of Phase 2 Option, Mutual Cross-Access and Cross-Parking Agreement, and Lien to Secure Performance – Phase 2A with The Fountains at Gateway, LLC, and authorize Mayor and City Manager to sign on behalf of the City and close on the property.

Background Information

The Fountains at Gateway (TFG) proposes to exercise an option to purchase Parcel 2A for the continuation of the development of the project. Initial construction will include excavation for underground parking and construction of a four-story, mixed-use building. A second building will include office and retail space along with two floors of for-sale residential condos. The land to be conveyed is outlined on Attachment 1.

The option provides for a transfer of the property for the Phase 2 property as adjusted in accordance with the number of jobs brought to in Phase 1 of the development. TFG has submitted the appropriate substantiation for the job-creation credit. Furthermore, Phase 2A will develop additional Class A office space, which is lacking in the City for economic development standpoint. Currently, the property generates no tax revenue and development will add to the property tax rolls and Development of the project Significant property taxes and sales taxes will be generated by the Phase 2 development

Council Priorities Served

Improve economic development

Incentives for economic development project advances and enhances job creation, amenities, and tax revenues all of which benefit the community.

Fiscal Impact

No immediate impact. Post-development tax revenues will enhance the City's revenues.

Attachments

1. Site Plan for Phase 2; the Phase 2A property is outlined in red.
2. Pre-Closing Memorandum.
3. Fourth Amendment to Agreement for Conveyance of Real Estate – Modification of Phase 2 Option.
4. Mutual Cross-Access and Cross-Parking Agreement.
5. Lien to Secure Performance.

PRE-CLOSING MEMORANDUM

The City of Murfreesboro ("City") and Scott Graby (together with permitted assigns, "Graby") (each sometimes a "Party" and together sometimes the "Parties") are parties to that certain Agreement for Conveyance of Real Estate dated March 15, 2015, as amended (the "Agreement"). Pursuant to the Agreement, Graby intends to close (the "Closing") of the purchase of Parcel 2A, containing approximately 4.96 acres substantially as shown on **Exhibit A**, on or before December 31, 2022. In order to prepare for and to consummate the Closing in an orderly manner the Parties agree to do the following:

1. Graby will obtain a survey from a Tennessee licensed surveyor of the areas to be included in Parcel 2A and 2B, and will provide the survey to the City for review and acceptance.

2. Graby will obtain a title commitment from Lawyers Land and Title, and at the Closing will be responsible for obtaining a Title Policy in such amount as Graby determines. Lawyers Land and Title will prepare a Special Warranty Deed to transfer Parcel 2A to Fountains at Gateway, LCC, and will handle the Closing for both Parties.

3. The Agreement provides for a purchase price for Phase 2 property of \$5.00 / sq. ft., subject to jobs created adjustment. The City accepts that Graby is entitled to a purchase price adjustment such that the approx. 4.96 acres of Parcel 2A will transfer without payment of any cash consideration. The Parties agree that the Deed for Parcel 2A shall recite "good and valuable mutual considerations, the receipt and sufficiency of which is hereby irrevocably acknowledged and confirmed," and that the recited value for transfer tax purposes should be calculated at \$5.00 / sq. ft.

4. Pursuant to the Agreement, Graby commits to substantially begin construction of Building 2A within 18 months after the Parcel 2A Closing, subject to force majeure. In order to secure that commitment, Graby will execute at Closing a Lien to Secure Performance allowing the City to "claw back" parcel 2A if Graby fails to perform. The City agrees that this Lien may be subordinate to liens securing construction funding.

5. The Parties agree that the 2-lane access driveway across the front of the 2B property shall be constructed to City street specification standards (except for sidewalks and setbacks).

6. The Parties will enter into a mutual cross-access / cross-parking easement agreement to provide that any future development on Option Parcel 3 shall have access and parking rights to the driveways and parking areas constructed on Parcel 1 and to be constructed on Parcel 2, and vice versa, regardless of whether Parcel 3 is developed by Graby. The point of this easement agreement is to assure that the entire 31 +/- acres of Parcels 1, 2 and 3 be developed as in a coordinated, unified manner regardless of who develops Parcel 3.

7. At or prior to the Closing, the Parties will enter into a Fourth Amendment to the Agreement to provide for certain additional modifications to the original Agreement.

8. The Closing shall take place at the offices of Lawyers Land Title at a date to be mutually agreed upon by the Parties. At the Closing the Parties will execute all appropriate Closing documents as provided in the Agreement in addition to the documents referenced above.

SIGNED to be effective as of the date of the last Party to sign.

CITY OF MURFREESBORO

SCOTT GRABY

By _____
Shane McFarland, Mayor
Date: _____

Date: _____

ATTEST:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

Approved by Murfreesboro City Council: _____, 2022.

**FOURTH AMENDMENT TO AGREEMENT FOR
CONVEYANCE OF REAL ESTATE -
EXTENSION OF PHASE 2 OPTION**

This Fourth Amendment to Agreement for Conveyance of Real Estate – Modification of Phase 2 Option (“Fourth Amendment”) is by and between the City of Murfreesboro, Tennessee, a municipal corporation (“City”) and Fountains at Gateway, LLC, as assignee of and successor to Scott Graby, (“Fountains”), together, (the “Parties”). City understands that Fountains may assign this Fourth Amendment for the purpose of an IRS 1031 Exchange.

WHEREAS, the following facts exist:

A. The Parties or their predecessors entered into an Agreement for Conveyance of Real Estate effective March 19, 2015 (the “Agreement”), amended by a First Amendment to Agreement for Conveyance of Real Estate dated April 20, 2015 (the “First Amendment”), and further amended by a Second Amendment to Agreement for Conveyance of Real Estate dated April 13, 2017 (the “Second Amendment”), and further amended by a Third Amendment to Agreement for Conveyance of Real Estate – Extension of Phase 2 Option dated November 4, 2021 (“Third Amendment”). Section 15 of the Agreement granted Graby an option to purchase certain defined “Phase 2” property (the “Phase 2 Option”).

B. The Fountains is designed to serve as a mixed-use environment attractive to employers bringing white-collar employment opportunities to the City. The Parties agrees that the additional development outlined herein will create the cutting-edge technological elements currently desired by corporate tenants. The City believes that the projects identified by Graby will support the City’s goals of attracting high-quality, white-collar jobs along with providing the amenities such as restaurants and retail space required for modern office environment and which will create significant direct and indirect tax revenues supportive of the City’s services to the community as a whole.

NOW THEREFORE, for good and valuable mutual considerations, including but not limited to the benefits expected to be derived by both Parties, the receipt and sufficiency of all of which is hereby irrevocably acknowledged and confirmed, the Parties agree as follows:

1. The Parties agree that Sec. 15 of the Agreement shall, from this date forward, be further modified as follows:

A. Section 15.H.(ii) by deleting the words “after the Phase 2 Closing Date” and replacing them with the words “after the commencement of vertical construction.”

B. The first sentence of Sec. 15.I. shall be modified by deleting the words “or any portion of such Phase 2 Property” from the second line and replacing them with the word “Land.”

C The first line of the last paragraph of Sec. 15.I. shall be modified by deleting the word “Property” and replacing it with the word “Land.”

2. All other provisions of the Agreement, the First Amendment, and the Second Amendment, and Third Amendment shall remain in full force and effect as written.

3. This Fourth Amendment shall be binding on the Parties together with any permitted successors or assigns.

4. This Fourth Amendment shall be effective as of the date of the last party to sign, provided that in no event will this Fourth Amendment be effective until approved by the Murfreesboro City Council.

CITY OF MURFREESBORO

By _____
Shane McFarland, Mayor
Date: _____

FOUNTAINS AT GATEWAY, LLC

By _____
Scott Graby, _____
Date: _____

ATTEST:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

Approved by Murfreesboro City Council: _____, 2022.

Prepared by:
David A. Ives
Deputy City Attorney
111 W. Vine Street
Murfreesboro TN 37130

MUTUAL CROSS-ACCESS AND CROSS-PARKING EASEMENT AGREEMENT

The parties to this Mutual Cross-Access and Cross-Parking Easement Agreement ("Easement Agreement") are the City of Murfreesboro ("City") and Scott Graby and Fountains at Gateway, LLC (together, "Fountains"), each sometimes described as a "Party" and together sometimes described as the "Parties."

WHEREAS the following facts exist:

A. Fountains is the owner of Parcel 1, is in the process of acquiring Parcel 2A, and has an option to acquire Parcel 2B as shown on the attached Exhibit A. Parcels 1, 2A, and 2B are more particularly described on the attached Exhibit B.

B. The City is the owner of Parcel 3 as shown on the attached Exhibit A and more particularly described on attachment C; Fountains has an option to acquire Parcel 3.

C. The Parties desire to provide for certain rights and responsibilities as between the Parcels and developers of the Parcels as described herein with respect to future development.

NOW THEREFORE, for good and valuable mutual considerations, including but not limited to the value, convenience, appearance, and functionality of the future development of all parcels, the receipt and sufficiency of which is hereby irrevocably acknowledged and confirmed, the Parties agree as follows:

1. It is the intention of the Parties and the purpose of this Easement Agreement that Parcel 3 shall be developed in such a manner that the entirety of Parcels 1, 2 and 3 shall appear to be and shall function as a single, cohesive development, regardless of whether Parcel 3 is developed by Fountains or by another developer.

2. Fountains, for itself, its successors and assigns, hereby grants to the City, as the owner of Parcel 3, together with the owners, occupants, and visitors to Parcel 3, an irrevocable right to utilize all currently existing and constructed in the future private street / access drives on Parcel 1 and Parcel 2 for access to Parcel 3.

3. The City, for itself, its successors and assigns, hereby grants to Fountains, together with the owners, occupants, and visitors to Parcel 1 and Parcel 2, an irrevocable right to utilize all currently existing and constructed in the future private street / access drives on Parcel 3 for access to Parcel 1 and Parcel 2.

4. In the event that the developer of Parcel 3 is a person or entity other than Fountains or an affiliate of and controlled by Fountains, prior to the issuance of construction permits for Parcel 3 the developer shall cause a Parking Study to be conducted by a consultant acceptable to the City and Fountains to assure that the parking on all three Parcels provides for all contemplated daytime, nighttime, and special event uses. Subject to any limitations or conditions proposed by or in such Parking Study and accepted by all parties:

A. Fountains, for itself, its successors and assigns, hereby grants to the City, as the owner of Parcel 3, together with the owners, occupants, and visitors to Parcel 3, an irrevocable right to utilize all currently existing and constructed in the future surface parking spaces on Parcel 1 and Parcel 2, unless marked as reserved for specific use.

B. The City, for itself, its successors and assigns, hereby grants to Fountains, as the owner of Parcel 1 and Parcel 2, together with the owners, occupants, and visitors to Parcel 1 and Parcel 2, an irrevocable right to utilize all currently existing and constructed in the future surface parking spaces on Parcel 3, unless marked as reserved for specific use.

5. It is the intention of the Parties that the rights and obligations herein created shall run with the land and be binding on all future owners of all or any portion of Parcel 1, Parcel 2, and Parcel 3.

6. The Parties agree and acknowledge that temporary closures of any private street / access drives for maintenance or repairs or by utility providers for maintenance / repair work shall not constitute a violation of this Easement Agreement.

7. The Parties agree and acknowledge that temporary closures of any private street / access drives for special events or functions shall not constitute a violation of this Easement Agreement so long as other reasonable access between and among the Parcels is available.

8. In the event of litigation between or among any of the Parties, the substantially prevailing party shall be entitled to recover its reasonable attorney fees and cost of court, in addition to any other relief or recovery obtained.

9. Each Party covenants that it is lawfully seized and possessed of said Parcels; that it has a good and lawful right to transfer and convey said easements; and that said Parcels are unencumbered except for applicable zoning regulations, liens and restrictions of record, and as otherwise set forth herein.

10. Each Party hereby covenants and agrees to warrant and defend the title to said easement unto the other, its successors and assigns, against the lawful claims of all persons.

CITY OF MURFREESBORO

By: _____

Name: **Shane McFarland**

Title: **Mayor**

Attest:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

FOUNTAINS AT GATEWAY, LLC

By: _____

Name: _____

Title: _____

Scott Graby, Individually

Notary Blocks on following pages

STATE OF TENNESSEE)

: ss

COUNTY OF RUTHERFORD)

Before me, the undersigned notary public, personally appeared **SCOTT GRABY**, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged such person(s) to be member(s) of **FOUNTAINS AT GATEWAY, LLC**, the within named bargainor, a Tennessee limited liability company, and that such person(s), as such member(s), executed the within instrument for the purposes therein contained, by signing the name of the limited liability company by such person(s) as member(s).

Witness my hand and seal, this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____ (SEAL)

STATE OF TENNESSEE)

: ss

COUNTY OF RUTHERFORD)

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

Witness my hand and seal, this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____ (SEAL)

)

: SS

)

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared **SCOTT GRABY, individually**, with whom I am personally acquainted or who proved to me on the basis of satisfactory evidence, executed the within and foregoing instrument for the purposes therein contained, by signing thereto his name, and by attesting said instrument.

Witness my hand and seal, this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____ (SEAL)

This Instrument Prepared By:
David A. Ives
Deputy City Attorney
City of Murfreesboro
11W. Vine Street
Murfreesboro, TN 37130

**THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING
TAX PURPOSES IS EXEMPT.**

Tax Map 091 Part of Parcel 2.00

LIEN TO SECURE PERFORMANCE – PHASE 2A

THIS LIEN TO SECURE PERFORMANCE – Phase 2A (“Lien”) is executed this _____ day of _____, 2021, among **FOUNTAINS AT GATEWAY, LLC**, a Tennessee Limited liability Company (“Fountains”) and **CITY OF MURFREESBORO**, a municipal corporation in Rutherford County, Tennessee (“City”).

Fountains, as successor to Scott Graby, and in consideration of the obligations undertaken by him in that certain Agreement (the “Agreement”) between Graby and City effective as of March 19, 2015, as amended by a First Amendment to Agreement Conveyance of Real Estate dated April 20, 2015, a Second Amendment to Agreement for Conveyance of Real Estate dated April 13, 2017, and by a Third Amendment to Agreement for Conveyance of Real Estate, and by a Fourth Amendment to Agreement for Conveyance of Real Estate dated _____, 2022 (altogether, the “Agreement”). which obligations are summarized below, and in order to secure the performance of those obligations, irrevocably grants and conveys to the City, this Lien over

**Parcel 2A, The Fountains at Gateway
Tax Map 91, Parcel**

located in the 25th Civil District of Rutherford County, Tennessee, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Property”).

Source of title being instrument of record at Record Book _____ page _____, RORC.

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights and water stock, and all structures or fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property.

Fountains covenants that it is lawfully seized and possessed of said Property in fee simple, has a good right to convey it, and that the same is unencumbered except for the permitted encumbrances listed in an attachment to the Deed referenced above.

Fountains further covenants and binds itself, its successors and assigns, to warrant and defend the title to said City, or its successors and assigns forever, against the lawful claims of all persons.

The obligations of Fountains secured by this Lien are summarized as follows:

1. If Fountains fails to have substantially begun vertical construction of the Phase 2A Office Building within 18 months after closing the Phase 2a purchase, subject to Force Majeure, it will re-convey the entire Phase 2A property back to the City for an amount equal to the amount paid by Fountains at the Phase 2 closing. The City will have the right to extend this deadline if the City, in its sole discretion, determines that an extension is in the City's best interest.

2. If Fountains fails to have received a Certificate of Occupancy for the Phase 2-A Office Building within 24 months after the commencement of vertical construction on the Phase 2Aoffice building, subject to Force Majeure, the City can offer a time extension and/or cancel the Phase 3 Option contained in the Agreement.

3. Fulfillment of Obligations. Fountains shall promptly fulfill all of its obligations under the Agreement secured by this Lien.

4. Charges, Liens. Fountains shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Lien when due, directly to the payee thereof. If Fountains fails to do so, the City can offer a time extension or cancel any remaining Options.

5. Preservation and Maintenance of Property. Fountains shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

6. Fountains Not Released. Extension of the time for performance of any obligation secured by this Lien granted by the City to Fountains or any successor in interest of Fountains shall not operate to release, in any manner, the liability of Fountains or any Fountains successor in interest.

7. Forbearance by City Not a Waiver. Any forbearance by City in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

8. Remedies Cumulative. All remedies provided in this Lien are distinct and cumulative to any other right or remedy under this Lien or afforded by law or equity, and may be exercised concurrently, independently or successively.

9. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of City and Fountains, provided that the City shall have the right to consent to any voluntary assignment by Fountains, which consent will not be unreasonably withheld. The captions and headings of the paragraphs of this Lien are for convenience only and are not to be used to interpret or define the provisions hereof.

10. Governing Laws; Severability. This Lien shall be governed by the laws of the State of Tennessee. In the event that any provisions or clause of this Lien conflicts with the applicable law, such conflict shall not affect other provisions of this Lien which can be given effect without the conflicting provision, and to this end the provisions of the Lien are declared to be severable.

11. Release. Upon performance of all obligations secured by this Lien, City shall release this Lien without charge to Fountains but Fountains shall pay all costs of recordation.

12. Future Subdivision. This Lien shall not be construed to prohibit Fountains from subdividing the Property provided that any such subdivision must be in accordance with all applicable laws and regulations and provided further that this Lien shall be modified so that the lien of this Lien shall attach to all lots or parcels into which the Property is subdivided.

13. Use of Terms. Any reference to "Fountains" or "City" shall be construed in the appropriate number and gender.

14. Conflicting Provisions. In the event of a conflict between the provisions of this Lien and the provisions of the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, Fountains and the City have executed this Lien as of the date first above written.

CITY OF MURFREESBORO

FOUNTAINS AT GATEWAY, LLC

By: _____

By: _____

Name: **Shane McFarland**

Name: _____

Title: **Mayor**

Title: _____

Attest:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

notary blocks on following page

STATE OF TENNESSEE)
 : ss
COUNTY OF RUTHERFORD)

Before me, the undersigned notary public, personally appeared **SCOTT GRABY**, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged such person(s) to be member(s) of **FOUNTAINS AT GATEWAY, LLC**, the within named bargainor, a Tennessee limited liability company, and that such person(s), as such member(s), executed the within instrument for the purposes therein contained, by signing the name of the limited liability company by such person(s) as member(s).

Witness my hand and seal, this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____ (SEAL)

STATE OF TENNESSEE)
 : ss
COUNTY OF RUTHERFORD)

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

Witness my hand and seal, this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____ (SEAL)

COUNCIL COMMUNICATION

Meeting Date: 12/1/2022

Item Title: Appointment of the Committee on Contributions for the Board of Trustees of the Community Investment Trust

Department: Mayor's Office

Presented by: Mayor McFarland

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

Appointment of the Committee on Contributions.

Background Information

Council has considered applications submitted for the Committee on Contributions. The Committee, composed of five to nine members, recommends to the Board of Trustees contributions to be made to charitable organizations that benefit the community.

To assure continuity of the Committee, members will initially serve one-, two-, and three-year terms and three-year terms thereafter. Once the appointment is made, unless Council directs a different means for the assignment of terms, a random number generator will be used to establish the initial term.

Candidates for appointment are:

Gary Green	Lyle Lynch
Wade Hays	Ronnie Martin
Gabe Helms	Claire Maxwell
John Hinkle	Carl Montgomery
Lynn Lien	Collier Andress Smith

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Wellness Service Agreement for 2023
Department: Employee Services
Presented by: Randolph Wilkerson, Employee Service Director
Requested Council Action:

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

Summary

Agreement with a healthcare organization for wellness reward services for the City's benefits plans.

Staff Recommendation

Approve agreement with WellSpark Health, Inc. to provide wellness reward services for our employees

Background Information

After a thorough RFCSP process staff recommends using WellSpark Health, Inc. for wellness reward services for our employees. The wellness reward services empower our employees with health education and lifestyle skills that enable them to achieve their best possible health.

The expense of the program is stable over the next two years at \$48,468 and is \$51,930 for year three. The total expenses for the three-year agreement is \$149,096.

Council Priorities Served

Responsible budgeting

A wellness program assists in decreasing the number and amount of health care claims made on the City's self-fund health insurance fund and are, therefore, important to reduce the amount the City and employees must contribute to that fund.

Fiscal Impact

The expense, \$48,968, will be funded by the Department's operating budget.

Attachment

WellSpark Health, Inc. Wellness Reward Agreement

This Agreement is entered into and effective as of the ____ day of December, 2022, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **WellSpark Health, Inc.**, a Corporation of the State of Connecticut ("Contractor").

This Agreement consists of the following documents:

- This document
- RFCSP-01-2023 – Employee Wellness and Rewards Program, issued July 19, 2022 (the "Solicitation");
- Contractor's Proposal, dated August 4, 2022 ("Contractor's Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- 1.1 Contractor is engaged to provide a Wellness Rewards Program for the City of Murfreesboro as set forth in Exhibit A "Account Summary" attached hereto and incorporated by reference into this Agreement.
- 1.2 In undertaking the work set forth herein, Contractor must comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.

2. Term.

- 2.1 The term of this Agreement commences on January 1, 2023, and expires on December 31, 2026, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein.
- 2.2. Termination. Contractor's services may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. Contractor or the City may terminate this Agreement at any time upon delivery of a thirty (30) calendar day written notice to the other Party in the event of any fraud or material misrepresentation by the other Party. In addition, either Party may terminate this Agreement at any time upon delivery of a thirty (30) calendar day written notice to the other Party (the "Defaulting Party") in the event of any

failure by the other Party to comply in any material respect with any material provision of this Agreement that is not cured in all material respects within the thirty (30) day notice period.

- d. 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. Pricing. The Administrative Fee for Wellness Services provided hereunder to the City shall be as set forth in Contractor's Proposal, Section 7.8, Fees as a price per employee per month ("PEPM"):

- a. Contract Period 1/1/2023 - 12/31-2024 – Admin Fee PEPM: \$3.30
- b. Contract Period 1/1/2024 - 12/31/2025 – Admin Fee PEPM: \$3.50
- c. Contract Period 1/1/2025 - 12/31/2026 – Admin Fee PEPM: \$3.75
- d. Implementation Fee - \$3000.00

4. Compensation; Method of Payment. The City shall pay the Fees on a monthly basis. Invoices will be delivered to the City by the 15th of each calendar month and payments shall be due and payable within thirty (30) days of the invoice date. Fees for any Custom Development Services (if applicable) will be invoiced upon completion of development work and/or as defined in the Statement of Work.

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

6. Intellectual Property Use and Ownership.

- a. Intellectual Property Use. Contractor grants to the City, and the City accepts, a non-exclusive, non-transferable, revocable right to access and to use WellSpark Health Inc. Property, as applicable to Wellness Services provided under this Agreement. The City expressly acknowledges that WellSpark Health, Inc. Property is provided under license to the City and that WellSpark Health, Inc. Property is made available to the City and the City's Covered Persons only for the purposes stated in this Agreement and only during the Term of this Agreement. The City shall take reasonable security measures to prevent unauthorized access to or use of WellSpark Health, Inc. Property and shall notify Contractor in the event it identifies any unauthorized access or use.
- b. Restrictions On Intellectual Property Use. The City agrees not to reproduce WellSpark Health, Inc. Property except as may be required for the sole purpose of accessing or using WellSpark Health, Inc. Property pursuant to this Agreement. The City further agrees not to distribute or display WellSpark Health, Inc. Property, to create derivative works based on WellSpark Health, Inc. Property, or to access or use WellSpark Health, Inc. Property in any manner not expressly permitted under this Agreement. The City agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or trade secrets from any software or proprietary materials of WellSpark Health, Inc. and/or its subcontractors, lessors or licensors.

- c. Intellectual Property Ownership. Each Party shall remain the owner of all Intellectual Property it owns prior to the Effective Date and that which it creates in the performance of its obligations under the Agreement. Contractor and/or its subcontractors, lessors, and licensors are, and shall remain the sole and exclusive owner of their respective WellSpark Health, Inc. Property and any and all components thereof, whether owned on the Effective Date or acquired thereafter. Upon the expiration or termination of the Agreement or applicable Statement of Work, as the case may be, the City shall promptly return to Contractor (or at Contractor's request, destroy), all such WellSpark Health, Inc. Property in its possession or control

6. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (1) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (2) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

7. **Indemnification.**

- 7.1 WellSpark Health, Inc. shall indemnify, defend, and hold harmless the City, its affiliates and permitted assigns (and all officers, directors, employees and agents thereof) (collectively, the "City Indemnitees") from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, suits, causes of action, costs, expenses, and/or damages which the City Indemnitees may suffer, incur, be responsible for, or pay out (either individually or collectively) as a result of claims brought by third-parties, governmental entities, or WellSpark Health, Inc's employees or representatives -- including but not limited to such claims alleging injuries (including death) to any person, damage or loss to any property or property rights, or any actual or alleged violation of applicable federal, state or local statutes, ordinances, orders, rules, or regulations of any governmental entity or agency -- caused directly by or directly arising from or out of: (a) WellSpark Health, Inc's breach of this Agreement; or (b) any willful, negligent, wrongful, or illegal acts or omissions of WellSpark Health, Inc, its employees, agents, representatives and/or subcontractors. WellSpark Health, Inc 's obligations to defend and indemnify the City Indemnitees under this Section shall be reduced by the proportionate extent, if any, that the indemnified claim arises from the negligent act or omission or intentional misconduct of the applicable the City Indemnitee(s). WellSpark Health, Inc 's indemnity liability under this Section, including indemnification of attorneys' fees and other defense costs, shall be limited to one million dollars (\$1,000,000) for any single qualifying occurrence and two million dollars (\$2,000,000) aggregate during the Term of this Agreement (the "Indemnity Caps").
- 7.2 If a claim covered by the foregoing indemnities is asserted against the City, the City shall promptly give WellSpark Health, Inc. written notice thereof. The City shall extend its full cooperation in connection with the defense provided by the WellSpark Health, Inc, subject to reimbursement for all reasonable out-of-pocket expenses incurred by the City in providing such cooperation. If WellSpark Health, Inc. fails to defend a claim within a reasonable time, which time shall not extend beyond the date the City is required to file an answer or other responsive pleading to the pending claim, the City shall be entitled to assume defense of the claim and WellSpark Health, Inc shall be bound by the results

obtained by the City with respect to such claim.

7.3 Copyright, Trademark, Service Mark, or Patent Infringement.

- a. 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.
- b. 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.
- c. 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: WellSpark Health, Inc. Attn: Benjamin Milstien 175 Scott Swamp Road Farmington, CT 06032 bmilstien@wellsparkhealth.com
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9. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.**
 - 14.1 It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of

contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

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

City of Murfreesboro, Tennessee

WellSpark Health, Inc.

By: _____
Shane McFarland, Mayor

By: _____
Roberta Wachtelhausen, President

Approved as to form:

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Self-funded Insurance Fund Stop Loss Coverage
Department: Human Resources
Presented by: Randolph Wilkerson, Director of Employee Services
Requested Council Action:

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

Summary

Purchase of stop loss insurance for the City's self-funded health plan.

Staff Recommendation

Approve the agreement with Blue Re of Tennessee for the purchase of stop-loss insurance.

Background Information

An Invitation to Bid was issued by the City for stop-loss coverage. Stop loss coverage provides coverage for claims above a certain amount made against the City's self-funded insurance retention. The City received one bid which was from BlueRe of Tennessee, which was accepted.

This insurance covers the Insurance Fund for individual claims above \$150,000 and \$200,000 aggregating specific deductible. The estimated total cost is \$894,734, which will be funded by the Insurance Fund. The actual total cost of the coverage will vary depending on the number of covered individuals. The single rate is \$27.71, and the family rate is \$76.55. This proposal includes no contingencies and a 45% rate cap maximum increase at renewal. Additionally, the proposal contains no provisions for coverage attachment points for certain plan members based on their prior claims experience, which can be a negative for stop-loss coverage. An agreement for coverage has been provided to the City.

Council Priorities Served

Strong and Sustainable Financial and Economic Health

The City purchases Stop Loss Insurance for its employee health insurance benefits when a claim exceeds normal limits under the City's regular health insurance contract, which is currently administered by Blue Cross Blue Shield of Tennessee.

Fiscal Impact

The estimate cost of coverage, \$894,734, is funded by the Insurance Fund.

Attachment

BlueRe of Tennessee Stop Loss Proposal Agreement



1 Cameron Hill Circle, Chattanooga, TN 37402

STOP LOSS INSURANCE PROPOSAL FOR:

City of Murfreesboro

Proposal #: SLP451216

Plans Administered by Blue Cross Blue Shield of Tennessee

BCBST Networks Utilized: Network P
BCBST Representative: Brian Turner
Broker: Reas, Debra

Proposal Date: 11/04/2022

Valid Through: 11/30/2022

Effective Date: 01/01/2023

Contract Duration: 12 Months

SPECIFIC STOP LOSS COVERAGE

		Option 1	Option 2	Option 3
Basis Of Coverage		Other	Other	Other
Specific Attachment Point		\$150,000	\$175,000	\$175,000
Aggregating Specific Deductible		\$200,000	\$200,000	\$175,000
Coverage To Be Included		Medical, Rx Card	Medical, Rx Card	Medical, Rx Card
Specific Policy Period Maximum Reimbursement		Unlimited	Unlimited	Unlimited
Specific Lifetime Maximum Reimbursement		Unlimited	Unlimited	Unlimited
Rate Per Month	Covered Units			
Single	594	\$27.71	\$23.97	\$24.66
Family	759	\$76.55	\$65.74	\$67.94
Total Lives	1,353			
Estimated Monthly Premium		\$74,561	\$64,135	\$66,215
Estimated Annual Premium		\$894,734	\$769,618	\$794,574
Rate(s) includes Commissions of		0.00%	0.00%	0.00%

Plans Administered by:





1 Cameron Hill Circle, Chattanooga, TN 37402

STOP LOSS INSURANCE PROPOSAL FOR:

City of Murfreesboro

Proposal #:

SLP451216

UNDERWRITING NOTES:

We have reviewed your updated paid claims, prognosis and case management information through 10/28/2022. The attached proposal is a firm offer. You must acknowledge acceptance of the terms in this proposal by returning a signed copy no later than the end of the business day on 11/30/2022. Please indicate which option is chosen. Failure to remit the signed proposal by 11/30/2022 will require submitting updated claims information for our review.

NOTE: The actual Excess Loss contract type on this case is 126/12 (not "Other" as indicated on Page 1). Claims incurred July 1, 2013 through December 31, 2023 and Paid January 1, 2023 through December 31, 2023.

The actual Excess Loss contract type on the Murfreesboro Electric Department retirees on this case are incurred in 49 months and Paid in 12 months. Claims incurred from 12/1/2019 through 12/31/2023 and Paid from 01/01/2023 through 12/31/2023.

There are some items that are important for you to remember as you review our proposal:

- a. Outstanding contingencies must be received no later than 7 days after the effective date.
- b. A 45% Rate Cap with no new lasers at renewal is included in this proposal*.

* The Specific Stop Loss Rate Cap Option also applies to the Aggregating Specific deductible. The Specific Stop Loss Rate Cap assumes there are no material changes to the groups plan such as revisions in the plan design, the specific deductible, contract change, commissions or PPO network. The Specific Rate Cap only applies to the group's next renewal, not subsequent renewals.

Assumptions:

1. Specific coverage includes Medical & Rx benefits.
2. Our proposal assumes that the number in each benefit plan option will remain the same or within 10% of current enrollment. We reserve the right to re-rate this proposal if the benefit plan enrollment changes more than 10%.
3. The PPO to be utilized for the proposed coverage period is reflected on page 1 of this proposal. If the PPO differs from what is stated, rates in this proposal are subject to change.
4. Our contract assumes that the policyholder's benefit plan document is in compliance with all applicable legislation. A valid copy of the benefit plan must be received within 45 days of the effective date. No policy will be issued or claim paid until the benefit plan document has been reviewed and approved by underwriting. Any deviation from the benefit plan upon which the sold proposal was based may result in a change to the terms of coverage.
5. Stop Loss coverage is for non-occupational injuries and illnesses.
6. This proposal expires at the end of the "Valid Through" date stated on Page 1 of the proposal. It is based on the data submitted to us in the prospect specifications. Any inaccuracy in the data will require revised calculations.
7. These rates are based on the "current" plan of benefits.
8. This proposal assumes the continuation of BCBS of Tennessee as the PPO and TPA.
9. Total group enrollment increases or decreases of more than 10% require re-rating.
10. This proposal assumes All retirees are participating in the covered benefit plan and were included in the census and claims provided.
11. The aggregating specific deductible must be satisfied before reimbursement of specific stop loss claims.
12. This proposal assumes that standard BCBST language for transplants has been elected.
13. Applicable state taxes are included in the premium charged. State assessments, if applicable, are not covered and will be billed separately to the policyholder.
14. We elect the Immediate Reimbursement option (if available). It is understood that all premiums and administrative fees related to our stop loss coverage, medical administration and ancillary services will be paid via ACH debit.

Policyholder Initials: _____

Plans Administered by:



Initial the selected proposal option:

	Option 1	Option 2	Option 3
Selection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Initials:			

This proposal includes a rate page, all accompanying notes, contingencies, assumptions and a signature page. Rates, Deductibles and Factors are based on the data provided to us. Inaccurate or incomplete data may require changes in the terms provided. We will not be bound by clerical or typographical errors contained in this proposal. This quote is subject to all policy provision, limitations, and exclusions. By signing below I confirm that I am authorized to accept the terms of this insurance proposal.

Signature _____ Date _____

Plans Administered by:

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Use of Competitive Sealed Proposals for Banking Services for the City of Murfreesboro

Department: Purchasing

Presented by: Cathy Smith, Director

Requested Council Action:

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

Summary

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

Staff Recommendation

Approve the use of RFCSP process for procurement of banking services for the Finance Department.

Background Information

In accordance with the passing of State of Tennessee Public Chapter No. 277, Senate Bill No. 72, the City must request and evaluate proposals from qualifying banks to provide banking services for the City.

Council approval is required to use the RFCSP process for procurement pursuant to State statute and City Code.

Council Priorities Served

Responsible budgeting

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

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Transportation Investment Report – Lascassas Highway Widening

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

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

Summary

Contract for Transportation Investment Report (TIR) for the proposed widening of Lascassas Hwy.

Staff Recommendation

Approve the contract with The Corradino Group, Inc. in the amount of \$98,200, subject to Legal Department final review.

Background Information

On August 30th, 2022, staff met with TDOT to discuss a partnership for the widening of Lascassas Hwy from Middle Tennessee Blvd to Compton Rd. To start this process, TDOT recommended developing a TIR for this project. Staff requested a proposal from The Corradino Group for the development and completion of this report. This study would determine the benefit and financial investment associated with the improvements of Lascassas Hwy from 2 lanes to 5 lanes as outlined in the 2040 Major Transportation Plan.

Council Priorities Served

Expand infrastructure

Improvements to this roadway will increase capacity and help traffic flow to alleviate congestion in this highly traveled area.

Fiscal Impact

This expenditure, \$98,200, is funded from the proceeds of Murfreesboro Electric Department.

Attachments

1. Contract for the TIR from The Corradino Group, Inc.
2. Site Map

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2022, by and between the City of Murfreesboro, Tennessee (City) and The Corradino Group, Inc., a Kentucky corporation, with offices at 377 Riverside Drive, Bldg. 1 – Suite 410, Franklin, Tennessee 37064 (Consultant) (each a Party, together Parties).

RECITALS

The City is in need of professional engineering design services for preparation of a technical report along Lascassas Pike, from the intersection at East Clark Boulevard to just north of SR-258/Compton Road in Murfreesboro, Tennessee (Project); and

Consultant has presented a proposal for those services and a lump sum fee to the City, dated November 9, 2022; and,

City has accepted the proposal from The Corradino Group, Inc.;

NOW THEREFORE, for and in consideration of the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all the parties hereto, it is covenanted and agreed as follows:

1.0 **INCORPORATION OF RECITALS**

The above-written recitals are incorporated herein and made a part hereof.

2.0 **SCOPE OF SERVICES**

2.1 The Scope of Services to be provided by the Consultant, as provided to the City on November 9, 2022, and approved by the City, are outlined in the attached Exhibit A, including the project assumptions, items to be provided by City, potential supplemental services not included in the present Scope of Services.

3.0 **COMPENSATION**

3.1 The Consultant shall be compensated for the performance of the Services outlined in Section 2 of this Agreement in the lump sum amount of Ninety-Eight Thousand Two Hundred dollars (\$98,200.00) as specified in Consultant's November 9, 2022 proposal to the City.

3.2 Consultant shall be paid by the City on a monthly basis by submission of monthly invoices, in a form acceptable to the City, showing progress on the various components of the Services.

4.0 PROSECUTION OF THE WORK

4.1 The Parties agree that time is of the essence in performance of this Agreement.

4.2 At all times, the Consultant and all its employees shall be considered independent consultants and not employees of the City. The Consultant shall: exercise general supervision and control over its worker's duties, shall be solely responsible for the payment of wages to its employees, and shall have the sole right to hire, fire and discipline its employees and workers. Because Consultant is an independent consultant and is not an employee of the City, payments made under this Agreement shall not be subject to any withholding for taxes, social security or other purposes, nor shall the Consultant or its employees be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, unemployment compensation, worker's compensation and the like from the City. Consultant shall, at its sole cost and expense and without increase in the Agreement price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over Consultant's work.

5.0 DISPUTES

Any and all disputes regarding this Agreement shall first be submitted to the City for resolution of the dispute. If the Parties cannot agree on a resolution of the dispute, the dispute shall be first mediated before the dispute may proceed to litigation, under procedures mutually agreed to by both Parties. Each Party shall equally bear the costs of the mediation and shall be solely responsible for its own attorneys' fees and other costs prior to and during the mediation process.

6.0 TERMINATION OR SUSPENSION OF THE WORK

6.1 The City retains the right to terminate this Agreement for convenience at any time prior to the completion of the Services provided for herein without penalty to the City. In the event of termination, notice of termination of this Agreement shall be in writing to the Consultant, as provided for by the notice provisions herein. In that event, the Consultant shall be paid for those Services performed prior to the date of its receipt of notice of termination, less damages resulting from any Consultant default.

6.2 In the event of termination of the Services, Consultant shall not be entitled to any lost profits, and the Consultant's remedies are hereby expressly limited to payment for those Services properly performed prior to the date of receipt of the notice of termination by the Consultant.

6.3 It is hereby understood by and between the City and the Consultant that any payment to the Consultant on the Project, including payments made pursuant to these termination provisions, shall be made only if the Consultant is not in default on its Services under the terms of this Agreement.

6.4 If the Consultant fails to comply with the provisions of this Agreement at any time, the City may declare the Consultant in default and notify the Consultant in writing giving notice that the Consultant has fifteen (15) calendar days to cure said default. If the Consultant fails to cure the

default, the City may terminate this and the Consultant shall only be entitled to compensation for completed and accepted Services, less all costs and damages caused by the Consultant's default.

6.5 Any termination for default that is subsequently found to be improper shall be automatically treated as termination for convenience under paragraph 6.1 above.

7.0 **LAWS, ORDINANCES AND REGULATIONS**

The Consultant shall keep itself and its employees fully informed of all local, state, and federal laws, ordinances and regulations which may, in any manner, affect those engaged or employed in the work and the equipment used. The Consultant and its employees shall, at all times, comply with such laws, ordinances and regulations.

8.0 **INSURANCE**

The Consultant shall procure and maintain the following insurance. Policies for General Liability and Automobile Liability Insurance shall name the City as an additional insured:

- A. Worker's compensation insurance adequate to ensure the City the protections contained in the indemnification clause below and as required by any law or statute as presently written, or hereafter amended in all states in which the Services are to be performed.
- B. Professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00).
- C. General liability insurance in the amounts not less than One Million Dollars \$1,000,000.00 per occurrence and a Two Million Dollar (\$2,000,000.00) annual aggregate limit.
- D. Automobile liability insurance in the combined single limit amount of not less than One Million Dollars (\$1,000,000.00) for personal injury and/or for property damage liability.

Said policies shall require that the insurance carrier give the City thirty (30) days prior written notice if the policy is to be canceled or not renewed. At least once a year, or at any time upon the request of the City, the Consultant shall furnish the City with a certification containing the name and address of the insurer, the effective date of the renewal policy, the amount of the policy, the termination date of the renewal policy and the policy number.

9.0 **INDEMNIFICATION**

The Consultant shall indemnify, and hold harmless the City and any of its officers, agents, representatives, boards, commissions, volunteers, and employees from and against any and all suits, actions, judgments, losses, damages, charges, legal proceedings, claims, demands,

liabilities, payments, recoveries, decrees of every nature, costs and expenses, including but not limited to, all reasonable attorney's fees to the extent arising out of or in connection with, or claimed to rise out of or in connection with, in whole or in part, any act, error, omission, or negligent act of the Consultant, its employees or agents, subcontractors, or anyone acting on its behalf in connection with or incident to this Agreement, except that neither the Consultant, its employees or agents, subcontractors, or anyone acting on its behalf will be liable under this subsection for any suits, actions, judgments, losses, damages, charges, legal proceedings, claims, demands, liabilities, payments, recoveries, decrees of any nature, costs, and expenses, including but not limited to, all reasonable attorney's fees to the extent arising out of or in connection with any act, error, omission, or negligent act of the City and any of its officers, agents, representatives, boards, commissions, volunteers, or employees during the performance of the Agreement.

10.0 **SPECIAL PROVISIONS**

Attachments: All attachments referred to herein are hereby made a part of and incorporated into this Agreement.

11.0 **NOTICES**

All other notices and communications in writing required or permitted hereunder may be delivered personally to the respective representatives of the City and the Consultant, or may be mailed by certified mail, return receipt requested, postage prepaid or by any expedited delivery service where proof of receipt is obtained to the addresses stated herein. Notices hereunder shall be effective, if delivered personally, on delivery; if mailed to an address in the city of dispatch, on the date mailed; or, if mailed to an address outside the city of dispatch, on the third day following the date mailed or on the date delivered, whichever is sooner.

Notice shall be given to the following representatives at the following addresses:

City of Murfreesboro, Tennessee:

Attn: Chris Griffith
111 W Vine Street
Murfreesboro, TN 37130

The Corradino Group, Inc.:

Attn: Gerald Bolden
377 Riverside Drive
Bldg. 1 - Suite 410
Franklin, TN 37064

Copy to:
The Corradino Group, Inc.
Attn: Fred P'Pool
4055 NW 97th Avenue
Miami, FL 33178

12.0 **ENTIRE AGREEMENT**

This Agreement, along with its attachments and exhibits, sets forth the entire understanding of the Parties and all understandings, agreements, promises, negotiations or representations between the Parties are merged into this Agreement, which fully and completely expresses their agreement and supersedes any prior agreements, promises, negotiations, representations or understandings relating to the subjects covered by this Agreement.

13.0 **ASSIGNMENT**

This Agreement shall not be assignable by Consultant without the prior approval of the City. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, heirs, successors and permitted assigns of the parties hereto.

14.0 **STANDARD OF CARE**

Consultant warrants and guarantees that all Services performed under this Agreement shall be performed to the standards of a reasonably competent, similarly-situated professional in the field.

15.0 **SEVERABILITY**

In the event that any portion or portions of this Agreement are deemed to be unenforceable or void by a court of competent jurisdiction, the Parties hereto agree that such unenforceable, voidable or void provisions may be severed from this Agreement and the remaining portion shall still be in effect.

16.0 **WAIVER**

The waiver by the City or the Consultant of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

17.0 **GOVERNING LAW AND VENUE**

The Parties hereto agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee and any legal action taken pursuant to this Agreement shall be filed, prosecuted and defended solely in the courts located in Rutherford County, Tennessee.

18.0 **ATTORNEY'S FEES**

In any dispute arising from or relating to this Agreement, including litigation, the prevailing Party shall be entitled to its reasonable attorney's fees and costs.

19.0 **WAIVER OF JURY TRIAL**

In any dispute or litigation arising from or relating to this Agreement, the Parties to this Agreement hereby expressly waive the right to jury trial.

20.0 **CAPTIONS**

Captions inserted herein are only as a matter of convenience and for reference only and in no way define, limit or describe the scope of this Agreement, nor the intent of any provision thereof.

21.0 **COUNTERPARTS AND EXECUTION**

This Agreement may be executed in counterparts with separate execution pages. Any documents so executed shall constitute a binding agreement on all the parties, notwithstanding that all the Parties are not signatories to the original or to the same counterpart or execution page.

City of Murfreesboro, Tennessee

The Corradino Group, Inc.

By: _____

By:  _____

Print Name: _____

Print Name: Gerald Bolden

Print Title: _____

Print Title: Vice President

Date: _____

Date: November 11, 2022

Approved as to form:

By: _____
Adam F. Tucker, City Attorney

EXHIBIT A

SCOPE OF SERVICES / FEE

EXHIBIT A

SCOPE OF SERVICES

SR-96 (Lascassas Pike) Technical Report

From East Clark Boulevard to Just North of SR-258/East Compton Road

Revised November 9, 2022

The following scope of work outlines the professional services to prepare a technical report for improving a section of SR-96 (Lascassas Pike) in Murfreesboro, Tennessee, from the intersection of East Clark Boulevard to just north of SR-258/East Compton Road. Improvements are desired to widen the existing roadway consisting of a two- or three-lane roadway having shoulders with no sidewalks and open-ditches to a five-lane curb-gutter roadway with sidewalks and/or a multi-use path. Preparation and development of the report is intended to simulate similar reports prepared by the Tennessee Department of Transportation (TDOT) in order for the City of Murfreesboro to create dialog with TDOT for these improvements.

1. General Project Management

Project management is a continuous task that will be performed for the duration of this contract. Monitoring, coordination, scheduling, and reporting requirements of this task will be used to facilitate periodic review by the City of Murfreesboro (City) to ascertain conformance with the requirements of this task.

After receipt of the notice-to-proceed, Corradino will conduct a project kick-off meeting with the City staff. This meeting will include the following topics:

- Key project staff
- Communications protocol
- Design goals and requirements
- Project schedule
- Invoicing
- Monthly progress meetings and reports
- Data and information needs

Once the project is underway, Corradino will provide monthly status reports to the City's Project Manager (PM) and conduct progress meetings with City staff, as necessary. These meetings will include a status update, anticipated next phases of work to be completed, and discussion on any critical items/issues and/or potential issues identified during project development.

Corradino anticipates having up to three (3) meetings with the City staff throughout the project. These meetings will include (1) an initial design kick-off meeting, (2) a field review meeting to be conducted on-site with City staff and any necessary TDOT staff prior to developing the report, and (3) one meeting after completion and submittal of the draft report to discuss and review any City comments and/or questions.

Corradino will prepare the agenda for all meetings and provide all necessary materials and handouts for discussion. At the conclusion of each meeting, Corradino will prepare meeting minutes and a cumulative list of "action items" developed for assignment to the appropriate party. These items will be distributed to the attendees and other appropriate stakeholders within five (5) working days following the meeting. All deliverables included within this task will be provided in .pdf format.

The following subtask will be completed as part of Task 1:

- 1.1 Conduct Project Kickoff Meeting.
- 1.2 Coordinate an on-site field review to identify and discuss areas of concern. Corradino will prepare a summary of minutes from this meeting.
- 1.3 Provide monthly status reports to the City's Project Manager (PM).
- 1.4 Conduct a final review/discussion of the draft report, including preparing a summary of meeting minutes and any revisions to the report.

2. Data Collection

- 2.1. Collect signal timing data and any previous traffic operations information or studies from the City. This information will be used to evaluate anticipated traffic signal operations of the intersections and evaluate design alternatives.
- 2.2. Collect traffic volume data, turning movement counts and/or average daily traffic counts, for the intersections and approaches along the corridor. Assumes the City will provide sufficient traffic data and the use of subcontracting to obtain current traffic data is not necessary.
- 2.3. Collect any previous studies completed for the corridor.
- 2.4. Collect crash history from Murfreesboro Police Department for the corridor.
- 2.5. Collect any available GIS data from the City, County or TDOT.
- 2.6. Conduct a site visit to observe existing traffic conditions during the peak periods and gather pertinent intersection information, such as lane configuration, signal operations, geometric information, etc.

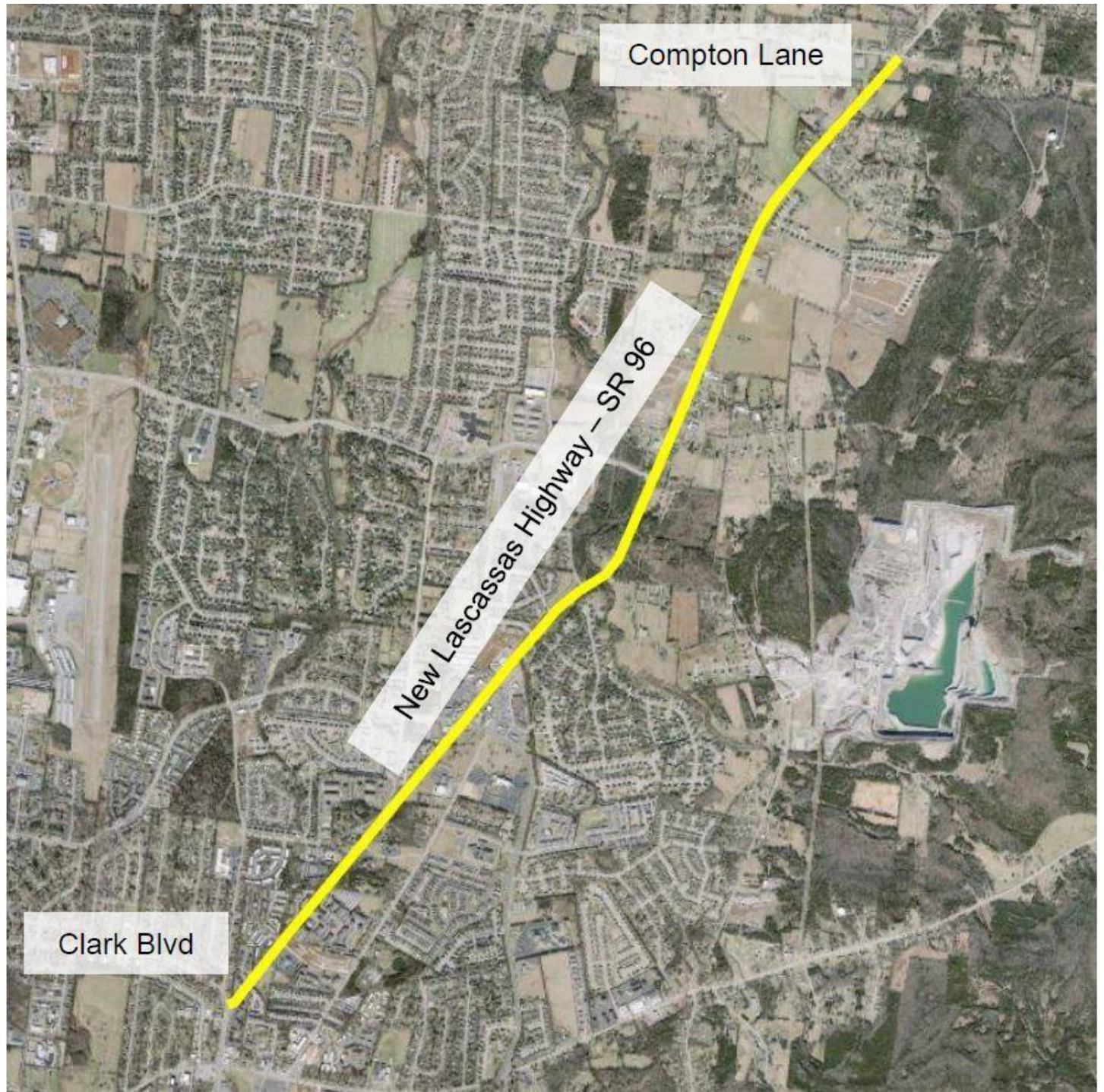
3. Technical Report Preparation and Development

- 3.1 Develop projected traffic volumes for future year operational analysis.
- 3.2 Conduct operational analysis, utilizing Synchro software, for existing conditions and future year traffic conditions for intersections along Lascassas Pike at; East Northfield Boulevard, DeJarnette Lane, SR-258/East Compton Road, and other intersections determined by the City.
- 3.3 Evaluate intersection improvements such as additional turn lanes; modifying lane designations; and/or changing signal phasing, and pedestrian improvements.
- 3.4 Review alternative for geometric and right-of-way impacts.
- 3.5 Review the collected crash data for the intersection and identify any crash trends and potential contributing factors.
- 3.6 Develop a conceptual layout on aerial imagery consisting of a plan view of proposed improvements. Detailed horizontal and vertical geometry will not be developed at this time. A conceptual typical section will be pushed through the corridor to provide an idea

of slope lines to develop conceptual right-of-way. DTM data to generate this information will be developed based off of GIS information and/or available contours.

- 3.7 Prepare conceptual level Opinion of Probable Cost.
- 3.8 Prepare Technical Memorandum containing the following:
 - Executive Summary
 - Study area and existing maps network
 - Demographics
 - Existing roadway and land use conditions
 - Existing structures conditions
 - Preliminary environmental constraints
 - Existing conditions analysis
 - Crash and traffic analysis
 - Existing deficiencies
 - Preliminary purpose and need
 - Conceptual project options (without slope lines)
 - Traffic benefits
 - Summary of collected data
 - Traffic volumes and projections
 - Opinion of Estimated cost
 - Summary of traffic data and analyses
 - FEMA flood maps
 - Crash rate sheets with crash report summary
 - NEPA desktop review
 - Overview of Highway Safety Access Manual (HSAM)
- 3.9 Submit the Technical Memorandum to the City
- 3.10 Coordinate with City staff to discuss the Technical Memorandum and discuss the next phase of the project development.

Considering the information presented herewith, this proposal will be a Lump Sum contract in the amount of \$ 98,200. This fee includes all materials and reimbursable expenses such as copies, plan sheets, mileage, etc.



Compton Lane

New Lascassas Highway - SR 96

Clark Blvd

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Transportation Investment Report - Old Fort Pkwy Widening

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

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

Summary

Contract for a Transportation Investment Report (TIR) for the proposed widening of Old Fort Pkwy.

Staff Recommendation

Approve the contract with Kimley-Horn in the amount of \$129,400, subject to Legal Department final review.

Background Information

On August 30th, 2022, staff met with TDOT to discuss a partnership for the widening of Old Fort Parkway from I-24 to Broad St. To start this process, TDOT recommended developing a TIR for this project. Staff requested a proposal from Kimley-Horn for the development and completion of this report. This study would determine the benefit and financial investment associated with the improvement of Old Fort Parkway from 4 lanes to 6 lanes as outlined in the 2040 Major Transportation Plan. Due to the number of signalized intersections, this TIR is more labor-intensive, and as a result, has a larger budget compared to similar reports.

Council Priorities Served

Expand infrastructure

Improvements to this roadway will increase capacity and help traffic flow to alleviate congestion in this highly developed area.

Fiscal Impact

This expenditure, \$129,400, is funded from the proceeds of Murfreesboro Electric Department.

Attachments

1. Contract for Transportation Planning Report
2. Site Map

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

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

OWNER intends to secure professional services to perform transportation planning services for the Old Fort Parkway Technical Report (hereinafter called the Project.)

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional Engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

**SECTION 1
BASIC SERVICES OF ENGINEER**

1.1 General

1.1.1 ENGINEER shall provide the OWNER professional Engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional Engineering representative for the Project, providing professional Engineering consultation and advice and furnishing customary civil, structural, ~~mechanical~~ and electrical engineering services ~~and customary architectural services~~ incidental hereto.

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

**SECTION 2
ADDITIONAL SERVICES OF ENGINEER**

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive. These services are not included part of Basic Services except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters;" these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.4 Providing renderings or models for OWNER's use.

2.1.5 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, ~~mechanical~~ and electrical engineering ~~and customary architectural~~ design incidental thereto); and providing data or services of the type described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

~~2.1.8 If ENGINEER's compensation is on the basis of a lump sum or percentage of Construction Cost or cost plus a fixed fee method of payment, services resulting from the award of more separate prime contracts for construction, materials, or equipment for the Project than are contemplated by paragraph 5.1.1.2. If ENGINEER's compensation is on the basis of a percentage of Construction Cost and ENGINEER has been required to prepare Contract Documents on the assumption that more than one prime contract will be awarded for construction, materials and equipment, but only one prime contract is awarded for construction, materials and equipment for the Project, services attributable to the preparation of contract documentation that was rendered unusable and any revisions or additions to contract documentation used that was necessitated by the award of only one prime contract.~~

2.1.9 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services called for in paragraph 6.2.2.5.

2.1.11 Providing any type of property surveys or related Engineering services needed for the transfer of interests in real property and field surveys for

design purposes and Engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12 Preparation of operating, maintenance, and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs and 1.4.2).

2.1.14 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2 Required Additional Services (See Sections 8.3 and 8.5)

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive (except to the extent otherwise provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matter"). These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation of Basic Services is not commensurate with the additional services rendered.

2.2.2 Services in making revision to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3 Services resulting from significant delays, changes, or price increases occurring as a direct or

indirect result of material, equipment, or energy shortages.

2.2.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 OWNER'S RESPONSIBILITY

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER.

3.1 The City Engineer shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have primary authority to transmit instruction, receive information, and interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

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

3.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") the following:

3.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2 appropriate professional interpretations of all the foregoing;

3.4.3 environmental assessment and impact statements;

~~3.4.4 property, boundary, easement, right-of-way, topographic, and utility surveys;~~

~~3.4.5 property descriptions;~~

3.4.6 zoning, deed, and other land use restrictions; and

3.4.7 other special data or consultations not covered in Section 2;

all of which ENGINEER may use and rely upon in performing services under this Agreement.

3.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER; obtain advice of an attorney, insurance counselor, and other consultants as OWNER deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8 Facilitate approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9 Provide such accounting, independent cost estimating, and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code, or order applicable to their furnishing and performing the work.

3.10 If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities, and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11 If more than one prime contract is to be awarded for construction, materials, equipment, and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive, and other costs of the type referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections, and final payment inspections.

3.14 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15 Furnish or direct ENGINEER to provide Additional Services as stipulated in paragraph 2.1 of this Agreement, or other services as required.

3.16 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial

operation of the Project, including extra work and required extensions thereto. If in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ENGINEER, all rates, measure, and amount of compensation provided herein shall be subject to equitable adjustments.

4.2 The services called for in the Tasks will be completed within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," after written authorization to proceed with the phase of services which will be given by OWNER within thirty days after ENGINEER has signed this Agreement.

SECTION 5 PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expense of ENGINEER

5.1.1 For Basic Planning and Study Report Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters".

5.1.1A For Basic Design Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters".

5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1 General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13) on the basis of ENGINEER's hourly rates provided in paragraph 8.4.

5.1.2.2 Professional Associates and Consultants. For Services and Reimbursable Expenses of independent professional associates and consultant employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to

ENGINEER therefor times a factor of 1.00. (See Section 8.4.)

5.1.2.3 Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration, or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of \$1,920.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4 As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4; and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1. ~~When Construction Cost is used as a basis for payment, it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:~~

~~5.1.4.1 For completed construction work, the total cost of all work performed as designed or specified by ENGINEER.~~

~~5.1.4.2 For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.~~

~~5.1.4.3 For work designed or specified but not constructed and for which no such bid or proposal is received, the most recent estimate of Construction Cost; or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.~~

~~Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates, including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from Construction Costs on account of any penalty, liquidated damages, or~~

~~other amounts withheld from payments to Contractor(s).~~

5.2 Time of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. ~~The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing.~~ OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3 Other Provisions Concerning Payments

5.3.1 If OWNER fails to make any undisputed payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefor, the amounts due ENGINEER will be increased at the rate of 1 percent per month from said thirtieth day; and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and charges.

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the Basis of Section 8.4 for services rendered by ENGINEER's principals and employees engaged directly on the Project during that phase to date of termination. In the event of any such termination, ENGINEER will also be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services, and for all unpaid Additional Services and unpaid Reimbursable Expenses.

5.3.3 Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.3.4 Whenever a factor is applied to Salary Costs in determining compensation payable to ENGINEER, that factor will be adjusted periodically and equitably to reflect changes in the various elements that

comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

5.4 Definitions

5.4.1 Salary Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including but not limited to engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday and other group benefits. For the purposes of this Agreement, the principals of ENGINEER and their current hourly Salary Costs are defined in Section 8.4.

5.4.1.1 The hourly Salary Costs of principals of ENGINEER will be adjusted equitably to reflect changes in personnel and in ENGINEER's overall compensation procedures and practices.

~~5.4.1.2 The amount of customary and statutory benefits of all other personnel of ENGINEER will be considered equal to 35 percent of salaries and wages, subject to equitable adjustment to reflect changes in ENGINEER's overall compensation procedures and practices.~~

5.4.2 Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates. See Sections 8.3, 8.5, and 8.6.

SECTION 6 (RESERVED)

SECTION 7 GENERAL CONSIDERATION

7.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

7.2 Reuse of Documents

All documents, including Drawings and Specifications, prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project; and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents may be suitable for reuse by OWNER or others on extensions of the Project. Any reuse without written verification or adaptation by ENGINEER for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants; and OWNER shall, to the extent currently permitted under state law, indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3 Insurance

7.3.1 ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any and all employees, or of any person other than such employees, and from claims or damages because of injury to or destruction of property, including loss of use resulting therefrom. ENGINEER shall carry, and shall provide proof of coverage, a minimum of \$1,000,000 in errors and

omissions insurance for four years from execution of agreement. ENGINEER shall, at its own expense, procure and maintain throughout the term of this Agreement comprehensive general liability insurance at \$1,000,000 per occurrence and comprehensive automobile liability insurance at \$1,000,000 per occurrence.

7.4 Controlling Law

This Agreement is to be governed by the laws of Tennessee.

7.5 Successors and Assigns

7.5.1 OWNER and ENGINEER each is hereby bound; and the partners, successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 7.5.2, the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

7.5.2 Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interest in (including without limitation monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

7.6 Dispute Resolution If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them

arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit C, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit C or other provisions of this Agreement or under law.

SECTION 8 EXHIBITS AND SPECIAL PROVISIONS

8.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement

8.1.1 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," consisting of 18 pages.

8.1.2 Exhibit B, "Dispute Resolution," consisting of one page.

8.2 This Agreement (consisting of pages 1 through 11 inclusive, and the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, modified, or canceled only by a duly executed written instrument.

8.3 In the event an error is made in the plans, the ENGINEER will correct the error in the plans, and the ENGINEER's services rendered in connection with correcting the error shall be considered as part of the Basic Services. However, if the cost to the OWNER for correcting the error includes tearing out or redoing any portion of the Project, the cost associated with the tearing out or redoing shall not be considered a part of the overall Project Cost for the purposes of calculating the ENGINEER's fee for Basic Services.

~~8.4 Notwithstanding any provision to the contrary, the maximum billing rates shall be as follows:~~

Principal	\$280/hour
Senior Professional	\$260/hour
Professional	\$195/hour
Production Team Member	\$155/hour
Clerical Staff	\$110/hour

~~These hourly rates shall be valid for a period of at least twelve (12) months. Increases in the hourly rates~~

~~may be necessary to reflect changes in salary, benefits, or other statutory requirements which could affect the hourly rates established herein. Any changes in these billing rates will be submitted for review and discussion prior to effecting such changes.~~

8.5 ENGINEER will obtain prior written approval before performing such work considered "Additional Services" and charging for same.

8.6 Notwithstanding any provision to the contrary, OWNER will not be invoiced for travel within Davidson, Williamson, and Rutherford Counties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

CITY OF MURFREESBORO

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

By: 
(Christopher D. Rhodes, P.E.)

Title: _____

Title: Vice President

Address for giving notice:

Engineering Department
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

Address for giving notice:

Kimley-Horn and Associates, Inc.
10 Lea Avenue, Suite 400
Nashville, Tennessee 37210
Phone: 615-564-2701

APPROVED AS TO FORM:

City Attorney, Adam Tucker

EXHIBIT A**FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES
AND RELATED MATTERS**

This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2022, between the City of Murfreesboro, Tennessee, (OWNER or City) and Kimley-Horn and Associates, Inc. (ENGINEER or Kimley-Horn), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemental as indicated below, and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are as indicated below.

This exhibit details transportation planning services for the Old Fort Parkway (State Route 96) Technical Report. A detailed description of the ENGINEER's Scope of Services, Schedule, and Fee are as follows:

Based on the information provided, we understand that the City of Murfreesboro wishes to study the Old Fort Parkway corridor to address congestion and accessibility issues with potential multimodal improvements (additional vehicle capacity, pedestrian / bicycle / transit enhancements, and potential safety improvements) from the Interstate 24 Interchange to the single point urban interchange (SPUI) with Broad Street (US Route 41) covering approximately 2.2 miles. The corridor consists of the following existing intersections:

- 1) Old Fort Parkway at Interstate 24 Westbound Ramps (signalized)
- 2) Old Fort Parkway at Interstate 24 Eastbound Ramps (signalized)
- 3) Old Fort Parkway at North Thompson Lane / Chaffin Place (signalized)
- 4) Old Fort Parkway at Mall Circle Drive / Market Place (signalized)
- 5) Old Fort Parkway at Mall Circle Drive / Bridge Avenue (signalized)
- 6) Old Fort Parkway at Stones River Mall Boulevard (signalized)
- 7) Old Fort Parkway at Old Fort Parkway Frontage Road (unsignalized median opening)
- 8) Old Fort Parkway at New Salem Road / Golf Lane (signalized)
- 9) Old Fort Parkway at Ordway Street / North Kings Highway (unsignalized two-way stop control)

The eastern terminus of the study area will be positioned prior to Old Fort Parkway overpassing Broad Street, which is located at the eastbound off-ramp and westbound on-ramps of Old Fort Parkway to / from broad Street. No improvements will be proposed for the Old Fort Parkway / Broad Street SPUI .

The Technical Report will be studied and prepared in a manner that consistent with the Tennessee Department of Transportation's (TDOT) Strategic Transportation Investment Division's Technical Report format and procedures.

Task 1 – Project Coordination Services

This task will consist of general project management, administrative, and accounting activities for the project. It will further consist of a kick-off meeting with City of Murfreesboro staff, project status and

review meetings, preparing and distributing reports and memos, scheduling of review meetings and activities, monthly project status reporting, and discussion of any project issues during the project. In addition, this task will consist of monthly work planning efforts and will comprise the initial schedule development and monthly maintenance of the scope of services and project milestones.

Task 1.1 – Kick-off Meeting

Kimley-Horn will coordinate and facilitate a kick-off meeting with City of Murfreesboro staff after the official notice-to-proceed (NTP) has been received. The purpose of this meeting will be to introduce the participants to the project, review project scope, discuss key issues, and identify other issues so they can be resolved early in the process. Along with City staff, project stakeholders (i.e., TDOT, etc.) can be invited to participate in the kick-off meeting, project meetings, and/or conference calls as deemed appropriate by City staff.

Task 1.2 – Project Status Meetings

Kimley-Horn will coordinate and facilitate periodic project meetings on a monthly basis. These meeting will be scheduled virtually via Microsoft Teams and/or in-person – with each meeting venue being determined via coordination with City staff. Each meeting will consist of project status updates, schedule review, and discussion of upcoming milestones for both the project team and City of Murfreesboro staff. Up to six (6) project status meetings have been budgeted for this sub-task, with the kick-off meeting being budgeted as one of these meetings.

Task 1 Kimley-Horn Deliverables: Meeting Agendas, Meeting Minutes, Action Items (electronic PDF format)
Invoices on a Monthly Basis (electronic PDF format)

Task 2 – Data Collection Services

This task will encompass the collection of base mapping necessary for the development of the Technical Report and the necessary traffic data collection services for the project. Furthermore, it will consist of field visits to determine and verify field geometry and existing ITS / traffic signal system equipment along the corridor.

Task 2.1 – Assemble Base Mapping

This sub-task includes the initial coordination with TDOT and the City to acquire the base mapping for the project. We will request existing ground data provided by TDOT consisting of a Digital Terrain Model (DTM), Digital Elevation Model (DEM), and/or post processed Light Detection and Ranging (LiDAR) data. In parallel we will also request the City's Geographic Information System (GIS) files for the project limits. Utilizing one or both of these sets of digital data, we will prepare base mapping suitable for project use. Kimley-Horn will assemble the base mapping to use as the conceptual design plan sheets. This consists of the following: incorporating additional mapping, cutting and arranging the base mapping onto plan sheets, creating match lines (if deemed necessary), labeling route numbers / adjacent roadways within the base map limits, developing title blocks, and development of a station line for the corridor (if deemed necessary).

Task 2.2 – Field Inventories and Observation

Field inventories / observations will be performed by Kimley-Horn along the corridor to confirm roadway geometry, ITS / signal infrastructure, and any multimodal features related to pedestrian, bicycle, and/or transit modes. We will build off existing field inventories performed at each signalized intersection as part of the TDOT I-24 Smart Corridor project for this sub-task. Additional photographs will also be taken, as deemed appropriate, along the corridor to supplement earlier data collection efforts.

Task 2.3 – Traffic and Crash Data Collection

City staff, via existing fisheye video detection technology that exists at each signalized intersection will provide weekday turning movement counts (TMC) from 6:00 AM – 8:00 PM. Kimley-Horn staff, via a data collection sub-consultant we frequently utilize, will perform TMC's at the two unsignalized intersections (intersections 7 and 9) for the same time periods. Directional Average Annual Daily Traffic (AADT) tube counts will also be acquired along the corridor from TDOT.

Kimley-Horn will also acquire exiting crash data along the corridor, available from TDOT over a three (3) year period. Utilizing this data, Kimley-Horn will prepare a three (3)-year period crash analysis for the project corridor along with crash diagrams and crash summary tables along the corridor consistent with TDOT Technical Report guidelines. Utilizing the results of the crash analysis, Kimley-Horn will identify potential safety deficiencies along the corridor for discussion during Task 3 efforts below.

Task 2.4 – Coordinate with Adjoining Projects

Kimley-Horn will coordinate with City and TDOT staff to identify and understand any adjacent planned or underway projects. We will acquire existing data (studies, conceptual designs, construction plans, etc.) for adjoining projects in an effort to demonstrate connectivity / continuity with potential adjoining projects.

Task 2 Kimley-Horn Deliverables: Turning Movement Counts – two (2) locations (electronic PDF format)

*Task 2 City Deliverables: GIS Base Mapping
Turning Movement Counts (seven (7) locations)
Information regarding potential adjoining projects*

Task 3 – Field Review

An on-site field review will be facilitated by Kimley-Horn staff with the following agencies:

- City of Murfreesboro Transportation Department
- City of Murfreesboro Engineering Department
- City of Murfreesboro Planning Department
- City of Murfreesboro Transit (Rover)
- WeGo Public Transit
- Nashville Area Metropolitan Planning Organization (MPO)
- TDOT Region 3 Project Development Office

- TDOT Region 3 Traffic Office
- TDOT Region 3 Design
- TDOT Traffic Operations Division
- TDOT Environmental Division
- TDOT Strategic Transportation Investments Division (STID)
- TDOT Long Range Planning Division
- TDOT Multimodal Division

Kimley-Horn will provide the front-end coordination, facilitation during, and documentation afterward of this field review meeting. The scope of the project, design considerations, and preliminary purpose and need will be discussed and determined amongst the Field Review team members. Prior to the Field Review, Kimley-Horn will develop the following items as part of a field review packet to be shared with the attendees beforehand:

- Project map and summary of project to be delivered
- Technical Report schedule
- Existing route information (functional classification, typical section, speed limit, geometric conditions)
- Pertinent traffic information (AADT, TMC)
- Corridor crash diagrams and crash summary tables

Task 3 Kimley-Horn Deliverables: Field Review Packet (electronic PDF format)

Task 4 – Evaluate Existing Conditions

Task 4 efforts will consist of compiling and validating the data collected in Task 2 and discussed during the Task 3 Field Review and preparing an operational analysis for the corridor with the goal of addressing three (3) primary objectives:

- Increased roadway capacity in both directions along Old Fort Parkway (i.e., studying the feasibility of widening from a four (4)-lane divided facility to a six (6)-lane divided facility and associated improvements,
- Identifying ways to enhance multimodal operations and access along the corridor consisting of pedestrian, bicycle, and transit modes, and
- Identifying and attempting to mitigate high crash locations along the corridor with the improvements recommended in this study.

Task 4.1 – Data Compilation / Validation

Prior to developing new coordination timings, it is important to understand and validate the existing conditions. Using the data collected in the field and knowledge of the conditions observed during the field observations / Field Review (Tasks 3 and 4), a network will be developed by Kimley-Horn for each peak using *Synchro*. Existing geometry and traffic volumes along with existing signal timings / settings

provided by City staff will be modeled in *Synchro*. The *Synchro* model will be developed using aerial photography as the background.

Task 4.2 – Operational Analysis

Once the field data has been collected and compiled, Kimley-Horn will perform an operational analysis along the corridor for the weekday AM and PM peak hours. Capacity analyses consistent with the *Highway Capacity Manual* will be performed to document existing conditions and recommended improvements along the corridor. Recommended improvements will be identified based upon the following inputs: (a) crash analysis from Task 2, (b) Field Review input from Task 3, (c) capacity deficiencies identified in this sub-task, and (d) multimodal deficiencies to be identified during this sub-task.

During this task, Kimley-Horn will project future weekday traffic conditions (AADT and TMC) along the corridor for future years associated with a five (5) and 25-year horizon (2027 and 2047) Build and No-Build scenarios, which is consistent with our most recent Technical Reports we have prepared for TDOT.

Task 5 – Conceptual Design Services

Building off the findings and recommendations in Task 4, Kimley-Horn will prepare a conceptual design along the corridor addressing the following items:

- Horizontal alignment
- Vertical alignment (incorporating any sight distance needs associated with any unsignalized intersections)
- Side street impacts
- Potential Right-of-Way (ROW) and/or easement impacts
- Structure needs (bridge, retaining wall, box culvert, etc.)
- Signal system / Intelligent Transportation System (ITS) enhancements and/or modifications
- Multimodal enhancements (pedestrian [sidewalks, signalized pedestrian crossings], bicycle facility needs, and transit operations [bus stops, shelters, exclusive lanes])
- Environmental concerns and mitigation techniques

During this task, Kimley-Horn will also identify and document any environmentally sensitive locations where design adjustments may be necessary.

The conceptual design will be presented in a conceptual plan set that consists of:

- Title sheet
- Typical sections
- 200-scale plan view conceptual layout figures consisting of:
 - Existing parcel data
 - Estimated proposed ROW and slope lines
 - Environmental features (wetlands, streams, churches, parks, schools, etc.)

- Roadway centerline
- Pavement markings
- Structures (guardrail, retaining walls, bridges, box culverts)
- Slope adjustments
- Locations where design exceptions are recommended

Additionally, Environmental Technical Study Areas (ETSA) figures will be developed once the concept is accepted.

Task 6 – Engineer’s Opinion of Probable Cost

Kimley-Horn will prepare a detailed engineer's opinion of the probable cost (i.e., cost estimate) of the recommended improvements along the corridor consistent with TDOT Technical Report standards via the TDOT Cost Estimate Tool.

Task 7 – Technical Report Preparation

Kimley-Horn will prepare the draft Technical Report based upon templates utilized by TDOT. The report will consist of the following items:

- Cover sheet
- Executive summary
 - Purpose of the report
 - Overview of adjoining projects
 - Description of existing conditions
 - Existing and horizon traffic
- Table of contents
- Introduction
 - Report goals
 - Project initiation
- Study area, vicinity, existing roadway network maps, Flood Insurance Rate Maps (FIRM Maps)
- Preliminary purpose and need
- Description of existing conditions
 - Existing lane and shoulder widths
 - Functional classification
 - Speed limit
 - Pavement condition
 - Description of existing geometrics
- Demographics
 - Census data, county/city growth rate
- Existing land use and zoning
- Preliminary environmental constraints
 - Parks, schools, churches, wetlands, institutions etc.
- Existing utility infrastructure

- Additional traffic engineering analyses
- Additional signal system design outside of the scope referenced
- Attendance at review meetings and / or public hearings
- Others as requested by the City

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Existing GIS and/or digital photography data for the project area
- TMC data for seven (7) of the corridor signals
- As-built traffic signal plans or file drawings (if available)
- Existing signal timing parameters (coordination, time-of-day / day-of-week, and local controller settings data)
- Information regarding adjoining projects

SCHEDULE

Given a notice to proceed and contract execution, Kimley-Horn is prepared to provide these services based upon a mutually agreed upon schedule.

FEE AND BILLING

Kimley-Horn will perform the services described in Tasks 1 through 7 for a total lump sum fee (inclusive of labor and expenses) summarized below.

<i>Task 1 – Project Coordination Services</i>	<i>\$12,600</i>
<i>Task 2 – Data Collection Services</i>	<i>\$19,700</i>
<i>Task 3 – Field Review</i>	<i>\$8,400</i>
<i>Task 4 – Evaluate Existing Conditions</i>	<i>\$32,200</i>
<i>Task 5 – Conceptual Design Services</i>	<i>\$35,600</i>
<i>Task 6 – Engineer's Opinion of Probable Cost</i>	<i>\$3,800</i>
<i>Task 7 – Technical Report Preparation</i>	<i>\$17,100</i>

Total Lump Sum Fee:	\$129,400
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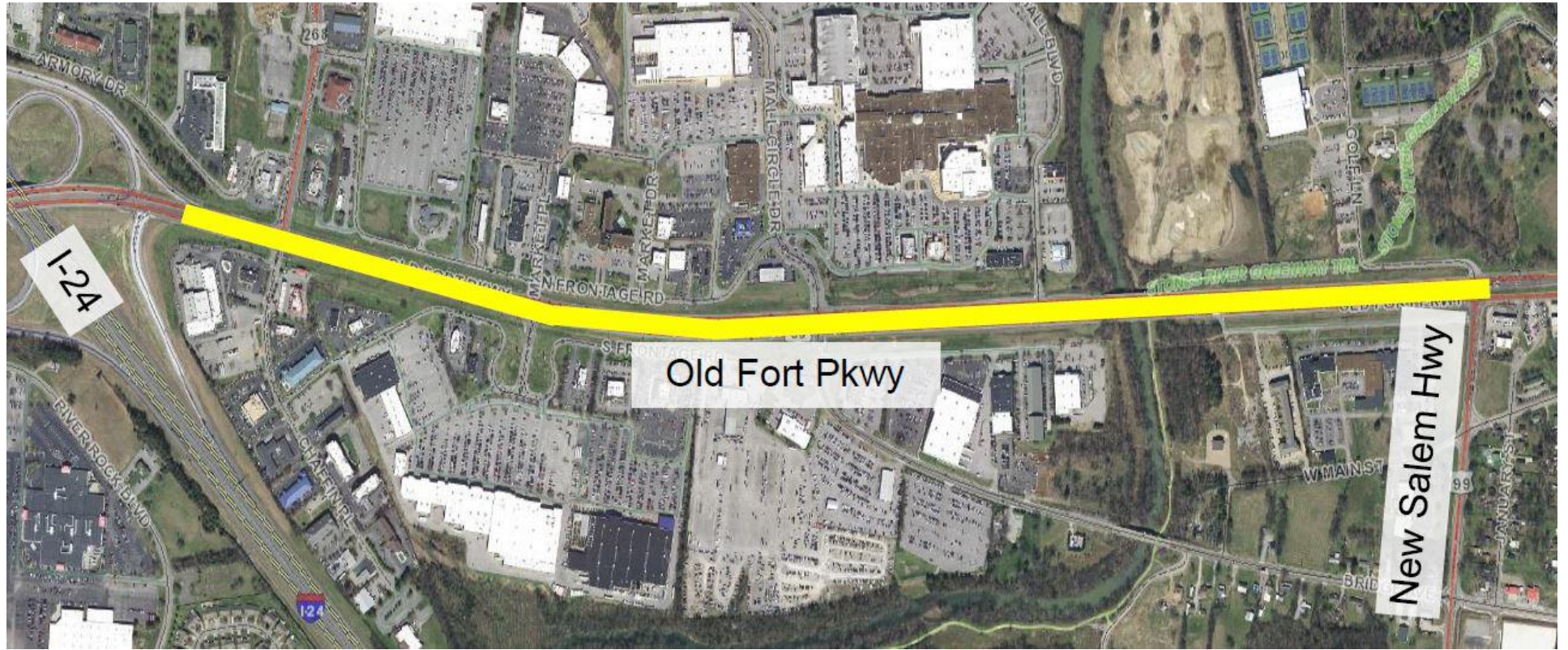
Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Kimley-Horn will perform the services described in Task 8 (Additional Services) of the Scope of Services on a labor fee plus expense basis or an agreed upon lump sum value. Effort associated with Task 8 will not be performed without authorization from the City of Murfreesboro.

EXHIBIT B

DISPUTE RESOLUTION

- 7.6.1 In the event a dispute arises between OWNER and ENGINEER relating to any obligation undertaken in this agreement, they agree to utilize the following procedure to resolve any such dispute.
- 7.6.2 OWNER and ENGINEER will attempt to resolve all disputes by first engaging in good faith negotiations between them as soon as possible after the dispute arises.
- 7.6.3 If negotiations are not successful, OWNER and ENGINEER will submit their dispute to a mutually acceptable mediator for nonbinding mediation.
- 7.6.4 If mediation is not successful, OWNER and ENGINEER will seek a resolution of their dispute through the normal legal process in a court of competent jurisdiction.
- 7.6.5 If a dispute is resolved through the procedure of paragraph 7.6.4, the prevailing party shall be entitled to recover from the other all court costs.
- 7.6.6 If the complete resolution of a dispute requires the joiner of a third party that does not agree to follow the procedure set out in paragraph 7.6, such dispute shall not be resolved between OWNER and ENGINEER in accordance with said paragraph. However, this paragraph 7.6.6 shall have no application unless formal written notice of objection is given by the party wishing to utilize this subsection to avoid the procedure set forth in paragraph 7.6 within 30 days of formal notice of the dispute invoking paragraph 7.6.



COUNCIL COMMUNICATION

Meeting Date: 12/08/2022

Item Title: Rollins Contract for Brush and Limb Collection

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

Contract with Rollins dba REC Pro for brush and limb services.

Staff Recommendation

Approval to enter into a contract with Rollins for brush and limb collection.

Background Information

The current contract for brush and limb collection with REC Pro ends January 8, 2023. Bids were received for this service on November 8, 2022 and Rollins Excavating dba Rec Pro was the lowest responsible and responsive bidder at \$1,456,800. This contract is for one year with the option to renew for two additional one-year periods per mutual agreement between City and Contractor. Should the City exercise this option for renewal, the contract as renewed shall be valid for one year, not to exceed three (3) years total. This contract serves 35,046 citizens and collects 3,500 tons of yard waste monthly.

Council Priorities Served

Maintain public safety

This contract will allow for continued brush and limb collection, allowing the streets to be debris free.

Fiscal Impact

The contract totals \$1,456,800 which is on a calendar year basis. The impact to FY23 is approximately \$1,305,000. The remaining \$105,000 will be covered by a future budget amendment.

Attachments

1. Signed agreement for limb, brush, and yard waste collection services.

Agreement
for Limb, Brush and Yard Waste Curbside Collection Services

This Agreement is entered into and effective as of the ____ day of _____ 2022 ("Effective Date"), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Rollins Excavating Co., LLC**, a limited liability corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-19-2023 – Limb, Brush, and Yard Waste Curbside Collection Services, issued 10/25/22 (the "Solicitation");
- Contractor's Proposal dated 11/8/2022 ("Contractor's Proposal");
- Contractor's Price Proposal dated 11/8/2022 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor. Contractor agrees to provide Limb, Brush and Yard Waste Curbside Collection Services based on "ITB-19-2023 – Limb, Brush and Yard Waste Curbside Collection Services" listed under "Bid Specifications" of the ITB.

2. Term. The term of this Agreement commences on the Effective Date and expires on _____, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination.

- a. This contract is renewable for two (2) additional one-year periods (for a total of up to 3 years) per mutual agreement between City and Contract. Should the City desire to renew the contract, a written preliminary notice will be furnished to the contractor not less than sixty (60) days prior to the expiration date of the contract. Such preliminary notice will not be deemed to commit the City to renew.
- b. Upon receipt of the City's preliminary notice, the contractor shall submit a written agreement to continue or discontinue contract performance at the same prices for an additional one-year period.
- c. Should the City exercise this option for renewal, the contract as renewed shall be deemed to include this option provision except that the total duration of this contract, including any renewals, shall not exceed three (3) years.
- d. Contractor's services may be terminated in whole or in part:
 - i. Upon 30-day prior notice, for the convenience of the City.

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

- 3. Compensation; Method of Payment.** Contractor will be compensated upon the completion of tasks as outlined in the Price Proposal, reflected in the pricing table below, and upon the completion of a Task and submission of an invoice to the City at its address for Notices. Per Section 2.2.9. of the ITB, a fuel adjustment may be considered if fuel costs vary 5% or more per the Producer Price Index for Light fuel oils, Series ID WPU0573, published by the U.S. Department of Labor, Bureau and Statistics. Fuel adjustment calculations will in general follow the State of Tennessee's Special Provision Regarding Payment Adjustment for Fuel (SP109A dated January 1, 2021). Gallons per ton for brush, limb and yard waste shall be established as 0.11, and the tonnages provided in table in Section 2.2.2. in the ITB shall be basis for payment adjustment.

	Unit Cost	Quantity	Total
Zone 3- Twice a month pickup of brush, limb, and yard waste	\$60,612.00 per month	12 months	\$727,350.00
Zone 4 -Twice a month pickup of brush, limb, and yard waste	\$60,612.00 per month	12 months	\$727,350.00
Weekday fully manned vehicle to be utilized within a 24-hour notice for emergency services	\$100.00 per day	15 days	\$1,500.00
Weekend fully manned vehicle to be utilized within a 24-hour notice for emergency services	\$100.00 per day	6 days	\$600.00
Total			\$1,456,800.00

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

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

6. **Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- c. Copyright, Trademark, Service Mark, or Patent Infringement.
 - I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
 - II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - a. Procure for the City the right to continue using the products or services.

- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 - c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
 - III. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.
- 7. **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:

Attn: Jay Beebe
Rollins Excavating Co, LLC
1468 Middle Tennessee Blvd.
Murfreesboro, TN 37130
rolexllc@aol.com
- 8. **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.
- 9. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
- 10. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

11. **Waiver.** No waiver of any provision of this 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.
12. **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.
13. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
14. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
15. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior

written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.

16. **Integration.** This 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.
17. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
18. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
19. **Severability.** Should any provision of this 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.
20. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
21. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO, TENNESSEE

ROLLINS EXCAVATING CO, LLC

By: _____
Shane McFarland, Mayor

DocuSigned by:
By: DeLa Rollins
4509E38E78091FA
DeLa Rollins, Owner

APPROVED AS TO FORM:
DocuSigned by:
Adam F. Tucker
43A2035E51F9401...
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Salem Barfield Sewer Improvements Construction Contract

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Construction contract for the Salem/Barfield Sewer Improvements allowing new sanitary sewer connections along the New Salem Hwy corridor.

Staff Recommendation

Approve the award and standard construction contract with Cleary Construction, subject to Legal Department final review.

Background Information

The referenced Salem/Barfield sewer basin and Salem Highway development corridor were disallowed to have any new sewer connections made on December 27, 2021 via a notice to development stakeholders in Murfreesboro (attached).

The Department has worked diligently to design and bid the sewer improvements to allow for new sewer connections. The new sewer connections made available through these improvements is approximately 3,724.

The lowest responsible bid came in at \$13,936,972. This project is made up of three distinct components –

- 1) Upsizing of a section of 15" diameter sewer to 24" diameter under the West Fork Stones River. This bottleneck upsizing is part of the Department's planned infrastructure upgrades; total cost \$3,685,159
- 2) Repair and reinstallation of a 36-inch diameter section of sanitary sewer installed under New Salem Hwy; total cost \$1,637,834
- 3) New Salem Hwy sanitary sewer upgrades to allow increased capacity for new connections within the Salem/Barfield service basins; total cost \$8,389,949

The last component of the project is proposed to be recouped through the establishment of a new Salem/Barfield special sanitary sewer assessment district (SSSAD). A pre-existing SSSAD exists within this service basin and was established in 2001. Staff is recommending an update to the pre-existing, original Salem/Barfield SSSAD fee for developments approved for sewer connections prior to 12/27/2021.

An SSSAD fee schedule has been attached to show the original 2001 Salem/Barfield SSSAD, the updated 2001 SSSAD to current year 2022, and the newly proposed 2022 SSSAD to pay back the almost \$8.4million in improvements just bid out.

Council Priorities Served

Expand infrastructure

Expanding sanitary sewer capacity in the Salem/Barfield sanitary sewer service basin increases future sewer connections and allows development to continue in a very fast-growing corridor within the City.

Improve economic development

An additional 3,724 sanitary sewer connections in the Salem/Barfield sanitary sewer service basin affords the City continued strong economic growth and associated opportunities in an expanding part of the City.

Fiscal Impact

The project costs, \$13,936,972, will be funded by MWRD working capital reserves (i.e., cash on hand) to fund this project.

Attachments

1. December 27, 2021 Salem Highway Corridor – Notice to Development Stakeholders Regarding No New Sewer Approvals and Proposed Improvements to Increase Capacity
2. Update and proposed new Salem/Barfield Special Sanitary Sewer Assessment District fee schedule
3. ELI Recommendation for Contract Award of Salem/Barfield Sewer Interceptor Upgrades



... creating a better quality of life

MEMORANDUM

DATE: December 27, 2021
TO: Development Stakeholders
FROM: Valerie Smith/Marshall Fall
SUBJECT: Salem Highway Corridor - Notice Regarding No New Sewer Approvals and Proposed Improvements to Increase Capacity

SUMMARY

The Murfreesboro Water Resources Department (MWRD) is not issuing any “will-serve” letters for sanitary sewer service other than those projects identified as approved in the attached table. MWRD is also delaying acceptance of construction drawings for projects in the area along the Salem Hwy corridor as identified in the attached exhibit. Both measures are being taken due to the sanitary sewer collection system being at capacity. Approving any additional connections will pose a risk of causing sanitary sewer overflows. A similar action is being taken by the Planning Department by discontinuing acceptance of development plan submittals for review and approval by the Planning Commission. A list of projects that have been approved by Planning but are not eligible for sewer service are also attached.

Sewer improvements are being designed for upgrades to afford this area additional capacity for 3,724 new connections, typically defined as single-family units (sfu’s). MWRD cannot guarantee that these improvements will be constructed or the exact number of new connections that may ultimately become available. City Council will have to review the bids when they are received next year in the late summer or early fall 2022 timeframe, and subsequently award the construction contract to start the improvements. If the sewer improvement project is approved by Council, then MWRD and the Planning Department will resume our standard procedures for issuing “will serve” letters for sanitary sewer service, accepting construction drawings and accepting development plan submittals at the time the project starts construction. Any due diligence activities or property development expenses incurred by parties relying on future sanitary sewer connections in this area are being taken at their own risk.

BACKGROUND

Between December 26, 2019 to March 7, 2020, the Department requested ADS, through our professional services agreement, to install 9 temporary sewer flow monitors within flow monitor Basin MF11A to measure flows to study the capacity within different portions of the basin. During this time, Murfreesboro had several rainstorms, ranging from less than 1” to greater than 4”. A 2” storm on January 11, 2020 was used as the basis of this study. Sewer main capacity limits were defined by using EPA’s guidelines that disallow additional sewer connections and sewer extensions when sewer surcharges within 3 feet of a manhole rim. Adding the estimated flows contributed by the 843 approved upcoming sewer connections put the sewer surcharge within the three-foot limit defined by EPA.

Staff looked at what improvements would be necessary to alleviate the anticipated surcharging and allow for a significant number of new sewer connections. Staff initiated sewer improvements designed to serve

Water Resources Department

300 NW Broad Street * P.O. Box 1477 * Murfreesboro, TN 37133-1477 * Office: 615 890 0862 * Fax: 615 896 4259
TTY 615 848 3214 * www.murfreesborotn.gov

the remaining 354 developable acres inside the City limits and 625 developable acres outside the City limits. The design improvements developed by MWRD are estimated to yield 3,724 new sewer connections at an estimated cost of \$6,350,000. This design and the associated increase in capacity are considered the highest value (i.e., lowest cost per new sewer connection or single-family unit, sfu).

PROPOSED IMPROVEMENTS

Utilizing flow monitoring data acquired between January and March of 2020, MWRD has recommended sanitary sewer capital improvements that would yield the highest future sewer connections at the lowest cost per connection. MWRD is already moving forward with the engineering design needed to construct these improvements and hopes to be under construction Fall 2022. In addition, a future special sanitary sewer assessment district in the form of an ordinance may be forthcoming to repay the Department's costs in making sewer system improvements in this basin. A summary of existing, current approved and new sewer connections is tabulated below:

Scenario	# of Existing + Current Approved sewer connections	Improvement Cost for NEW sewer connections	# of NEW sewer connections	Total number of sewer connections	# of Developable Acres Inside + Outside City Limits in basin
Sanitary Sewer Improvements to serve remaining Salem Hwy basin	2412+1094 = 3,506	\$6.35m	3,473*	6979	354 + 625

*Note: 1,912 new connections are calculated inside the existing 354 acres within the City limits when applying the densities allowed per the sewer allocation ordinance (see attached table), leaving 1,561 new connections for future annexation of properties within the basin (approximately 625 acres).

POTENTIAL SPECIAL ASSESSMENT

Note that the Salem Hwy Sewer basin currently has two special sanitary sewer assessment districts (SSSAD) that affect the 1,094 current approved connections. The two assessments, Barfield / Salem SSSAD (\$750 per sfu) and Basin D SSSAD (\$925 per sfu), effectively have a cumulative \$2,286,000 remaining balance.

Keeping the new connections made available through the \$6,350,000 in improvements and only charging them an assessment to recoup those costs (i.e., not affecting the 1,094 currently approved connections) would equal \$2,220 per single family unit.

	Total sfu's	Estimated Cost	Cost per sfu	3.5% Interest 15-ys	Assessment Cost per sfu
New Connection					
Salem Hwy SSAD	3473	\$6,350,000	\$1,829	\$553	\$2,381

There are several ways to set up a new special sanitary sewer assessment district (SSSAD). Depending on how the structure of a future SSSAD is established, the amount of the special assessment could be anticipated between \$2,000 and \$4,000. Any future assessment established would be in addition to the standard single-family unit connection fee of \$2,550.

ATTACHMENTS

Table of Projects Approved to Connect to Sewer and Unapproved to Connect to Sewer
GIS Property Exhibit of Developable Area with Zoning Table

Planning Commission Approval/Approved for Construction or Already Under Construction and <u>Committed for Connection to Sewer</u>	
MWRD Proj. #	Project Name
19016	Bell Tower Apartments
18054	Crossings Of Three Rivers, Phase 2
19021 21015 19042	Gardens of Three Rivers – Sections 2 & 3
18051 19130	Magnolia Grove Sec 1 Ph 1 & 2
20059 18117 20107 19124 20108	Meadows at Kimbro Woods, Section 4, 5 & 6
17054	Salem Creek Section 8
19043 20006	Stonebridge at 3 Rivers 3B & 3C
21118	Strickland Brothers Oil
17117	Three Rivers - Section 2A, Phases 1 & 2 (Remaining)
18126	Waffle House
18061 20021 18145	Waites Creek Crossing Sections 1, 2 & 3
19109	Westwind Sec 5
17039	Westwind TH

Planning Application Received and/or Approved - <u>Not Approved for Construction or Connection to Sewer</u>	
MWRD Proj. #	Project Name
17100	Three Rivers - Section 12 (West of Cason Ln)
NA	Ognio Property (PCD Zoning & Annexation)(12.6 acres @ 2.5 sfu's/acre)
NA	Waites Creek Crossing - Section 4, 5 & 6 (Preliminary Plat)

Remaining Developable Property
Inside Salem Hwy Corridor and Inside City Limits

Map no.	Deeded Acreage	Current Zoning	Allowable Density (sfu eq/Ac)	Potential Sfu
1	11.5	RS-15	3	34.5
2	22.1	RS-A1	7	154.7
4	18.26	PRD	7	127.8
5	21.5	PRD	7	150.5
6	23.3	PRD	7	163.1
7	5.01	PUD	4	20.0
8	56.8	PUD	4	227.2
9	48.4	PUD	4	193.6
10A	17.76	RS-6	7	124.3
10B	6.12	CF	2.5	15.3
14B	4.65	OG	2.5	11.6
15A	5.8	OG	2.5	14.5
15B	13.7	CF	2.5	34.3
16A	43.3	RM-16	9	389.7
16C	30.3	CH	2.5	75.8
17A	17	RM-16	9	153.0
17B	8.7	CF	2.5	21.8
TOTAL	354.2		Total	1912

Salem Barfield Special Sanitary Sewer Assessment District
Updated 2001 to 2022 and Newly Proposed 2022

Original Salem-Barfield (2001)		Updated Salem-Barfield (2001 to 2022)	
Estimated		Actual	
Actual Construction Costs	\$2,920,664	Actual Construction Costs	\$2,920,664
Interest @ 3.5% over 20 years	\$1,189,357	Interest Earnings Foregone (thru 2021)	\$451,699
		Assessment Collected (thru 2021)	\$2,697,570
Total Basis of Assessment	\$4,110,021	Subtotal	\$674,793
		Interest 3.5% over 5 yrs	\$72,477
		Updated Total Basis of Assessment	\$747,270
# Single Family Unit Connections	5,480	Updated (Approved) SFU Connections	891
Assessment Fee	\$750	Updated Assessment Fee	\$840
New Proposed Salem-Barfield (2022)			
Actual Bid Costs	\$8,389,949		
Interest @ 3.5% over 15 years	\$2,536,920		
Total Basis of New Assessment	\$10,926,869		
# SFU Connections	3,473		
New Assessment Fee	\$3,150		



ENERGY LAND & INFRASTRUCTURE

November 16, 2022

Valerie Smith, PE
Assistant Director
Murfreesboro Water Resource Department
220 NW Broad Street
Murfreesboro TN, 37130

Re: Recommendation to Award

SALEM/BARFIELD SEWER IMPROVEMENT PH 3 (BASIN 72-6) (Lines A & B)
SOUTHWEST INTERCEPTOR SEWER REPLACEMENT PH 2 (LINE C)
SALEM HIGHWAY SANITARY SEWER IMPROVEMENTS (BASIN 72-2) (LINES D, E, F)

Dear Ms. Smith,

Bids were opened and read aloud for the combined Salem/Barfield, Southwest Interceptor, and Salem Highway Sanitary Sewer project at 10am on November 15, 2022. Bids were submitted by Cleary Construction and Norris Brothers Excavating. Five (5) contracting companies purchased plans for this project but Cleary Construction and Norris Brothers Excavating were the only contractors to submit bids. Based on a review of the submitted bids, both appear to be responsive to the bid requirements. Below is a summary of the bid results after recalculation based on the submitted unit prices:

Contractor	Bid Amount
Cleary Construction	\$13,936,972.00
Norris Brothers Excavating	\$15,859,944.00
ELI Opinion of Probable Cost	\$9,980,502.13

Differences between the bids as submitted and the bid tabulation are noted on the attached bid tabulation.

Upon review of the submitted bids, ELI recommends award of the project to Cleary Construction in the amount of \$13,936,972.00. The pricing of both contractors is significantly higher than the opinion of probable cost. ELI believes this is primarily due to the current volatility of material pricing, uncertainty in material delivery times, and the current strain on the local construction market. If you have any questions, please feel free to contact me at 615-878-3334 or by email at John.Gordon@eli-llc.com.

Regards,

ENERGY LAND & INFRASTRUCTURE, LLC

John R. Gordon, PE, PMP, CPESC

Attachment: Bid Tabulation

Project: SALEM/BARFIELD SEWER IMPROVEMENT PH 3 (BASIN 72-6) (Lines A & B)
SOUTHWEST INTERCEPTOR SEWER REPLACEMENT PH 2 (LINE C)
SALEM HIGHWAY SANITARY SEWER IMPROVEMENTS (BASIN 72-2) (LINES D,E,F)

11/16/2022



SALEM/BARFIELD SEWER IMPROVEMENT PH 3 (BASIN 72-6) (Lines A & B)				Engineering Estimate		Norris Brothers		Cleary Construction	
Item	Description	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	MOBILIZATION	LS	1	\$50,000.00	\$ 50,000.00	\$425,000.00	\$ 425,000.00	\$550,000.00	\$ 550,000.00
2	CLEARING AND GRUBBING	LS	1	\$20,000.00	\$ 20,000.00	\$55,000.00	\$ 55,000.00	\$20,000.00	\$ 20,000.00
3	15IN SDR26 PVC GRAVITY SEWER	L.F.	219	\$330.00	\$ 72,270.00	\$280.00	\$ 61,320.00	\$365.00	\$ 79,935.00
4	24IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE INSTALLATION)	L.F.	1890	\$350.00	\$ 661,500.00	\$580.00	\$ 1,096,200.00	\$411.00	\$ 776,790.00
5	24IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE MATERIAL ONLY)	L.F.	1890	\$254.00	\$ 480,060.00	\$190.00	\$ 359,100.00	\$321.00	\$ 606,690.00
6	60IN MANHOLE 8FT-10FT DEPTH	EACH	3	\$9,000.00	\$ 27,000.00	\$10,000.00	\$ 30,000.00	\$17,500.00	\$ 52,500.00
7	60IN MANHOLE 10FT-12FT DEPTH	EACH	1	\$10,000.00	\$ 10,000.00	\$12,000.00	\$ 12,000.00	\$18,000.00	\$ 18,000.00
8	60IN MANHOLE 12FT-14FT DEPTH	EACH	2	\$11,000.00	\$ 22,000.00	\$14,000.00	\$ 28,000.00	\$27,000.00	\$ 54,000.00
9	60IN MANHOLE 14FT-16FT DEPTH	EACH	2	\$12,000.00	\$ 24,000.00	\$16,000.00	\$ 32,000.00	\$30,000.00	\$ 60,000.00
10	60IN MANHOLE 16FT-20FT DEPTH	EACH	1	\$15,000.00	\$ 15,000.00	\$24,500.00	\$ 24,500.00	\$30,000.00	\$ 30,000.00
11	CONNECT 8IN SEWER TO NEW MANHOLE	EACH	4	\$4,000.00	\$ 16,000.00	\$28,000.00	\$ 112,000.00	\$17,000.00	\$ 68,000.00
12	CONNECT 24IN SEWER TO EXIST. MANHOLE	EACH	2	\$5,000.00	\$ 10,000.00	\$26,000.00	\$ 52,000.00	\$22,000.00	\$ 44,000.00
13	CONNECT EXISTING 21IN SEWER TO NEW MANHOLE	EACH	1	\$7,500.00	\$ 7,500.00	\$26,000.00	\$ 26,000.00	\$21,500.00	\$ 21,500.00
14	TV INSPECTION	L.F.	2543	\$5.00	\$ 12,715.00	\$10.00	\$ 25,430.00	\$3.00	\$ 7,629.00
15	RIVER CROSSING	LS	1	\$460,000.00	\$ 460,000.00	\$375,000.00	\$ 375,000.00	\$1,050,000.00	\$ 1,050,000.00
16	PLUG EXISTING MANHOLE CONNECTION	EACH	2	\$1,500.00	\$ 3,000.00	\$6,000.00	\$ 12,000.00	\$2,000.00	\$ 4,000.00
17	RETIRE IN PLACE 15IN - 21IN SEWER LINE	L.F.	713	\$25.00	\$ 17,825.00	\$30.00	\$ 21,390.00	\$40.00	\$ 28,520.00
18	RETIRE IN PLACE 48IN MANHOLE	EACH	2	\$2,000.00	\$ 4,000.00	\$2,000.00	\$ 4,000.00	\$2,500.00	\$ 5,000.00
19	MACHINED RIP-RAP (CLASS A-1)	TON	88	\$41.00	\$ 3,608.00	\$55.00	\$ 4,840.00	\$85.00	\$ 7,480.00
20	GEOTEXTILE (TYPE III) (EROSION CONTROL)	S.Y.	67	\$4.00	\$ 268.00	\$3.00	\$ 201.00	\$40.00	\$ 2,680.00
21	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	550	\$5.00	\$ 2,750.00	\$3.00	\$ 1,650.00	\$4.50	\$ 2,475.00
22	SEEDING	UNIT	140	\$30.50	\$ 4,270.00	\$45.00	\$ 6,300.00	\$195.00	\$ 27,300.00
23	CURB AND GUTTER RESTORATION	L.F.	200	\$30.00	\$ 6,000.00	\$80.00	\$ 16,000.00	\$100.00	\$ 20,000.00
24	PAVEMENT RESTORATION	SY	500	\$120.00	\$ 60,000.00	\$65.00	\$ 32,500.00	\$245.00	\$ 122,500.00
25	CONSTRUCTION ENTRANCE	EACH	1	\$2,500.00	\$ 2,500.00	\$2,500.00	\$ 2,500.00	\$3,500.00	\$ 3,500.00
26	FENCE REPLACEMENT (IN KIND)	L.F.	148	\$25.00	\$ 3,700.00	\$6.00	\$ 888.00	\$45.00	\$ 6,660.00
27	UNDERCUTTING	CY	100	\$25.00	\$ 2,500.00	\$40.00	\$ 4,000.00	\$80.00	\$ 8,000.00
28	BACKFILL OF UNDERCUTTING	CY	100	\$30.00	\$ 3,000.00	\$40.00	\$ 4,000.00	\$70.00	\$ 7,000.00
SALEM/BARFIELD SEWER IMPROVEMENT PH 3 SUBTOTAL					\$ 2,001,466.00		\$ 2,823,819.00		\$ 3,684,159.00
SOUTHWEST INTERCEPTOR SEWER REPLACEMENT PH 2 (LINE C)				Engineering Estimate		Norris Brothers		Cleary Construction	
Item	Description	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	MOBILIZATION	LS	1	\$50,000.00	\$ 50,000.00	\$360,000.00	\$ 360,000.00	\$435,000.00	\$ 435,000.00
2	CLEARING AND GRUBBING	LS	1	\$5,000.00	\$ 5,000.00	\$60,000.00	\$ 60,000.00	\$7,500.00	\$ 7,500.00
3	36IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE INSTALLATION)	L.F.	358	\$350.00	\$ 125,300.00	\$1,000.00	\$ 358,000.00	\$801.00	\$ 286,758.00
4	36IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE MATERIAL ONLY)	L.F.	358	\$500.00	\$ 179,000.00	\$800.00	\$ 286,400.00	\$652.00	\$ 233,416.00
5	60IN MANHOLE 16FT-20FT DEPTH	EACH	2	\$15,000.00	\$ 30,000.00	\$23,500.00	\$ 47,000.00	\$47,000.00	\$ 94,000.00
6	CONNECT EXISTING 8IN SEWER TO NEW MANHOLE	EACH	1	\$4,000.00	\$ 4,000.00	\$3,500.00	\$ 3,500.00	\$17,500.00	\$ 17,500.00
7	CONNECT EXISTING 36IN SEWER TO NEW MANHOLE	EACH	2	\$7,500.00	\$ 15,000.00	\$30,000.00	\$ 60,000.00	\$18,000.00	\$ 36,000.00
8	TV INSPECTION	L.F.	430	\$5.00	\$ 2,150.00	\$10.00	\$ 4,300.00	\$3.00	\$ 1,290.00
9	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	700	\$5.00	\$ 3,500.00	\$3.00	\$ 2,100.00	\$4.50	\$ 3,150.00
10	SEEDING	UNIT	25	\$30.50	\$ 762.50	\$65.00	\$ 1,625.00	\$650.00	\$ 16,250.00
11	REMOVE EXISTING 36" FRP	LS	1	\$480,000.00	\$ 480,000.00	\$100,000.00	\$ 100,000.00	\$500,000.00	\$ 500,000.00
12	CONSTRUCTION ENTRANCE	EACH	2	\$2,500.00	\$ 5,000.00	\$2,500.00	\$ 5,000.00	\$3,500.00	\$ 7,000.00
SOUTHWEST INTERCEPTOR SEWER IMPROVEMENT PH 2 SUBTOTAL					\$ 899,712.50		\$ 1,287,925.00		\$ 1,637,864.00
SALEM HIGHWAY SANITARY SEWER IMPROVEMENTS (BASIN 72-2) (LINES D,E,F)				Engineering Estimate		Norris Brothers		Cleary Construction	
Item	Description	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	MOBILIZATION	LS	1	\$100,000.00	\$ 100,000.00	\$645,000.00	\$ 645,000.00	\$765,000.00	\$ 765,000.00
2	CLEARING AND GRUBBING	LS	1	\$80,000.00	\$ 80,000.00	\$325,000.00	\$ 325,000.00	\$15,000.00	\$ 15,000.00
3	TRAFFIC CONTROL	LS	1	\$50,000.00	\$ 50,000.00	\$198,000.00	\$ 198,000.00	\$25,000.00	\$ 25,000.00
4	12IN SDR26 PVC GRAVITY SEWER	L.F.	1075	\$300.00	\$ 322,500.00	\$380.00	\$ 408,500.00	\$358.00	\$ 384,850.00
5	15IN SDR26 PVC GRAVITY SEWER	L.F.	3128	\$330.00	\$ 1,032,240.00	\$580.00	\$ 1,814,240.00	\$365.00	\$ 1,141,720.00
6	18IN SDR26 PVC GRAVITY SEWER	L.F.	1465	\$360.00	\$ 527,400.00	\$620.00	\$ 908,300.00	\$408.00	\$ 597,720.00
7	21IN SDR26 PVC GRAVITY SEWER	L.F.	1712	\$390.00	\$ 667,680.00	\$760.00	\$ 1,301,120.00	\$598.00	\$ 1,023,776.00
8	12IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE INSTALLATION)	FT	296	\$300.00	\$ 88,800.00	\$1,110.00	\$ 328,560.00	\$290.00	\$ 85,840.00
9	12IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE MATERIAL ONLY)	FT	296	\$99.00	\$ 29,304.00	\$70.00	\$ 20,720.00	\$140.00	\$ 41,440.00
10	16IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE INSTALLATION)	FT	1241	\$325.00	\$ 403,325.00	\$1,140.00	\$ 1,414,740.00	\$494.00	\$ 613,054.00
11	16IN CLASS 350 D.I.P. GRAVITY SEWER (PIPE MATERIAL ONLY)	FT	1241	\$145.00	\$ 179,945.00	\$80.00	\$ 99,280.00	\$184.00	\$ 228,344.00
12	48IN STEEL CASING BORE	LS	1	\$990,000.00	\$ 990,000.00	\$2,676,000.00	\$ 2,676,000.00	\$980,000.00	\$ 980,000.00
13	60IN MANHOLE 4FT-6FT DEPTH	EACH	2	\$8,000.00	\$ 16,000.00	\$9,000.00	\$ 18,000.00	\$16,000.00	\$ 32,000.00
14	60IN MANHOLE 6FT-8FT DEPTH	EACH	4	\$8,500.00	\$ 34,000.00	\$9,800.00	\$ 39,200.00	\$20,000.00	\$ 80,000.00
15	60IN MANHOLE 8FT-10FT DEPTH	EACH	2	\$9,000.00	\$ 18,000.00	\$12,000.00	\$ 24,000.00	\$21,500.00	\$ 43,000.00
16	60IN MANHOLE 10FT-12FT DEPTH	EACH	8	\$10,000.00	\$ 80,000.00	\$12,000.00	\$ 96,000.00	\$22,000.00	\$ 176,000.00
17	60IN MANHOLE 12FT-14FT DEPTH	EACH	6	\$11,000.00	\$ 66,000.00	\$15,000.00	\$ 90,000.00	\$23,000.00	\$ 138,000.00
18	60IN MANHOLE 14FT-16FT DEPTH	EACH	4	\$12,000.00	\$ 48,000.00	\$18,000.00	\$ 72,000.00	\$24,000.00	\$ 96,000.00
19	60IN MANHOLE 16FT-20FT DEPTH	EACH	5	\$15,000.00	\$ 75,000.00	\$22,000.00	\$ 110,000.00	\$30,000.00	\$ 150,000.00
20	60IN MANHOLE 20FT-24FT DEPTH	EACH	3	\$20,000.00	\$ 60,000.00	\$27,000.00	\$ 81,000.00	\$50,000.00	\$ 150,000.00
21	CONNECT 8IN SEWER TO NEW MANHOLE	EACH	7	\$4,000.00	\$ 28,000.00	\$23,000.00	\$ 161,000.00	\$17,000.00	\$ 119,000.00
22	CONNECT 10IN SEWER TO NEW MANHOLE	EACH	1	\$4,500.00	\$ 4,500.00	\$26,000.00	\$ 26,000.00	\$17,500.00	\$ 17,500.00
23	CONNECT 12IN SEWER TO NEW MANHOLE	EACH	1	\$4,500.00	\$ 4,500.00	\$27,000.00	\$ 27,000.00	\$18,000.00	\$ 18,000.00
24	CONNECT 21IN SEWER TO EXIST. MANHOLE	EACH	1	\$5,000.00	\$ 5,000.00	\$6,800.00	\$ 6,800.00	\$21,500.00	\$ 21,500.00
25	INSTALL 6IN SEWER SERVICE	EACH	7	\$4,000.00	\$ 28,000.00	\$3,200.00	\$ 22,400.00	\$13,000.00	\$ 91,000.00
26	TV INSPECTION	L.F.	10420	\$5.00	\$ 52,100.00	\$10.00	\$ 104,200.00	\$3.00	\$ 31,260.00
27	PLUG MANHOLE CONNECTION	EACH	4	\$2,500.00	\$ 10,000.00	\$3,500.00	\$ 14,000.00	\$2,000.00	\$ 8,000.00
28	RETIRE IN PLACE 15IN - 21IN SEWER LINE	L.F.	1373	\$25.00	\$ 34,325.00	\$30.00	\$ 41,190.00	\$40.00	\$ 54,920.00
29	RETIRE IN PLACE 48IN MANHOLE	EACH	3	\$2,000.00	\$ 6,000.00	\$2,000.00	\$ 6,000.00	\$2,500.00	\$ 7,500.00
30	PIPE TRENCH PLUG	EACH	16	\$2,000.00	\$ 32,000.00	\$600.00	\$ 9,600.00	\$1,850.00	\$ 29,600.00
31	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	18000	\$5.00	\$ 90,000.00	\$6.00	\$ 108,000.00	\$4.50	\$ 81,000.00
32	SEEDING	UNIT	600	\$30.50	\$ 18,300.00	\$65.00	\$ 39,000.00	\$345.00	\$ 207,000.00
33	EROSION CONTROL BLANKET	SY	1000	\$31.50	\$ 31,500.00	\$3.00	\$ 3,000.00	\$8.00	\$ 8,000.00
34	CURB AND GUTTER RESTORATION	L.F.	400	\$30.00	\$ 12,000.00	\$45.00	\$ 18,000.00	\$100.00	\$ 40,000.00
35	EXTRUDED CURB RESTORATION	L.F.	50	\$30.00	\$ 1,500.00	\$45.00	\$ 2,250.00	\$100.00	\$ 5,000.00
36	MOUNTABLE DETACHED CURB RESTORATION	L.F.	200	\$25.00	\$ 5,000.00	\$65.00	\$ 13,000.00	\$100.00	\$ 20,000.00
37	PAVEMENT RESTORATION	SY	1500	\$120.00	\$ 180,000.00	\$55.00	\$ 82,500.00	\$240.00	\$ 360,000.00
38	SIDEWALK RESTORATION	SF	1200	\$20.00	\$ 24,000.00	\$10.00	\$ 12,000.00	\$185.00	\$ 222,000.00
39	REMOVE AND REPLACE STORM PIPE AND INLET	LS	1	\$15,000.00	\$ 15,000.00	\$25,000.00	\$ 25,000.00	\$58	

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Solid Waste Management WasteAway Project Agreement

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Approval of Project Agreement with WasteAway, LLC for solid waste management.

Staff Recommendation

Approve the project agreement with WasteAway, LLC, committing to the planning and design of a qualified biogas property (QBP) to be built at 2120 Butler Drive, and which necessarily incorporates a Materials Management Station (MMS) to be constructed in anticipation of Middle Point Landfill's closure by 2025.

Background Information

At the October 13, 2022 City Council reviewed the decision model for the process of addressing future Solid Waste Disposal for Murfreesboro (attached). Incorporating the weighting factors of the Council's Triple Bottom Line (TBL) worksheets ensures that the City's proposed future solid waste management solution incorporates social and environmental elements that reflects the citizenry and brand of Murfreesboro.

Based on the multi-criteria analysis scoring, City Council provided staff the directive to move forward with constructing a project agreement with WasteAway, LLC.

The proposed project agreement with WasteAway is attached, and can be summarized as follows:

- The agreement primarily defines the design phase of the WasteAway facility at a cost of \$2,500,000. The design consists of four distinct components, a Material Management Station (MMS), WasteAway SE3 Manufacturing (SE3M) section, Anaerobic Reactor Biogas Generation (ARBG) section and Renewable Natural Gas Purification (RNGP) section. All of these components require construction and bid drawing preparation. In addition, the design phase will deal with geotechnical investigation, permitting, bidding and contract administration.
- The agreement sets an expectation to negotiate in good faith the terms for the construction of all improvements and that the construction phase will be complete by July 1, 2025, and cost no more than \$67,500,000 gross and \$55,000,000 net to the City. The difference between the gross and net amounts is due to a 30% federal rebate defined in Title 26 USC §48: ENERGY CREDIT Qualified Biogas Property ("QBP") projects. In order to receive the 30% rebate, the QBP project must be considered "under construction" before January 1, 2025.

- The agreement sets an expectation to negotiate in good faith the terms for a long-term operation of the project after construction is complete. The agreement sets forth the requirement that the revenues generated by selling renewable natural gas (RNG) and Renewable Identification Number (RIN) credits fully support the debt service and operational expenses of the facility. And that any additional revenues would provide for a reasonable management fee and then accrue benefits to the City primarily in the form of reduced tipping or processing fees.

Also attached is a proposed draft interlocal agreement with Rutherford County to cost-share in the design and construction of the Material Management Station section of the project. As you may recall in the 2018 the consultant Gershman, Brickner & Bratton, Inc. (GBB), recommended a material management station on the north and the south end of the County. The City has attempted to persuade the County in partnering on a southern material management station first, with a northern station coming later. The interlocal agreement defines the roles and responsibilities of each municipal organization.

In spending the last 16 months working through the various options available to Murfreesboro after Middle Point Landfill's closure, I have confidence that the WastAway process works –

- 1) Technically; from the EPA comfort letter to the manufacturing of the SE3 fuel to generating renewable natural gas
- 2) Financially; the renewable natural gas business case offers the lowest monthly cost to the solid waste customers in Murfreesboro and the federal government incentives are only getting better.
- 3) Socially and Environmentally; no out of county traffic or trash, no odor, and 90% diversion of municipal solid waste is a homerun.
- 4) Interlocally; a material management station off of Butler Dr. is a win-win for the County and City
- 5) By Mitigating Risk; revenue bonds are backed by the project revenues and bondholders do not have a claim on the City, and the City/County retain ownership of the material management station of the project.
- 6) Based on Timing; the material management station needs to be operation by beginning of 2025 to dovetail with Middle Point Landfill's closure and also meet the federal rebate requirements of the qualified biogas property being "under construction". Please note that the timing only works if we begin the design process immediately.

Council Priorities Served

Responsible budgeting

Addressing the financial aspects of handling solid waste in the future is a significant requirement for responsibly budgeting for this service.

Fiscal Impact

The planning and design costs associated with the qualified biogas property (e.g., WastAway project) is \$2,500,000 over an approximate 16-month period. Construction costs will be determined during the bidding process.

Attachments

1. Solid Waste Management Multi-criteria Analysis (MCA) report
2. Murfreesboro-WastAway Qualified Biogas Property Project Agreement
3. Murfreesboro-Rutherford County Material Management Station Interlocal Agreement

COUNCIL COMMUNICATION

Meeting Date: 12/01/2022

Item Title: Parks and Recreation Commission

Department: Administration

Presented by: Mayor McFarland

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

Appointments to the Parks and Recreation Commission.

Background Information

The Commission oversees the operations of the Parks and Recreation Department. As established by M.C.C.§31-15, there are nine appointed members appointed for three-year terms.

Attachments:

Memo from Mayor McFarland



. . . creating a better quality of life.

December 1, 2022

Members of City Council

RE: Recommended Appointment – Parks and Recreation Commission

Board Appointment

As an item for the City Council agenda, I am recommending the following reappointments to the Parks and Recreation Commission.

Appointments

Kent Syler, filling the vacancy left by Charles Apigian, June 30, 2024 expiration

Charlie Montgomery, filling the vacancy left by Ricky L. Turner June 30, 2023 expiration

Sincerely,

Shane McFarland
Mayor