

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
January 5, 2023

PRAYER

Mr. Bill Shacklett

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEMS

Consent Agenda

1. New Bulk Fuel Farm at the Murfreesboro Municipal Airport (Airport)
2. Amendment of ZOLL Data Systems Contract (Fire Rescue)
3. Purchase PortaCount Machine (Fire Rescue)
4. Main Street Banner Request (Street)
5. Transportation Investment Report – Memorial Blvd Widening (Transportation)
6. Amendment No. 1 Contract for Engineering Study of Transit Route and Shelter Placement (Transportation)
7. Amendment to WRRF Sodium Hypochlorite Contract (Water Resources)
8. Advanced Metering Infrastructure Equipment Purchasing Contract (Water Resources)
9. High Service Pump Station Programmable Logic Controller Replacement (Water Resources)
10. Amendment of Contract with Calgon Carbon Corporation (Water Resources)
11. Mechanical and Electrical Services Contract Extension (Water Resources)
12. Asphalt Purchases Report (Water Resources)

Old Business

Land Use Matters

13. Ordinance 22-OZ-44 Rezoning property along North Rutherford Boulevard (2nd and final reading) (Planning)
14. Ordinance 22-OZ-45 Zoning for property along Veterans Parkway (2nd and final reading) (Planning)

New Business

Resolution

15. Resolution 23-R-01: FY23 City Schools Budget Amendment #5 (Schools)

On Motion

16. Town Creek Master Services Agreement and Task Orders (Administration)
17. Construction Contract Award - Beasie/River Rock Connector Road (Engineering)

18. Construction Admin Contract - Beasie/River Rock Connector Road
(Engineering)
19. Professional Services Contract - Rutherford Blvd Extension Geotech Services
(Engineering)
20. City of Murfreesboro/CUD Cost Sharing Agreement - Berkshire Paving
(Engineering)
21. Martin Luther King Jr. Blvd Sidewalk Project Phase 1 - Final Change Order
(Engineering)
22. Purchase of 2023 Ford E-450 Commercial Cutaway Truck (Schools)
23. Engineering Design Services for Qualified Biogas Property (WastAway Solid
Waste Management Project) (Solid Waste)

Board & Commission Appointments

24. Pension Committee

Licensing

Payment of Statements

Other Business

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Construction for New Bulk Fuel Farm – Murfreesboro Municipal Airport

Department: Airport

Presented by: Chad L. Gehrke, Airport Director

Requested Council Action:

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

Summary

Construction of New Bulk Fuel Farm at the Murfreesboro Municipal Airport.

Staff Recommendation

Approve contract in the amount of \$329,915.00 with Southeast Contractors, Inc. of Brentwood, Tennessee for

Background Information

The Murfreesboro Municipal Airport benefits from relocation of the existing fuel farm and update fuel service through construction of a new bulk fuel farm to service the anticipated demand for aircraft fuel as the airport continues to grow.

This construction project includes site preparations, new utilities, electrical conduits, and concrete pads for fuel tank storage and containment areas, as well as site drainage improvements. Southeast Contractors was the lowest responsible bidder at.

Council Priorities Served

Expand infrastructure

Maintaining and expanding the Airport facilities are critical to safe and effective transportation and provide for economic growth and development/

Fiscal Impact

The project cost, \$329,915, is funded by the FY21 CIP Budget.

Attachments

Contract for Construction of a Small Project with Southeast Contractors

CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between City of Murfreesboro, Tennessee (Owner) and Southeast Contractors, Inc., a Corporation of the State of Tennessee (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - THE WORK

1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
 - 1. Construction of new reinforced concrete containment and aboveground storage tank pad including truck fuel transformer pad with rollover curbs. Work also includes installation of primary electric conduit and junction boxes to location of new transformer pad and installation of new meter and panel. Installation of new conduit for site lighting, estop, and communication. Additional site lighting with reinforced concrete pedestals will be installed. Minor site drainage and grading work and site restoration of disturbed areas is required to complete the work.
 - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located at the Murfreesboro Municipal Airport located at 1930 Memorial Blvd., Murfreesboro, Tennessee 37129.

ARTICLE 2 - CONTRACT DOCUMENTS

2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
 - 1. This Contract.
 - 2. Bid Security in the form of a Bid Bond, Cashier's Check, or Money Order.
 - 3. Performance bond.
 - 4. Payment bond.
 - 5. Invitation to Bid.
 - 6. Technical Specifications listed in the Table of Contents.
 - 7. Drawings as listed on the Drawing Sheet Index.
 - 8. Addenda.
 - 9. The following which may be delivered or issued on or after the Effective Date of the Contract:
 - a. Work Change Directives (EJCDC C-940).
 - b. Change Orders (EJCDC C-941).
 - c. Field Orders.
 - 10. Drug Free Work Place Affidavit.
 - 11. Statement of Compliance Certificate Illegal Immigrants
 - 12. Statement of Compliance Iran Divestment Act

ARTICLE 3 - ENGINEER

3.01 Engineer

- A. The Engineer for this Project is Griggs & Maloney, Inc.
 - c/o Ryan Maloney, P.E.
 - 745 S. Church Street, Suite 205
 - Murfreesboro, TN 37130
 - rmaloney@griggsmaloney.com
 - (615) 895-8221

ARTICLE 4 - CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially completed within 90 days after the Effective Date of the Contract and completed and ready for final payment within 120 days after the Effective Date of the Contract.

4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Two Hundred Fifty Dollars and No Cents (\$250.00) for each day that expires after the Contract Time for substantial completion.

4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 - CONTRACT PRICE

5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents, the lump sum amount of Three Hundred Twenty-Nine Thousand, Nine Hundred and Fifteen Dollars and No Cents (\$329,915.00) for all Work.

ARTICLE 6 - BONDS AND INSURANCE

6.01 Bonds

- A. A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- B. Before starting Work, Contractor shall furnish a performance bond and a payment bond, each for 100% of the contract amount, from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.
- C. All Bid Bonds, all Performance Bonds, and all Payment Bonds shall be executed by such sureties that are listed on the U.S. Department of Treasury Financial Service List of Bonding Companies and have a rating of at least AA by Standard & Poor's or a comparable rating by an accepted credit rating agency.

6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

- 1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

- a. Workers' Compensation:

State:	<u>Statutory</u>
Employer's Liability:	
Bodily Injury, each Accident	\$ <u>1,000,000</u>
Bodily Injury By Disease, each Employee	\$ <u>1,000,000</u>
Bodily Injury/Disease Aggregate	\$ <u>1,000,000</u>

- b. Commercial General Liability:

General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

c. Automobile Liability herein:

NOTES TO USER: Automobile Liability Insurance may be listed as Bodily Injury and Property Damage or a Combined Single Limit that covers both. Choose Bodily Injury and Property Damage or a Combined Single Limit and delete the lines not used.

Bodily Injury:

Each Person \$ 1,000,000

Each Accident \$ 1,000,000

Property Damage:

Each Accident \$ 1,000,000

Combined Single Limit of: \$ 1,000,000

d. Excess or Umbrella Liability:

Per Occurrence \$ 1,000,000

General Aggregate \$ 2,000,000

e. Contractor's Pollution Liability:

Each Occurrence \$ 1,000,000

General Aggregate \$ 1,000,000

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
 2. Blanket contractual liability coverage to the extent permitted by law;
 3. Broad form property damage coverage; and
 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall

provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.

1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid

damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall

annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.

- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.
- I. Required Submittals:
 - 1. Concrete Mix Design
 - 2. Joint Sealant (compatible with exposure to fuel)
 - 3. Bollards
 - 4. Lighting
 - 5. Panel
 - 6. Misc. Electrical Junction Box Conduit
 - 7. Reinforcing Steel
 - 8. Valves and Piping
 - 9. Yard Hydrant

7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease,

or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.

- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK

10.01 Authority to Change the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.01 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except

with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Engineer will promptly:
 - 1. Review the subsurface or physical condition in question;
 - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
 - 3. Determine whether the condition falls within the differing site condition as stated herein;
 - 4. Obtain any pertinent cost or schedule information from Contractor;
 - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
 - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION

12.01 Claims Process

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.01 Tests and Inspections

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.01 Progress Payments

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.02 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work

have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

14.03 Retainage

- A. The Owner shall retain 5% of each progress payment until the Work is substantially complete.

14.04 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

14.06 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.07 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all disputes that Contractor believes are unsettled; and
 - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and

2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

15.03 Owner May Terminate for Convenience

- A. Upon 7 days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - a. The cost, progress, and performance of the Work;
 - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
 - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17 - MISCELLANEOUS

17.01 Cumulative Remedies

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.02 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Murfreesboro

By: Shane McFarland

By: William F. Milburn

Title: Mayor

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Jennifer Brown

Attest:

Title: City Recorder

Title:

Address for giving notices:

Address for giving notices:

Attn: City Manager

Attn: William F. Millburn

111 West Vine Street

354 Cool Springs Boulevard, Suite 104

Murfreesboro, TN 37130

Franklin, TN 37067

License No.: 22182

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Approved to form

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Amendment of ZOLL Data Systems Contract

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

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

Summary

Amend contract with ZOLL Data Systems for reporting software to correct vendor's contract error.

Staff Recommendation

Approve the amendment to contract with ZOLL Data Systems Inc.

Background Information

Council previously approved the purchase ZOLL Reporting Software for fire reports, patient care reports, and inventory of medical supplies. The original contract inadvertently excluded the Operations Module. The Operations Module will add \$15,300 to the previously approved 3-year contract. The amendment corrects that error. Because of the vendor's mistake, ZOLL has agreed to provide the Operations Module without charge through June 30, 2023.

Council Priorities Served

Maintain public safety

The use of this software helps maintain operational readiness and efficiency of operations.

Fiscal Impacts

The expenditure, \$15,000, is funded by the Department's annual operating budget.

Attachment

Adjustments-to-Fees Addendum to contract with ZOLL Data Systems, Inc.

Adjustments-to-Fees Addendum**Order No.: Q-43074**

THIS ORDER FORM (this "Order") is made as of the date on which both parties have signed below (the "Effective Date") by and between ZOLL Data Systems, Inc., a Delaware corporation with offices at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021, accountsreceivable@zoll.com ("ZOLL") and City of Murfreesboro, Tennessee, on behalf of the Murfreesboro Fire & Rescue Department (the "Customer").

Bill To: Murfreesboro Fire & Rescue Department PO Box 1139 Murfreesboro, TN 37133 Email for Notices: jflynt@murfreesborotn.gov	Ship To: Murfreesboro Fire & Rescue Department 220 N.W. Broad Street Murfreesboro, TN 37130
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Territory Manager: Tim Malone**Offer Expires:** 12/19/2022

ASP Services								
Item	Lic. Type	Description	Qty	List Price	Disc	Adj. Price	Annual Fees or One Time Charge	Monthly Fees
ZFR-OM	HL	ZOLL Fire Reports - Operations Modules (Per Incident) – from Effective Date until June 30, 2023	500	\$0.85	100%	\$0.00	\$0.00	\$0.00
ZFR-OM	HL	ZOLL Fire Reports - Operations Modules (Per Incident) – beginning July 1, 2023	500	\$0.85		\$0.85	\$5,100.00	\$425.00

Comments: Providing the above ZOLL Fire Reports - Operations Modules to Customer at quantities listed above at \$0 to Customer until June 30, 2023. ZOLL will internally adjust Fees accordingly.

*MONTHLY FEES: \$425.00
 *ANNUAL FEES: \$5,100.00
 ANNUAL FEES FOR INITIAL TERM BEFORE ADJUSTMENT: \$15,300.00
 ANNUAL FEES FOR INITIAL TERM AFTER ADJUSTMENT: \$11,900.00

TOTAL FEES FOR INITIAL TERM BEFORE ADJUSTMENT: \$15,300.00
TOTAL FEES FOR INITIAL TERM AFTER ADJUSTMENT: \$11,900.00

ASP Services Payment Terms: ZOLL will invoice Customer for the sum of any One-Time Fees and the Professional Services Fees listed above for the deployment of each of the ASP Services listed above upon completion of the Professional Services for which such Professional Services Fees are payable. ZOLL separately will invoice Customer for Expenses incurred by ZOLL in providing such Professional Services.

Additionally, ZOLL will invoice Customer upon the earlier of the Deployment Date or 60 days after on the Effective Date (the "Monthly Fees Commencement Date") and at the beginning of each calendar month during the Term for the amount of the Monthly Fees listed above for such ASP Services (i) prorated to account for any partial month, (ii) increased or decreased as set forth in the Adjustments to Fees section below and (iii) if such Monthly Fees are based on the quantity of Concurrent Users, increased by an amount equal to \$10 per month for any Registered User in excess of 200% of the Concurrent Users Cap.

Monthly Fees are payable in advance for each month of ASP Services ("Monthly Service Period"), except for the first Monthly Service Period. Accordingly, the first invoice for Monthly Fees shall be for the amount of the Monthly Fee for the first Monthly Service Period and the Monthly Fee for the second Monthly Service Period. Each subsequent invoice shall be for the amount of the Monthly Fee.

Term. Unless earlier terminated as set forth in the Agreement, (i) the initial term of this Order shall begin on the Effective Date and continue until October 31, 2025 (the "Initial Term") and (ii) after the Initial Term, this Order automatically shall continue on a month-to-month basis until so terminated.

Early Termination Fee. Notwithstanding the Agreement, if this Order is terminated prior to the expiration of the Initial Term by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal the amount of (i) the Annual Fees for the Initial Term minus (ii) the sum of Monthly Fees paid by Customer to ZOLL prior to the date of termination for the ASP Services or Software set forth in this Order.

Additional Terms for the City of Murfreesboro being a political subdivision of the state of Tennessee:

- **Choice of Law and Venue:** This Agreement will be governed by and interpreted in accordance with the laws of the State of Tennessee without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court of Tennessee, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.
- **Immunity:** Customer's obligations to indemnify, defend and hold ZOLL and its agents, officers, directors and employees harmless under the Agreement are subject to Article II, Section 29 of the Tennessee Constitution and are enforceable only to the extent permitted by Tennessee law. To the extent required by Tennessee law, Customer's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 et seq. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq.
- **Disclaimer of Warranties:** ZOLL's disclaimers of warranties under the Agreement are enforceable except to the extent prohibited by Tennessee law.

Adjustments-to-Fees Addendum**Order No.: Q-43074**

- **Non-appropriations:** ZOLL acknowledges that Customer is a governmental entity, and payments under this Agreement are based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available, after making due efforts, for the subsequent fiscal year covered by the term of this Agreement for the services to be provided, Customer shall notify ZOLL prior to the start of such fiscal year and this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without further liability for the subsequent fiscal year payment and such termination shall not be a breach of this Agreement.
- **Public Records:** Customer is a public agency subject to the Tennessee Public Records Act, set out in T.C.A. §10-7-503 et seq. Accordingly, no claim of confidentiality or proprietary information in all or any portion of information submitted by ZOLL to Customer in furtherance of this Agreement will be honored unless a specific exemption from the Public Records Act exists.
- **Order of Precedence:** In the event of any inconsistency between this Order and any other portion of the Agreement, the terms and conditions of this Order will control.

* **Adjustments to Fees:** Fees are subject to adjustment based on quantity as set forth in the attached Adjustment-to-Fees Addendum, including as a result of Registered Users being in excess of the Concurrent Users Cap for Fees based on Concurrent Users.

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS, AND APPLICABLE ADDENDA, AVAILABLE AT <https://www.zolldata.com/legal>, WHICH ARE INCORPORATED BY REFERENCE. BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES HAVING READ AND AGREES TO AND INTENDS TO BE BOUND BY THEM. HARD COPIES ARE AVAILABLE UPON REQUEST.

Each person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms of this Order. By signing below, the parties agree to the terms and conditions of this Order. Once signed, any reproduction of this Order made by reliable means (for example, photocopy or facsimile) is considered an original.

ZOLL Data Systems, Inc.

Authorized Signature:

**City of Murfreesboro, Tennessee on behalf of
Murfreesboro Fire & Rescue Department**

Authorized Signature:

DocuSigned by:

Sandy King

D1D2A604...Sandy...King

Name:

Title: Director of Operational Accounting

Date: 12/8/2022

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:*Adam F. Tucker*

43A2035E51F9401...

Adam F Tucker, City Attorney

Adjustments-to-Fees Addendum

Order No.: Q-43074

* **Adjustments to Fees:** Fees in the Order Form to which this addendum is attached (the “**Order**”), and of which it is a part, are subject to adjustment based on quantity as specified below (“**Qty**”), including as a result of Registered Users being in excess of the Concurrent Users Cap for Fees based on Concurrent Users:

Product	Basis for Adjustment
ZOLL Fire Reports	Qty of Fire Reports (the “ Fire Report Volume ”) listed in the line item in the Order. ZOLL may conduct an audit of Fire Report Volume following the 12 th month after the Monthly Fees Commencement Date for ZOLL Fire Reports and each anniversary of such date (a “ Fire Report Audit ”). Fire Report Volume (the “ Actual Fire Report Volume ”) for the preceding 12-month period (the “ Fire Report Audit Period ”) exceed 110% of the quantity of Fire Reports that was the basis for Monthly Fees in the Fire Report Audit Period multiplied by 12 (the “ Estimated Fire Report Volume ”), then ZOLL will invoice Customer for such excess multiplied by the per-Fire Report price listed in the Order (the “ Per-Fire Report Price ”). Should the Actual Fire Report Volume be less than the Estimated Fire Report Volume by more than 10% during the Fire Report Audit Period, then ZOLL will issue a credit in the amount of 10% of the Estimated Fire Report Volume multiplied by the Per-Fire Report Price. Future billings of the Monthly Fee will be adjusted based on the Actual Fire Report Volume as determined by the Fire Report Audit; <i>provided, that</i> the Monthly Fee shall not decrease by more than 10%.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Purchase of PortaCount Machine

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

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

Summary

Purchase of PortaCount Machine.

Staff Recommendation

Approve the purchase of equipment from TSI, Incorporated.

Background Information

MFRD proposes to purchase one PortaCount machine from TSI, Inc. TSI is the single-source provider of PortaCount devices. This machine will replace the department's current device which is approaching 10 years of age and beginning to malfunction. The PortaCount machine is used to satisfy OSHA requirements of annual Self-Contained Breathing Apparatus (SCBA) fit testing.

Funding for the purchase is provided by federal ARPA funds. Federal regulations require Council approval for expenditure of these funds.

Council Priorities Served

Maintain public safety

This PortaCount machine will ensure the proper fit of SCBAs which are critical pieces of equipment for MFRD personnel.

Fiscal Impacts

The cost, \$14,855, is funded by American Rescue Plan Act funds.

Attachments

TSI Quote and Sole Source Letter



500 Cardigan Road
Shoreview, MN 55126
USA
EIN 41-0843524

Tel:(800)680-1220
Fax:(651)490-3824
Web:www.TSI.com
Email:answers@TSI.com

Page 1 of 2

Quotation

Quote Contact

Nicole Miller
Tel: 615-893-1422
Email: nmiller@murfreesborotn.gov

Bill-To-Party

Murfreesboro Fire & Rescue
220 NW Broad St
Murfreesboro TN 37130-3512

Ship-To-Party

Murfreesboro Fire & Rescue
220 NW Broad St
Murfreesboro TN 37130-3512

Make PO Out To: TSI Inc.

Quotation Number 20244870
Quotation Date 12/14/2022
Customer No 5339046
Cust. Ref.
Incoterms 2020 CPT: Line Item
Consignee's Premises
Payment Term Net 30 days
Valid To 01/30/2023
Currency USD
Method of Payment PO, Visa, Amex, Mastercard
Reference Quote number when submitting PO

Item	Material/Description	Quantity	Unit Price	Amount
1	8048-T PortaCount Model 8048-T; w/ Tablet Respirator Fit Tester Includes: Carry Case; AC Adapter with Universal Plug Set; 8026 Particle Generator (115 VAC); Alcohol Cartridge; Alcohol Fill Capsule; Storage Cap; (2) Zero Check Filters; 3/16" and 1/4" Hose Adapters; (2) Spare Alcohol Wicks; (100) Sampling Probes; (100) Lock Washers; Probe Insertion Tool; Neck Strap; 8016 Alcohol Supply containing (16) 30mL Bottles of Reagent Grade Isopropyl Alcohol; FitPro Ultra Fit Test Software; Microsoft® Surface Go® Tablet; WiFi USB Adapter; USB-A & USB-C Cable; and 2-Year Warranty	1.00 EA	16,235.00	16,235.00
	Promo Discount Amt			1,500.00-
2	8025-20 Fit Test Adapter Kit - Scott Full-face Fit Test Adapter for Scott masks including AV-2000, AV-3000, Scott-O-Vista, 65. Includes disposable components for 200 fit tests including Adapter, Case, (200) Clips, (200) Suction Cups, (50-ft) Tubing, (1)P100 Filter, and instructions.	1.00 EA	260.00	260.00
	Customer Discnt Amnt			260.00-
Sub Total				14,735.00
Freight				120.00
Tax				TBD
Total Amount				14,855.00



500 Cardigan Road
Shoreview, MN 55126
USA
EIN 41-0843524

Tel:(800)680-1220
Fax:(651)490-3824
Web:www.TSI.com
Email:answers@TSI.com

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Quotation

Bill-To-Party Murfreesboro Fire & Rescue	Quotation Number 20244870
	Quotation Date 12/14/2022

Item	Material/Description	Quantity	Unit Price	Amount
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FREIGHT ESTIMATE IS FOR FEDEX GROUND SERVICE.

Sales Tax and Freight charges determined by tax status of customer and shipping method selected.

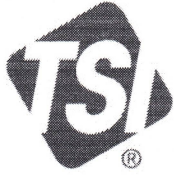
These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.

This Quotation is subject to the warranties, disclaimers and all other terms and conditions set forth by TSI Inc. and incorporated by reference and to no others. Seller reserves the right to change prices effective on any new orders, provided Seller notifies in writing those with currently valid Quotations prior to any order being placed. This quotation shall become an agreement binding upon the Buyer and Seller when accepted by the Buyer and subsequently accepted by an authorized representative of the Seller at the Seller's home office and thereupon shall constitute the entire agreement between the parties.

Rick Thao
TSI Incorporated

Date 12/14/2022

TSI Terms and Conditions apply and are incorporated by reference. See <http://www.tsi.com/tc.pdf>
For payment terms, complete credit application at <http://www.tsi.com/credit-app/>



TSI INCORPORATED

500 Cardigan Road, Shoreview, MN 55126 USA
tel 651 490 2811 + toll free 800 874 2811 + fax 651 490 3824 + web www.tsi.com

December 6, 2022

Murfreesboro Fire Rescue

To Whom it May Concern:

TSI Incorporated is the manufacturer of the following instruments:

PortaCount Models 8030, 8038, 8040 and 8048
DustTrak Models 8530, 8531, and 8532
DustTrak DRX Models 8533 and 8534
Q-Trak Model 7575
Personal Aerosol Monitor AM-510, AM-520, AM-520i
P-Trak Ultrafine Particle Counter Model 8525

With the exception of the Fire industry and limited circumstances in which TSI Incorporated is unable to reach agreement on terms and conditions for the sale of its equipment, TSI Incorporated operates a direct sales model in the United States and does not utilize third party resellers.

TSI warrants the equipment, under normal use and service as described in the operator's manual, shall be free from defects in workmanship and material for twenty-four (24) months, or the length of time specified in the operator's manual, from the date of shipment to the customer. This warranty period is inclusive of any statutory warranty. TSI recommends annual recalibration and cleaning for this equipment and TSI is the sole source for calibration and servicing of the equipment in the United States.

Best Regards,

John Gates
NA Sales Manager

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Main Street Banner Request
Department: Street Department
Presented by: Raymond Hillis, Executive Director
Requested Council Action:

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

Summary

Request from Read to Succeed and Rutherford County Area Habitat for Humanity to hang banners over East Main Street.

Staff Recommendation

Approve banners to be displayed as follows:

1. Read to Succeed from September 8- September 15, 2023 to promote their annual Reading in the Schools.
2. Read to Succeed from October 16 – 26, 2023 to promote their annual celebrity spelling bee.
3. Rutherford County Area Habitat for Humanity from October 26- November 4, 2023 to promote their Annual Cookin' To Build event.

Background Information

The Read to Succeed reading in the school's event is an annual event. Reading in the schools will take place on September 15, 2023 with over 25,000 volunteers coming into classrooms to read to students.

The Read to Succeed celebrity spelling bee is an annual event. This event is an annual fundraising event that includes a live auction, food tastings from local vendors and an adult spelling bee. Funds raised at the event will go to promote literacy in Rutherford County.

Rutherford County Area Habitat for Humanities Cookin' to Build is annual event. This fundraising event takes place on public square and for an admission fee patrons sample stew, chilis and desserts all in a keepsake bowl. Monies raised go to the fight against poverty in the community.

Council Priorities Served

Establish strong City brand

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

Fiscal Impact

None.

Attachments

1. Letter of request from Read to Succeed
2. Letter of request from Read to Succeed
3. Letter of request from Rutherford County Area Habitat for Humanity



Rutherford County Area
Habitat
for Humanity®

November 10, 2022

City of Murfreesboro
Lisa Mangrum
620 West Main Street
Murfreesboro, TN 37130

Dear Mayor and City Council,

My name is Megan Hutchings, and I am the Volunteer Coordinator for Rutherford County Habitat for Humanity. Each fall we have a special event called **Cookin' to Build**.

Cookin' to Build is held on the Murfreesboro Public Square and it showcases soup, stew, and chili recipes from local businesses, organizations, and individuals. There is an admission price, and it includes the choice of a hand painted bowl that you get to take home, endless samples of the various recipes, a drink, a dessert, and live entertainment. All the money raised from the event goes towards Habitat's mission of eliminating poverty housing. The 16th Annual Cookin' to Build is scheduled to take place on November 4, 2023.

I am writing this letter to seek your approval to put a banner over Main Street to advertise for Cookin' to Build. I have spoken with Lisa Mangrum, and she indicated that the dates of October 26th – November 6th, 2023 are available for the Cookin' to Build banner. Please consider approving this request.

Sincerely,

Megan L. Hutchings



December 8, 2022

City of Murfreesboro
Lisa Mangrum
620 West Main Street
Murfreesboro, TN 37130

Dear Mayor McFarland and City Council,

Read To Succeed requests permission to hang a banner across East Main Street for the following dates: Reading in the Schools Day Banner - September 8 - September 15, 2023. The banner will promote our annual Reading in the Schools Day event to take place September 15, 2023. Reading in the Schools Day is an annual event with participation by Rutherford County elementary schools, Murfreesboro City Schools, and area private schools. Over 25,000 children have volunteer readers visit their classrooms to read that day.

Lisa Mangrum has indicated that these dates are available.

Thank you in advance for your consideration of this request and any return correspondence can be sent to me c/o Read To Succeed, 415 N Maple Street, Murfreesboro, TN 37129

Sincerely,

Jolene Radnoti
Executive Director
615-738-7323
joleneradnoti@readtosucceed.org

READ TO SUCCEED · P.O. Box 12161 · Murfreesboro, TN 37129

Read To Succeed, the community literacy collaborative in Rutherford County, will promote reading, with an emphasis on family literacy. This non-profit initiative supports literacy programs and fosters awareness of the importance of reading. For a complete listing of Council members or information, visit www.readtosucceed.org.



December 8, 2023

City of Murfreesboro
Lisa Mangrum
620 West Main Street
Murfreesboro, TN 37130

Dear Mayor McFarland and City Council,

Read To Succeed requests permission to hang a banner across East Main Street for the following dates: Celebrity Bee Banner - October 16 – October 26, 2023. The banner will promote our annual Celebrity Spelling Bee event to take place during the month of November 2023. The Celebrity Spelling Bee is our annual fundraising event, featuring a live auction, food tastings from local vendors and adult spelling bee. Funds raised will support our ongoing efforts to promote literacy in Rutherford County.

Lisa Mangrum has indicated that these dates are available.

Thank you in advance for your consideration of this request and any return correspondence can be sent to me c/o Read To Succeed, 415 N Maple Street, Murfreesboro, TN 37129

Sincerely,

Jolene Radnoti
Executive Director
615-738-7323
joleneradnoti@readtosucceed.org

READ TO SUCCEED · P.O. Box 12161 · Murfreesboro, TN 37129

Read To Succeed, the community literacy collaborative in Rutherford County, will promote reading, with an emphasis on family literacy. This non-profit initiative supports literacy programs and fosters awareness of the importance of reading. For a complete listing of Council members or information, visit www.readtosucceed.org.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Transportation Investment Report – Memorial Blvd 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

Task Order for a Transportation Investment Report (TIR) for the proposed widening of Memorial Blvd.

Staff Recommendation

Approve the Task Order No. 4 with Neel-Schaffer.

Background Information

On August 30th, 2022, staff met with TDOT to discuss a partnership for the widening of Memorial Blvd from Thompson Ln to Jefferson Pk. To start this process, TDOT recommended developing a TIR for this project. Staff requested a proposal from Neel-Schaffer for the development and completion of this report. This study would determine the benefit and financial investment associated with the improvement of Memorial Blvd from three lanes to five 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 developed area.

Fiscal Impact

This expenditure, \$81,648, is funded from the proceeds retained by the City from the sale of the Electric Department.

Attachments

1. Task Order No. 4 for Transportation Investment Report
2. Neel-Schaffer Master Services Agreement
3. Site Map

PRIME EXHIBIT

This is Task Order No. 04, Consisting of 2 pages

TASK ORDER

In accordance with the Master Agreement between the City of Murfreesboro ("CITY") and Neel-Schaffer, Inc. ("NEEL-SCHAFER") for Professional Services dated December 17th, 2021, ("Agreement"), CITY hereby authorizes NEEL-SCHAFER to perform services as specified in this Task Order.

Specific Project Data

1. Project Name: **Memorial Blvd (SR-10) Technical Information Report (TIR)**
2. Project Number: **N/A**
3. Site Location: **Memorial Blvd (SR-10) from W Thompson Ln (SR-268) to Jefferson Pk (SR-266)**
4. Description of Project: **The City of Murfreesboro desires preparation of a TIR, formerly known as Transportation Planning Report (TPR), for the section of Memorial Blvd between W Thompson Ln and Jefferson Pk. City officials have interest in beginning project development for future improvements to the project corridor. The TIR will generally follow guidelines set for TIRs prepared and reviewed by TDOT, as the corridor is a state route and will have oversight from TDOT.**
5. Scope of Work: **See attached Exhibit A**
6. Schedule: **The technical report will be prepared under due diligence customary for similar studies. A specific timeline for completion will monitored through duration of project and is flexible based on final report requirements and coordination with local and state partners.**
7. Compensation and Method of Payment and Pricing Schedule: **Hourly Max plus directs, per Exhibit B**
8. CITY Representative and Contact Information:
Jim Kerr, Transportation Director
111 West Vine Street, Murfreesboro, TN 37130
615.893.6441
9. This Task Order is subject to the Contract and special provisions as follows, if any: **N/A**
10. CITY Responsibilities and Services, if different from section 2.2: **See Exhibit A for additional details**
11. Subcontractors authorized by CITY: **Quality Counts, LLC (for collection of traffic data)**
12. Documents Incorporated By Reference: **N/A**

NEEL-SCHAFFER is authorized to begin performance upon its receipt of a copy of this Task Order signed by CITY.

The Effective Date of this Task Order is _____, _____.

ISSUED AND AUTHORIZED BY:

ACCEPTED AND AGREED TO BY:

CITY OF MURFREESBORO

NEEL-SCHAFFER, INC.

_____

Title: _____

Title: Engineer Manager-Vice President

Date Signed: _____

Date Signed: December 14th, 2022

APPROVED AS TO FORM

DocuSigned by:



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Adam F. Tucker, City Attorney

EXHIBIT A

Exhibit A – Scope of Service

Neel-Schaffer proposes to prepare a technical study to facilitate preliminary engineering activities for the proposed widening of the 2.77-mile-long segment of State Route (SR-10) (Memorial Boulevard) between SR-268 (Thompson Lane/Compton Road) and SR-266 (Jefferson Pike) in Rutherford County. The City of Murfreesboro envisions expanding this section of Memorial Blvd to include two vehicle lanes in each travel direction and a 10-ft multi-use path. The objective of the study will be to define the primary purpose and need for the project, document existing conditions, and provide feasible preliminary planning and design recommendations that are cost effective, and provides improved safety and mobility for this segment of Memorial Boulevard. The effort will include the following tasks:

Task 1 Project Management & Coordination - Neel-Schaffer will maintain communication with City of Murfreesboro staff and respective Tennessee Department of Transportation offices for project coordination, establishing goals, prepare stakeholder meetings, and inquire input throughout the study's duration. The effort to perform this review will not require public input and excludes public involvement, including public meetings and other forms of public engagement.

Task 2 - Acquisition of traffic, roadway, and technical data

Field Review - A field review will be performed to examine existing roadway conditions, cross-section details, roadside conditions, existing pedestrian and bicycle features, and identify existing intersections characteristics along the study corridor. The field review will include an initial windshield scan to observe and identify information and sensitive areas that may be of interest for future environmental review.

Identify Bridge Structures - A field assessment will be performed to identify bridge structures, box bridges, and culverts along the corridor. Task includes review of available bridge data from previous TDOT bridge reports to retrieve structure sufficiency rating. Information to be documented will be limited by availability and content of data provided by TDOT.

Existing Utilities – Identify existing utilities along corridor and obtain contact information for each service for utility coordination. A field survey will not be prepared for this study. Information collected will originate from readily available data provided by TDOT and visual observations within study area.

Traffic Data – Existing traffic volume data will be collected to aid study analysis. This includes the following:

- Turning movement counts at the following intersections along Memorial Blvd:
 - W Thompson Lane/Compton Road (4-hr)
 - Cherry Lane (4-hr)
 - Jefferson Pike (4-hr)
 - Central Valley Road (10-hr)
- One (1) 24-hour bi-directional weekday ADT count: north of Cherry Lane
- ADT cycle counts available from TDOT's Enhanced Tennessee Roadway Information Management System eTRIMS (including average truck percentage and average directional distribution)

Crash Data –Review and catalog historical crash data. Spatial review of crash data will provide insight into existing factors and roadway conditions that contribute to safety concerns and help determine suitable potential countermeasures to be considered as part of the proposed roadway improvements. Historic crash data will be provided by the city or extracted from TDOT's (eTRIMS) database.

Exhibit A – Scope of Service

Area Demographics – Retrieve area demographics along this segment of Memorial Blvd to help inform and provide information needed for NEPA documentation. Data will be extracted from web-based sources available from the United States Census Bureau and U.S. Bureau of Labor Statistics.

Existing Land Use and Zoning - Retrieve maps from city that provide details for zoning ordinances, future street plans, urban growth boundary, and present/future land uses to assist with NEPA documentation.

Other Proposed Committed Developments – Coordinate with city officials to gain insight regarding other proposed committed developments.

Review Other Planning Level Studies - Neel-Schaffer will review previously prepared planning level efforts and studies completed by the city. The assessment will review the expected typical section desired for the improved section of Memorial Blvd and account for multi-modal pedestrian and bicycle features that are planned for this section of Memorial Blvd. The review will include, but is not limited to, 2040 Major Transportation Plan and City of Murfreesboro Greenways, Blueways, and Bikeways Master Plan, city standard drawings & street standards.

Task 3 - Existing conditions review

Existing Conditions Summary - Perform an analysis and derive preliminary assessment of existing data that includes reviewing crash data, documenting existing intersection LOS/capacity, identifying potential deficiencies and noting design emphasis points along the corridor.

Crash Data Review - Perform spot and segment analysis to identify high-crash rate locations. Compare rates and severities to TDOT's statewide averages. Develop spatial representation to graphically illustrate crash history based on crash location, crash type and manner of collision.

Existing Intersection LOS - Perform level of service and capacity analysis at intersections using collected turning movement counts at the study intersections.

Perform an Environmental Desktop Review - Neel-Schaffer will prepare an Environmental Technical Study Area Layout depicting identified environmentally sensitive areas, flood zones, public spaces, hazardous material sites and historically significant sites along the corridor. Deliverable will take the form of a color-coded sketch outlining areas of interest. Sensitive areas will be documented to the extent available from resources researched; scope does not guarantee inclusion of all areas of interest.

Task 4 - Conceptual review of proposed alignment and improvements

Purpose & Need Statement – The TIR will include development of a preliminary Purpose & Need Statement. The statement will establish the vision and general objectives for pursuing the proposed improvements.

Derivation of Horizon Year (2043) Traffic Volume Model - Future traffic growth will be estimated based on estimated ambient growth factor accounting for growth of background traffic and will include volumes expected on the road network from previously approved developments, as provided by the city. The horizon year traffic model will consider the planned extension of Cherry Lane. AM and PM peak hour volumes will be forecast for major intersections (W Thompson Lane/Compton Road; Cherry Lane; Jefferson Pike; Central Valley Road). Horizon year directional ADT volumes will be forecast for roadway segments between the major intersections.

Exhibit A – Scope of Service

Intersection Scan Assessment - Scan alternatives for major intersection using TDOT's IIE Tool. Evaluate and develop intersection improvement scenarios using TDOT's Intersection & Interchange Evaluation Tool to scan intersection control alternatives. Assessment will develop recommended improvement scenarios for consideration by city officials.

Proposed Intersection LOS and Capacity Analysis – Intersection volume forecasts will be used to evaluate intersection Levels-of Service and delay based on existing control types and any potentially viable types identified during the IIE scanning process at each study intersection. Evaluation will be conducted to determine need for turn lane improvements and preferred intersection traffic control. Analysis will use Synchro or HCM software.

Safety Assessment - Historic crash data will be used to identify locations with safety issues, determine if the proposed roadway design should consider appropriate countermeasures at high-crash rate locations, and to determine the safety benefit of proposed improvements. The safety review will reference analysis methodologies, tools, and crash modification factors (CMFs) outlined in the *Highway Safety Manual* and *CMF Clearinghouse*.

Review and Illustrate Preferred Typical Section - TIR will compare design year traffic volume forecast to generally accepted ranges of peak hour traffic to review the preferred typical section of proposed Memorial Blvd. Results will be provided to city officials for use in future road design tasks. City officials anticipate pursuing a typical section that includes two travel lanes in each direction with an associated 10-ft multi-use path.

Task includes preparation of functional sketches illustrating concept layouts of the proposed roadway improvement with proposed lane lines. The concept drawing will identify desirable multi-modal accommodations, such as sidewalk and/or multi-use paths as determined in earlier study assessment. The functional sketch will overlay preliminary limits of suggested Environmental Boundary Study Limits.

Review General Access Control Considerations - Existing driveway connections along the corridor will be evaluated to determine if the driveway spacing is appropriate upon completion of the new roadway. Additionally, this task will define desirable minimum driveway spacing and requirements based on TDOT design guidelines to aid in future preliminary design.

Task 5 - Prepare technical report

Prepare a final report summary - Study and evaluation results will be summarized in the form of a written technical report. Functional sketches depicting the proposed corridor alignment, typical-section, and recommended intersection improvements will be prepared using city-provided aerial photography as base mapping. A planning level opinion of cost will be developed for the proposed improvement. This task allows for two draft report reviews by City of Murfreesboro Staff and TDOT personnel prior to final report submission.

Information provided by the City:

As available, the city will provide Neel-Schaffer access to information and data pertinent to completing the study: GIS planimetric data (including but not limited to land parcels, flood zones, utilities), aerial photography, and other planning level studies that provide relevant information and data.

EXHIBIT B

EXHIBIT B
AS-NEEDED TRAFFIC ENGINEERING SERVICES
Master Services Agreement
Memorial Blvd TIR

City of Murfreesboro, Tennessee

NEEL-SCHAFER MAN-POWER ESTIMATE BY CLASSIFICATION

Tasks and SubTasks	Engineer	Sr Project	Project	Engineer
	Manager (P7)	Engineer (P6)	Engineer (P4)	Intern (P 1-3)
Project Admin / Mgmt	30			
Acquisition of traffic, roadway, and technical data				
Field Review	8	8	16	
Tabulation and documentation of Existing Bridge Structures		2	10	
Identify Existing Utilities			8	
Review and Summarize Traffic Volume Data			8	
Obtain, Tabulate and report Crash History Data			16	
Research and Tabulate Socio-Economic Data			8	
Document Existing Land Use & Zoning Data			6	
Research and Summarize Committed Development Projects			4	
Review completed relevant Planning Studies		2	10	
Existing Conditions Review				
Prepare Crash Data Analysis & Evaluation	2		34	
Intersection LOS Analysis & Evaluation			20	
Arterial LOS Analysis & Evaluation			10	
Identification of Potential Deficiencies	2	4	12	
Conduct Environmental Desktop Review / Prepare Environ Boundary Figure	2	2	36	
Conceptual Review of Proposed Improvements				
Develop Purpose & Need Statement	1		6	
Derive Horizon Year Traffic Model (2043)			18	
Conduct Intersection Ops Scan Assessment		2	8	
Intersection LOS Analysis & Evaluation			20	
Safety Assessment	2	2	16	
Document Preferred Typical Section		2	8	
Prepare Functional Drawings Illustrating Typ Sect and Alignment	2	2	24	
Prepare General Assessment of Access Control Considerations	2	2	16	
Prepare Technical Report				
Prepare Draft Technical Report	2	6	40	
Prepare Draft Opinion of Cost		4	12	
Internal QA/QC and City Review Comments	4	4	12	
Final Deliverables	4	4	16	
Coordination with TDOT (estimated)	16	8	30	
	77	54	424	0
Traffic Counts (TMC/ADT - Vendor)	\$3,500.00			
Printing	\$200.00			
Total Direct Costs:	\$3,700.00			
Total Labor Fee:	\$77,948.00			
Total Project Budget =	\$81,648.00			

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, entered into as of this 16th day of December, 2021, between the City of Murfreesboro, Tennessee ("CITY") and Neel-Schaffer, Inc., a Mississippi Corporation, with its main office at 125 South Congress Street, Jackson, Mississippi 39201 ("NEEL-SCHAFFER"). The Agreement shall take affect no earlier than January 1, 2022.

From time to time CITY intends to engage NEEL-SCHAFFER to provide professional engineering and planning services. This Agreement sets forth the general terms and conditions which shall govern the relationships and performance of CITY and NEEL-SCHAFFER, if and only if one or more Task Orders are agreed to under this Agreement. Each engagement will be documented by a Task Order. NEEL-SCHAFFER has a thorough knowledge of professional engineering and planning and is qualified to render such professional services.

CITY and NEEL-SCHAFFER in consideration of their mutual covenants as set forth herein agree as follows:

A. BASIC SERVICES

- i. The services to be provided by NEEL-SCHAFFER may include professional consultation, project management, studies, engineering, planning and other related services as authorized by CITY as provided herein. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate the specific tasks and functions to be performed by CITY and deliverables to be provided. The general format of a Task Order is shown in Exhibit A.
- ii. This Agreement is not a commitment by CITY to NEEL-SCHAFFER to issue any Task Orders.
- iii. CITY and NEEL-SCHAFFER shall agree on the scope, time for performance, and fee terms within each Task Order. NEEL-SCHAFFER will commence performance as set forth and executed in the Task Order.

B. TERM

- i. This Agreement shall be effective and applicable to Task Orders issued hereunder for an unlimited period as mutually agreed upon by both parties. The primary Agreement or individual Task Orders may be terminated with advanced written notice.
- ii. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, NEEL-SCHAFFER will perform services and provide deliverables within a reasonable time. The time for a party's performance will be extended to the extent performance was delayed by causes beyond the control and without the fault of the party seeking the extension. That party shall promptly notify the other party in writing when it is being delayed.
- iii. If CITY fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase under a Task Order, or if NEEL-SCHAFFER's services are delayed through no fault of NEEL-SCHAFFER, NEEL-SCHAFFER's time for performance shall be extended accordingly.
- iv. If NEEL-SCHAFFER's services under a Task Order are delayed or suspended in whole or in part by CITY, or if NEEL-SCHAFFER's services under a Task Order are extended by a Contractor's actions or inactions for more than 90 days through no fault of NEEL-SCHAFFER, NEEL-SCHAFFER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect incremental costs incurred by NEEL-SCHAFFER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under the Task Order has been revised.

C. CONTENTS

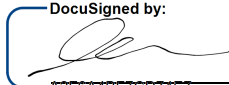
- i. Exhibit A – Task Order Template
- ii. Exhibit B – Hourly Classification Schedule
- iii. Exhibit C – General Terms & Conditions

Signature Page

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO

DocuSigned by:



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Title: Mayor

Date Signed: 12/17/2021

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.



Title: Engineer Manager-Vice President

Date Signed: December 14th, 2021

APPROVED AS TO FORM:

CITY OF MURFREESBORO

DocuSigned by:



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Title: City Attorney
City Attorney

Date Signed: 12/16/2021

EXHIBIT A

TASK ORDER

This is Task Order No. _____,

Consisting of _____ pages

In accordance with the Master Agreement between the City of Murfreesboro (“CITY”) and Neel-Schaffer, Inc. (“NEEL-SCHAFER”) for Professional Services dated _____, (“Agreement”), CITY hereby authorizes NEEL-SCHAFER to perform services as specified in this Task Order.

Specific Project Data

1. Project Name: TBD
2. Project Number:
3. Site Location:
4. Description of Project:
5. Scope of Work:
6. Schedule:
7. Compensation and Method of Payment and Pricing Schedule: Hourly, per Schedule in Exhibit B
8. CITY Representative and Contact Information:
Jim Kerr, Transportation Director
111 West Vine Street, Murfreesboro, TN 37130
615.893.6441
9. This Task Order is subject to the Contract and special provisions as follows, if any: N/A
10. CITY Responsibilities and Services, if different from section 2.2: N/A
11. Subcontractors authorized by CITY: N/A
12. Documents Incorporated By Reference: N/A

NEEL-SCHAFFER is authorized to begin performance upon its receipt of a copy of this Task Order signed by CITY.

The Effective Date of this Task Order is _____, _____.

ISSUED AND AUTHORIZED BY:

ACCEPTED AND AGREED TO BY:

CITY OF MURFREESBORO

NEEL-SCHAFFER, INC.

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

EXHIBIT B
NEEL-SCHAFFER, INC.
2022 SPECIAL RATE SCHEDULE FOR PROFESSIONAL SERVICES
FOR CITY OF MURFREESBORO, TENNESSEE

Employee Classification	Position Title	Hourly Rate
P-8	Senior Manager / Vice President	\$225.00
P-7	Engineer Manager/Professional IV/Survey Manager	\$200.00
P-6	Senior Project Manager/Assistant Engineer Manager/Professional III	\$170.00
P-5	Project Manager/Professional II	\$150.00
P-4	Professional I	\$125.00
P-1,P-2,P-3	Professional Intern III	\$102.00
T-6	Senior Certified Engineering Technician/Client Manager	\$140.00
T-5	Certified Engineering Technician/Supervisory Technician	\$125.00
T-4	Technician IV/Inspector IV/Surveyor IV *	\$120.00
T-3	Technician III/Inspector III/Survey Crew Chief *	\$100.00
T-2	Technician II/Inspector II/Survey Instrument Person *	\$95.00
T-1	Technician I/Inspector I/Survey Assistant *	\$85.00
T-1	Student Intern *	\$60.00
A-4	Senior Administrative	\$75.00
A-2,A-3	Clerical *	\$60.00
A-1	Assistant Clerical *	\$50.00

* Hourly rates indicated for these non-exempt classifications apply to regular time. If overtime work is required to meet client's schedule, Neel-Schaffer reserves the right to negotiate overtime rates.

"Professional" positions include engineer, architect, geologist, scientist, landscape architect, and planner.

"Technician" positions include engineering, soil, architecture, planning, GIS and information technology.

REIMBURSABLE EXPENSE SCHEDULE

EXPENSE	COST
Vehicle Mileage	\$0.47/mile
In-House Printing (8 ½" x 11")	\$0.20/copy
In-House Printing (11" x 17")	\$1.00/copy

All other expenses, including outside reproduction/printing, travel and subsistence, parking, communications, equipment rental, postage and overnight mail, and supplies will be reimbursed at actual cost.
 Use State or Federal Rates for mileage, travel and subsistence where necessary and/or required.

Neel-Schaffer reserve ability to adjust hourly classification rates on an annual basis on or after respective contract anniversary date to then prevailing rates.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

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

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

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

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

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES

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

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

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

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

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

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

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

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COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Amendment No. 1 to Contract for Engineering Study of Transit Route and Shelter Placement

Department: Transportation – Transit

Presented by: Russ Brashear, Assistant Transportation Director

Requested Council Action:

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

Summary

Amendment of the scope of work contracted with Kimley-Horn and the City.

Staff Recommendation

Approve the amendment to the agreement with Kimley-Horn.

Background Information

In January 2022, the Council approved a contract with Kimley-Horn to perform a Transit Route and Shelter Placement Study to prepare for the construction of the Transit Facility. Amendment No. 1 is for the implementation of the initial eight transit shelter locations that were identified in Phase 1 of the study. The scope of the amendment includes preparation of FTA NEPA checklist, survey, and design services for the eight shelter locations identified as Prioritization Group 1.

The amendment with Kimley-Horn is an hourly rate with a not to exceed amount of \$105,109. Funding for this project request is a 10% local match, which will be approximately \$10,511.

Council Priorities Served

Expand Infrastructure

The realignment of routes and shelter placements is directly related to the Transit Facility project which will improve transportation options and expansion of future services.

Fiscal Impact

This expense, projected to be approximately \$10,511, budgeted in the Department's FY23 Operating Budget.

Attachments

1. Amendment No. 1 to Agreement with Kimley-Horn
2. Original contract with Kimley-Horn: Standard Form Agreement Between Owner and Engineer for Professional Services dated January 27, 2022

**AMENDMENT NUMBER 001
TO THE AGREEMENT BETWEEN
THE CITY OF MURFREESBORO, TENNESSEE
AND KIMLEY-HORN AND ASSOCIATES, INC.**

AMENDMENT NUMBER 001 dated _____, 2022 to the agreement between the City of Murfreesboro, Tennessee ("City"), and Kimley-Horn and Associates, Inc., ("Consultant") dated January 27, 2022 ("the Agreement") concerning professional services to study, develop, design, and implement plans for new transit routes and transit shelters (the "Project").

The Consultant has entered into the Agreement with the City for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by the Consultant and provisions for additional compensation by the City to the Consultant, all as set forth in Exhibit A hereto. The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

CITY OF MURFREESBORO

KIMLEY-HORN AND ASSOCIATES, INC.

Share McFarland

Christopher D. Rhodes
Christopher D. Rhodes, P.E.

Title: Mayor

Title: Vice President

Date: _____

Date: 12/09/2022

APPROVED AS TO FORM:

DocuSigned by:

Adam Tucker
City Attorney, Adam Tucker



**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY**

CITY OF MURFREESBORO

During Phase I of the Transit Route and Shelter Study, a total of 31 transit shelter locations throughout the City of Murfreesboro were identified. These 31 locations were prioritized for implementation in four prioritization groups based on the following factors:

- Availability of right-of-way
- Availability of sidewalk/pedestrian crossing
- Suitability of grade at location
- Proximity to a city planned roadway widening

This amendment is for implementation of the initial eight (8) transit shelter locations (Prioritization Group 1) identified in Phase I and listed in the table below:

Prioritization Group 1

Route Name	Direction	Location
MLK	Outbound	Save-A-Lot/Kroger
Memorial	Inbound	Walgreens north of Northfield Boulevard
Memorial	Inbound	Airport Road across from Walmart
South Church	Inbound	McDonalds north of Warrior/Butler Drive
South Church	Inbound	Regal Inn at far side of Shelby Street
Highland	Outbound	Northfield Boulevard at North Tennessee Boulevard
Highland	Inbound	Hazelwood Student Housing
Highland	Inbound	Greenland Drive

Consultant shall perform the following services:

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 monthly virtual (i.e., Microsoft Teams) meetings (as needed) with the City of Murfreesboro Transportation Department staff (Assistant Transportation Director is the primary contact), preparing and distributing project correspondence, schedule of meetings and activities, periodic project status reporting, and discussion of project issues throughout the life of the project. Kimley-Horn will also coordinate with our Subconsultant surveyor as part of this task.

Task 1.1: Monthly Project Documentation, Reporting, and Administration

Kimley-Horn will use our firm-wide electronic accounting system for storage and retrieval of project accounting information. This system provides a mechanism for tracking and reporting the progress of a project monthly. Information developed in this task will consist of updates on schedule, budget status, elements of tasks completed, tasks remaining, and problems / issues to be addressed. Kimley-Horn will submit an invoice and status report for each month on, or before the deadline as determined by the City of Murfreesboro Transportation Department.

Deliverables:

- Monthly Virtual Meeting Summary (one (1) electronic copy via email)
- Monthly Status Reports
- Monthly Invoices



**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY**

CITY OF MURFREESBORO

Task 2: Public and Stakeholder Outreach

Completed during Phase I.

Task 3: Planning and Research to Identify Route Realignment

Completed during Phase I.

Task 4: Planning and Research to Identify Potential Shelter Locations

Completed during Phase I.

Task 5: Survey/Data Collection Services

This task will consist of the collection of the base mapping and survey data necessary for the development of the design plan sheets.

Task 5.1: Survey of Existing Features

Kimley-Horn, through a Subconsultant, will provide survey data for use in the development of the construction plans for up to eight (8) transit shelter locations. Each of the up to eight (8) proposed locations will be surveyed in a 50' x 50' area that contains the proposed transit shelter area. This data will consist of collecting property corners for the parcel(s) within the survey area, horizontal and vertical locations of existing features that are visible and accessible from the surface of the ground, such as sidewalks, roadways, curbs, parking lots, drainage structures, signs, benches, fences, grassed areas, utilities, pavement markings, edge of pavements, curb cuts and medians, ditches, right-of-way limits, and easements for the project locations. The Subconsultant will make a Tennessee One-Call request to locate utilities within each 50' x 50' survey area. The survey will also consist of topographic data associated with all of the above collected existing features. Topography must be captured with sufficient accuracy and density to meet Americans with Disabilities Act (ADA) standards. This data will be collected under the supervision of a Tennessee Registered Land Surveyor. All survey data is to be delivered in Tennessee State Plane 4100, USFT. Vertical datum will be delivered in NAVD 88. The survey results shall meet or exceed Category I minimum standards as defined in 0820-03-.05 ACCURACY OF SURVEYS of the Tennessee State Board of Examiners Standard of Practice.

Deliverables:

- Survey for up to eight (8) transit shelter locations (one (1) electronic copy via email)

Task 6: Checklist of Information Required to Initiate NEPA/FTA Coordination

This task shall consist of the development of the Federal Transit Administration (FTA) Checklist for Information Required to Initiate National Environmental Policy Act (NEPA) documentation (the Checklist) and FTA coordination for the initial eight (8) transit shelter locations throughout the City of Murfreesboro. The NEPA document determination can only be made by FTA and FTA will use the Checklist to confirm the appropriate NEPA class of action. Given the nature of the proposed project and the following assumptions, the NEPA document for this project is a likely candidate for classification as a C-List Categorical Exclusion (C-List CE).

- The majority of the proposed improvements will occur within existing right-of-way, but minor amounts of additional right-of-way and/or easements (permanent or temporary) may be needed in some locations; and
- The majority of the proposed improvements will occur in urbanized and/or or areas of previously disturbed ground.

**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY****CITY OF MURFREESBORO**

This amendment does not include development of the NEPA document. Development of the NEPA document will be considered Additional Services beyond this scope of services. Development of the Checklist will be based on conceptual plans identifying the location and configuration of the initial eight (8) transit shelter locations throughout the City of Murfreesboro.

Task 6.1: FTA Coordination

The purpose of this task is to plan, organize, and implement the tasks stipulated in this scope of services in a timely manner. In this task, the Consultant will maintain direct contact with the designated FTA Region 4 representative.

Deliverables

- Meeting Minutes for up to two project meetings (one (1) electronic copy each, Adobe PDF format) to the City and all meeting attendees.

Task 6.2: Development of Need and Purpose and Description of Existing Conditions

The Consultant will prepare a "Purpose and Need" statement for inclusion in the environmental document. The statement will clearly describe the need that exists for the proposed improvements and will describe the problems that the proposed action is intended to correct.

The Consultant will also review the project area and prepare a project location map and a description of the area of potential effect (APE) for inclusion in the Checklist.

Task 6.3: Agency Coordination

It is assumed that no initial coordination letters to federal and state agencies requesting a review of the proposed project's impacts to threatened and endangered species, wetlands, and/or streams will be required for the development of the Checklist. If any agency coordination activities are deemed necessary for the proposed project, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.4: Public Involvement

It is assumed that no public involvement activities such as public meetings, newsletters, or website updates will be required for the proposed project. If any public involvement activities are deemed necessary for the proposed project, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5: Environmental Areas of Concern

The Environmental Technical Study Area (ETSA), as developed under Task 3, will serve as the study area limits for the reviews for environmental areas of concern outlined below. If further design details or plans become available during preparation of the Checklist and the expected right-of-way limits exceed what is presented in the ETSA, then these reviews for environmental areas of concern will need to be updated to reflect the latest design plans. Updates to the reviews for environmental areas of concern can be completed in accordance with the Additional Services clause of this agreement.

Task 6.5.1: Section 106 / Cultural Resources

It is assumed that an Assessment of Effects for Historic Properties Report and/or a Phase I Archaeological Survey will not be required for the completion of the Checklist. Based on this assumption, the Consultant will review and research the architectural/historical records for the general project area through a desktop review only. As part of this Section 106 Desktop Assessment, the Consultant will generate the following items:



**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY**

CITY OF MURFREESBORO

- United States Geological Survey (USGS) topographic map of the project area
- Photographs of the site, along with a key map
- Dates of construction for buildings in the project area where this information is readily available.

The above items will support the information provided in the Checklist and will be made available upon request. Following completion of the Section 106 Assessment, any identified potential areas of concern will be summarized in the Checklist. If further studies are deemed necessary for the proposed project, these services can be provided by the Consultant in accordance with Additional Services clause of this agreement.

- **Archaeology**
It is not anticipated that a Phase I Archaeological Survey will be deemed necessary by FTA and/or the Tennessee State Historic Preservation Office (TN-SHPO) since a majority of the improvements are expected to occur within existing (previously distributed) right-of-way. If a Phase Archaeology Survey is deemed necessary by FTA or the TN-SHPO, one can be provided by the Consultant in accordance with the Additional Services clause of this agreement.
- **Tribal Consultation**
A draft tribal consultation letter will be prepared by the Consultant and submitted to FTA. Tribal Consultation will be completed by the FTA Region 4 environmental staff, if/when warranted. If Consultant is later tasked with developing the NEPA document, this letter and resulting consultation documentation would be incorporated directly into the environmental document by the Consultant in accordance with the Additional Services clause of this agreement.
- **Historic Architecture**
It is not anticipated that an Historic Architecture Survey will be deemed necessary by FTA and/or the Tennessee State Historic Preservation Office (TN-SHPO) since a majority of the improvements are expected to occur within existing (previously distributed) right-of-way. If a Historic Architecture Survey is deemed necessary by FTA or the TN-SHPO, one can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.2: Ecology

The Consultant will complete a desktop review of the USFWS National Wetlands Inventory (NWI) database and USGS topographic mapping to identify all wetlands and streams within the project area. This information along with all relevant NWI and USGS topographic mapping will be referenced in determining the presence or absence of ecological areas of concern. Any areas of concern will be noted in the Checklist.

It is assumed that an Environmental Boundaries Survey will not be required for the completion of the Checklist. If an Environmental Boundaries Survey is deemed necessary by the Client, FTA, or another state and/or federal agency for the completion of the Checklist or for the later development of a NEPA document, one can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

It is assumed that no individual plant or animal species survey will be conducted as part of this proposed scope of services and cost estimate. If the Client, FTA, or another state and/or federal agency requests a

**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY****CITY OF MURFREESBORO**

species survey, these services can be provided, but will be considered Additional Services beyond this scope of services.

Task 6.5.3: Hazardous Materials

The Consultant will complete a desktop review of available hazardous materials databases to determine whether the proposed project area has the potential to contain hazardous materials that may be impacted by the project. Hazardous materials databases to be reviewed are the Underground Storage Tank (UST) Data and Reports database provided by Tennessee Department of Environment and Conservation (TDEC), the “EnviroMapper” database maintained by the Environmental Protection Agency (EPA), and the Public Data Viewer maintained by the TDEC Division of Water Resources.

If additional studies such as a Phase I or Phase II Environmental Site Assessment are required, these services can be provided in accordance with the Additional Services clause of this agreement.

Task 6.5.4: Noise

It is not anticipated that a detailed Noise Analysis will be deemed necessary by FTA since the project involves the construction of bus shelters and will not result in additional transit service. If a Noise Analysis is deemed necessary by FTA, one can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.5: Air Quality

It is not anticipated that a detailed Air Quality Analysis will be deemed necessary by FTA since the project involves the construction of bus shelters and will not result in additional transit service. If an Air Quality Analysis is deemed necessary by FTA, one can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.6: Relocations

No business, residential or non-profit organization displacements are anticipated within the construction limits of the proposed project. If a relocation study is deemed necessary for this project, this service can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.7: Farmland

Given the project is located in an urban environment, it is assumed that coordination with the Natural Resource and Conservation Service (NRCS) will not be required. If farmland resources are identified and coordination with the NRCS is deemed necessary by FTA, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.8: Section 4(f)

No Section 4(f) resources are anticipated to be affected by the proposed project. If a Section 4(f) evaluation or coordination is required by any agency, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 6.5.9: Parks and Recreational Resources/ Section 6(f)

No parks or Section 6(f) resources are anticipated to be affected by the proposed project. If a Section 6(f) evaluation or coordination is required by any agency, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY****CITY OF MURFREESBORO***Task 6.5.10: Environmental Justice*

An Environmental Justice (EJ) evaluation will be undertaken in conformance with Executive Order 12898 and FHWA Order 6640.23 (December 2, 1998). The analysis will consider the composition of the affected area to determine whether minority or low-income populations are present in the area affected by the proposed action, and if so, whether there may be disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Baseline data will be collected for low income and minority populations using U.S. Census data. Any identified potential areas of EJ populations will be displayed on GIS mapping. The EJ analysis will be limited to desk-top research only. No field work will be completed. If a disproportionately high and adverse effect on a low-income population or minority population is revealed, the analysis will show how the effects are distributed within the affected community.

If potential mitigation measures or potential community outreach efforts are identified, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement. The EJ analysis will be incorporated directly into the environmental document.

Task 6.5.11: Floodplains

The Consultant will conduct a preliminary analysis of floodplains and floodways as part of the review for potential environmental areas of concern for development of the Checklist. Floodplains and floodways in the study area will be identified as part of the environmental screening, through the review of National Flood Insurance Rate Maps (FIRMs). The Consultant will also identify in the Checklist if the proposed project encroaches into any base (100-year) floodplain and/or any regulatory floodways.

Task 6.6: Checklist Preparation and Coordination

The purpose of this task is to develop the FTA Checklist of Information Required to Initiate NEPA, consistent with FTA requirements and in consideration of Council on Environmental Quality (CEQ) and FTA regulations for NEPA compliance. The Consultant will incorporate the Purpose and Need, a project description and results of the review for environmental areas of concern into the Checklist.

As a part of the Checklist, tables and figures will be developed to illustrate and explain the project area characteristics, alternatives, location of potential environmental areas of concern and comparison of those potential areas of concern.

Following completion of the document by Consultant, the Checklist will be submitted to the City of Murfreesboro for review and comment. Consultant will then revise the Checklist based on the City's comments. Once the City approves of the Checklist, the Checklist will be submitted to the FTA for initial review and subsequent acceptance.

Deliverables:

- Copy of all correspondence and submittals to various regulatory agencies (one (1) electronic copy each, Adobe PDF format) to the City
- Section 106 Desktop Assessment to FTA (one (1) electronic copy, Adobe PDF format)
- Draft Checklist for City review (one (1) electronic copy, Adobe PDF format)
- Draft Checklist for FTA review (one (1) electronic copy, Adobe PDF format)
- Final Checklist for FTA review and approval (one (1) electronic copy, Adobe PDF format)



**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY**

CITY OF MURFREESBORO

Task 7: Design Phase Services

This task shall consist of the development of construction plans and documents for transit shelter installations at up to eight (8) transit shelter locations.

Task 7.1: Preliminary Design (75 Percent Submittal)

Draft Construction Plans (75 percent complete) will be provided to the City of Murfreesboro for review and comment. For the up to eight (8) transit shelter locations, Kimley-Horn will prepare one (1) set of construction plans. The plans will consist of the following:

- Cover sheet, index of sheets, location map
- Proposed Layout, Grading, and Drainage plans
- Erosion Prevention and Sediment Control (EPSC – Phase 1) plans
- Construction General Notes
- Construction Details

Task 7.1.1: Preliminary Engineer's Opinion of Probable Construction Cost

Kimley-Horn will prepare an engineer's opinion of the probable construction cost for the overall project consisting of up to eight (8) transit shelter locations. The opinion of probable construction cost will be based on actual bid prices for recent projects which involve similar equipment and construction, to the extent that such information is available.

Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

Task 7.1.2: Preliminary Technical Specifications

Kimley-Horn will prepare preliminary technical specifications for the proposed project. These specifications are intended to be a supplement to the general conditions and bidding information that will be provided by the City of Murfreesboro Transportation Department for the purposes of bidding this project. The specifications will consist of site elements that are not covered by the construction plans or by manufacturer's specifications.

Deliverables:

- 75 percent plans package (up to five (5) hard copies in 11 x 17-inch sheet size and one electronic copy via email)
- 75 percent engineer's opinion of probable construction cost (one (1) electronic copy)
- 75 percent technical specifications (one (1) electronic copy)

**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY****CITY OF MURFREESBORO****Task 7.2: Final Plans Package**

Upon receiving comments on the plans, updated cost estimate, and technical specifications, Kimley-Horn will update the preliminary plans and produce final construction plans suitable for competitive bidding by the City of Murfreesboro.

Deliverables:

- Construction plans package (up to five (5) hard copies in 11 x 17-inch sheet size and one electronic copy via email)
- Updated engineer's opinion of probable construction cost (one (1) electronic copy)
- Technical Specifications (one (1) electronic copy)

Task 8: Submittals and Permitting Services

Kimley-Horn will compile the Construction Plans, Updated Engineer's Opinion of Probable Construction Cost and Technical Specifications and submit to the City of Murfreesboro Transportation Department. Kimley-Horn will also submit the construction plans to FTA Region 4, and the City of Murfreesboro Engineering and Planning departments. It is assumed that one round of comments will be received on the construction plans from each of these agencies. Kimley-Horn will compile all comments and make one revision to the plans and resubmit to the agencies listed above.

Deliverables:

- Construction plans package (up to five (5) hard copies in 11 x 17-inch sheet size and one electronic copy via email)
- Engineer's opinion of probable construction cost (one (1) electronic copy)
- Technical Specifications (one (1) electronic copy)

Task 9: Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the City of Murfreesboro Transportation Department requests, will be considered additional services and will be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Attendance / participation at other meetings outside of those mentioned in Tasks 1 and 5-8.
- Additional surveying services
- Public involvement activities
- Phase I Archaeological Survey
- Historic Architecture Survey
- Waters of the U.S. Survey or protected species survey (including a protected bat survey)
- Phase I or Phase II Environmental Site Assessment
- Noise Analysis
- Air Quality Analysis
- Relocation study
- Coordination with the NRCS


**EXHIBIT A TO AMENDMENT 001
TRANSIT ROUTE AND SHELTER STUDY**
CITY OF MURFREESBORO

- Section 4(f) / 6(f) evaluation or coordination
- Roadway improvements or modifications
- Environmental engineering services (i.e. wetland and stream delineations, etc.), USACE Permits (i.e., Section 404, etc.), TDEC Permits (i.e., NOC, ARAP, etc.)
- Limited Construction Phase Services (i.e. bid assistance, pre-construction meeting, shop drawing review, site visits and observation of construction, substantial completion summary, final notice of acceptability of work summary)
- Increased Construction Support Services (i.e. T-2 submittals, Contractor payroll review / approval, increased site visits, etc.)
- Right-of-Way or easement acquisition services
- Utility relocation design services
- Electrical routing and design for bus shelters
- Renderings and graphics
- Other services as requested by the City of Murfreesboro Transportation Department

The specific scope of these tasks will be defined if the City of Murfreesboro Transportation Department elects to move forward with any Additional Services.

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 Expenses

Kimley-Horn will perform the services in Tasks 1 and 5 - 8 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 1 – Project Coordination Services	\$17,710
Task 5 – Survey/Data Collection Services	\$17,380
Task 6 – NEPA Documentation/FTA Coordination	\$17,000
Task 7 – Design Phase Services	\$43,259
Task 8 – Submittals and Permitting Services	\$9,760
Maximum Labor Fee	\$105,109

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client



**EXHIBIT A TO AMENDMENT 001
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CITY OF MURFREESBORO

request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn will perform the services described in Task 9 (Additional Services) of the Scope of Services on a labor fee plus expense basis. Effort associated with Task 9 will not be performed without written authorization by the OWNER.

Transit Route and Shelter Study, Phase II (Amendment 001)

Transit Route and Shelter Study, Phase II
Design / Construction
December 9, 2022
Doug Delaney
Zac Dufour / Chris Rhodes

Labor Task / Task Description:								
Labor Task / Task Description	Principal	Project Manager	Senior Professional II	Senior Professional I	Analyst	Administrative	Task Hour Subtotals	Task Fee Subtotals
Task 1 1.1 Project Coordination Services Monthly Project Documentation, Reporting, and Administration	2.0	18.0	36.0	6.0	0.0	12.0	74.0	\$ 17,710.00
Task 5 Survey/Data Collection Services	0.0	4.0	8.0	0.0	30.0	0.0	42.0	\$ 7,720.00
5.1 Survey of Existing Features	0.0	4.0	8.0	0.0	30.0	0.0	42.0	\$ 7,720.00
Task 6 Checklist of Information Required to Initiate NEPA/FTA Coordination	0.0	4.0	0.0	18.0	60.0	0.0	82.0	\$ 14,370.00
6.1 FTA Coordination	0.0	2.0	0.0	2.0	0.0	0.0	4.0	\$ 1,040.00
6.2 Development of Need and Purpose and Description of Existing Conditions	0.0	0.0	0.0	2.0	6.0	0.0	8.0	\$ 1,370.00
6.3 Agency Coordination	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.4 Public Involvement	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5 Environmental Areas of Concern	0.0	0.0	0.0	6.0	0.0	0.0	6.0	\$ 1,410.00
6.5.1 Section 106/Cultural Resources	0.0	0.0	0.0	0.0	8.0	0.0	8.0	\$ 1,200.00
6.5.2 Ecology	0.0	0.0	0.0	0.0	4.0	0.0	4.0	\$ 600.00
6.5.3 Hazardous Materials	0.0	0.0	0.0	0.0	6.0	0.0	6.0	\$ 900.00
6.5.4 Noise	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.5 Air Quality	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.6 Relocations	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.7 Farmland	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.8 Section 4(f)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.9 Parks and Recreational Resources / Section 6(f)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-
6.5.10 Environmental Justice	0.0	0.0	0.0	0.0	14.0	0.0	14.0	\$ 2,100.00
6.5.11 Floodplains	0.0	0.0	0.0	0.0	2.0	0.0	2.0	\$ 300.00
6.6 Checklist Preparation and Coordination	0.0	2.0	0.0	8.0	20.0	0.0	30.0	\$ 5,450.00
Task 7 Design Phase Services	0.0	14.0	14.0	0.0	220.0	0.0	248.0	\$ 40,630.00
7.1 Preliminary Design (75 Percent Submittal)	0.0	6.0	6.0	0.0	130.0	0.0	142.0	\$ 22,770.00
7.1.1 Preliminary Engineer's Opinion of Probably Construction Cost	0.0	4.0	4.0	0.0	30.0	0.0	38.0	\$ 6,680.00
7.1.2 Preliminary Technical Specifications	0.0	2.0	2.0	0.0	36.0	0.0	40.0	\$ 6,490.00
7.2 Final Plans Package	0.0	2.0	2.0	0.0	24.0	0.0	28.0	\$ 4,690.00
Task 8 Submittals and Permitting Services	0.0	8.0	8.0	0.0	36.0	0.0	52.0	\$ 9,760.00
Hour Totals:	2.0	48.0	66.0	24.0	346.0	12.0	364.0	
Loaded Rate \$	305.00	\$ 285.00	\$ 260.00	\$ 235.00	\$ 150.00	\$ 100.00		
Extension \$	610.00	\$ 13,680.00	\$ 17,160.00	\$ 5,640.00	\$ 51,900.00	\$ 1,200.00		
Labor Subtotal: \$ 90,190.00								
Expenses:								
Allocation				Quantity	Rate		Extension	
Meals				1	\$ 4,148.74		\$ 4,148.74	
Hotel				2	\$ 60.00		\$ 120.00	
Mileage				1	\$ 120.00		\$ 120.00	
Rental Car				500	\$ 0.47		\$ 235.00	
Rental Car (Gas)				1	\$ 75.00		\$ 75.00	
Airfare				1	\$ 60.00		\$ 60.00	
Subconsultant (Survey)				1	\$ 500.00		\$ 500.00	
None				0	\$ -		\$ 9,660.00	
				0	\$ -		\$ -	
Expense Subtotal: \$ 14,918.74								
Overall Project Fee: \$ 105,109.00								

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

THIS IS AN AGREEMENT made as of January 27, 2022 between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and KIMLEY-HORN AND ASSOCIATES, INC. (ENGINEER).

OWNER intends to secure professional services to study, develop, design, and implement plans for new transit routes and transit shelters, (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 Transportation Director 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") a not-to-exceed amount of \$103,219.00 based on the tasks outlined in Exhibit A.

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 two 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	\$240/hour
Professional	\$190/hour
Production Team Member	\$160/hour
Clerical Staff	\$ 95/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.

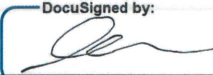
IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

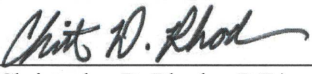
OWNER:

ENGINEER:

CITY OF MURFREESBORO

KIMLEY-HORN AND ASSOCIATES, INC.

By: 
A2F6A4BF7CD74E7...

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

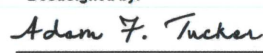
Title: Mayor

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.
214 Oceanside Drive
Nashville, Tennessee 37204
Phone: 615-564-2701

APPROVED AS TO FORM:

DocuSigned by:

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 January 27, 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 the study to develop, design, and implement plans for new transit routes and transit shelters. A detailed description of the ENGINEER's Scope of Services, Schedule, and Fee are as follows:

Phase I**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 every other week virtual (i.e., Microsoft Teams) meetings (as needed) with the City of Murfreesboro Transportation Department staff (Assistant Transportation Director is the primary contact), preparing and distributing project correspondence, schedule of meetings and activities, periodic project status reporting, and discussion of project issues throughout the life of the project. Kimley-Horn will also coordinate with our subconsultant surveyor as part of this task.

Task 1.1: Monthly Project Documentation, Reporting, and Administration

Kimley-Horn will use our firm-wide electronic accounting system for storage and retrieval of project accounting information. This system provides a mechanism for tracking and reporting the progress of a project monthly. Information developed in this task will consist of updates on schedule, budget status, elements of tasks completed, tasks remaining, and problems / issues to be addressed. Kimley-Horn will submit an invoice and status report for each month on, or before the deadline as determined by the City of Murfreesboro Transportation Department.

Deliverables:

- Every Other Week Virtual Meeting Summary (one (1) electronic copy via email)
- Monthly Status Reports
- Monthly Invoices

Task 1.2: Kickoff and Data Collection Meeting

Kimley-Horn shall coordinate and facilitate a site visit and kick-off/data collection meeting with the City of Murfreesboro Transportation Department staff after the official notice-to-proceed has been granted. The purpose of this meeting will be to review the project scope, receive data information from the City of Murfreesboro Transportation Department staff, discuss key issues, and to discuss potential route changes and transit shelter locations. Up to three (3) Kimley-Horn staff are anticipated to participate in this in-person meeting.

Deliverables:

- Kickoff and Data Collection Meeting Materials
- Kickoff and Data Collection Meeting Summary (one (1) electronic copy via email)



TRANSIT ROUTE AND SHELTER STUDY

EXHIBIT A MURFREESBORO, TENNESSEE

Task 1.3: Initial Transit Route and Shelter Meeting

Kimley-Horn shall prepare for, facilitate, and document an initial transit route and shelter meeting with the City of Murfreesboro Transportation Department staff to present the proposed transit route realignment and/or adjustments and proposed transit shelter locations and memorandum drafted to summarize the results of Tasks 3 and 4 and the stakeholder input received as a result of Task 2. The City of Murfreesboro Transportation Director and Assistant Transportation Director will be involved in this meeting; however, others can be added at the discretion of the City of Murfreesboro Transportation Department.

The purpose of this meeting is to receive feedback from the City of Murfreesboro Transportation Department staff regarding the initial proposed transit route realignment and/or adjustments and the initial proposed transit shelter locations, proposed shelter facility styles, project goals, and objectives.

Deliverables:

- Initial Transit Route and Shelter Meeting Materials
- Initial Transit Route and Shelter Meeting Summary (one (1) electronic copy via email)

Task 1.4: Final Transit Route and Shelter Meeting

Kimley-Horn shall prepare for, facilitate, and document a transit route and shelter meeting with the City of Murfreesboro Transportation Department staff to present the final transit route realignment and/or adjustments and final transit shelter locations and memorandum drafted to summarize the results of Tasks 3 and 4 and the public comments received as a result of Task 2. The City of Murfreesboro Transportation Director and Assistant Transportation Director will be involved in this meeting; however, others can be added at the discretion of the City of Murfreesboro Transportation Department staff.

The purpose of this meeting is to provide information to and receive feedback from the City of Murfreesboro Transportation Department staff regarding the final transit route realignment and/or adjustments, as well as the final transit shelter locations and final shelter facility styles.

Deliverables:

- Final Transit Route and Shelter Meeting Materials
- Final Transit Route and Shelter Meeting Summary (one (1) electronic copy via email)

Task 2: Public and Stakeholder Outreach

When the City of Murfreesboro Transportation Department staff have approved the proposed transit route realignment and/or adjustments and proposed transit shelter locations for release to the public, Kimley-Horn will plan and conduct outreach at the current Downtown Hub. Kimley-Horn will develop public notifications and provide information about the date, time(s), location, and meeting content in accordance with the City of Murfreesboro's public notice requirements. The City of Murfreesboro will be responsible for posting this information on the City of Murfreesboro's website, placing any public notices in the newspaper (if required), and placing notices on the transit buses.

Task 2.1: Stakeholder Outreach

In coordination with Tasks 2 and 3, Kimley-Horn will gather input on route realignment or adjustments to existing routes and potential additional routes with up to six (6) stakeholders via in-person, or virtual meetings. The input from these stakeholders will be summarized in a Stakeholder Outreach Summary and will be incorporated into the recommendations presented to the City of Murfreesboro Transportation Department staff during Tasks 1.3.



TRANSIT ROUTE AND SHELTER STUDY

EXHIBIT A MURFREESBORO, TENNESSEE

Deliverables:

- Stakeholder Outreach Summary (one (1) electronic copy via email)

Task 2.2: Downtown Hub Outreach

Kimley-Horn will conduct morning and afternoon outreach efforts at the current Downtown Hub. Kimley-Horn and the City of Murfreesboro Transportation Department staff will set up displays and provide handouts explaining the proposed transit route realignment and/or adjustments and proposed transit shelter locations, as well as answer questions and gather comments on the proposed changes. Kimley-Horn will prepare one (1) draft of the displays and handout materials for review by the City of Murfreesboro Transportation Department staff. Kimley-Horn will prepare one (1) final version of the meeting materials based on review / comments provided by the City of Murfreesboro Transportation Department staff. Members of the public and transit riders will be encouraged to complete an online survey and/or comment cards and leave their names and email addresses so that they can be invited to review online information about the project. Up to four (4) Kimley-Horn staff are anticipated to participate in this in-person outreach.

Deliverables:

- Proposed Transit Route and Shelter Public Outreach Materials
 - Presentation, boards, handouts, online survey, comment cards and other materials

Task 2.3: Public and Stakeholder Outreach Summary

After the Downtown Hub Outreach event, Kimley-Horn will provide a formal written summary of the stakeholder input and public comments. Kimley-Horn and the City of Murfreesboro Transportation Department staff will conduct a meeting, or virtual meeting, to discuss whether changes to the proposed transit routes and transit shelter locations are required as a result of the stakeholder input and public comments and, if so, what changes should be made, after which Kimley-Horn will record how each comment was considered or addressed in refining the recommendations.

Deliverables:

- Draft/Final Public Outreach Summary (one (1) electronic copy via email)

Task 3: Planning and Research to Identify Route Realignments

Once completed and operational, the new multimodal transit facility will replace the current Downtown Hub and will become the location where a majority of the existing Murfreesboro Transit routes connect. Kimley-Horn will undertake an analysis to determine if the relocation will require route realignment or adjustments to the existing six (6) Murfreesboro Transit routes in order to maintain their schedule while also serving the new transit facility. Kimley-Horn will also conduct a needs assessment of up to three (3) potential additional routes.

Task 3.1: Transit Route Realignment and/or Adjustment Evaluation

Kimley-Horn will evaluate the existing six (6) Murfreesboro Transit routes to identify route realignment and/or adjustments needed to maintain effective and efficient service and connect the existing routes to the new multimodal transit facility. The intent of this evaluation will be to maintain as much of the existing routes as possible. This analysis will use existing operational and ridership data supplied by the City of Murfreesboro and will not involve the collection of new operational and/or ridership data by Kimley-Horn.

Initial route realignment and/or adjustments will be discussed and evaluated with the City of Murfreesboro Transportation Department staff during Task 1.2 and 1.3. The proposed route realignment



TRANSIT ROUTE AND SHELTER STUDY

EXHIBIT A MURFREESBORO, TENNESSEE

and/or adjustments will be discussed and evaluated with the City of Murfreesboro Transportation Department staff during Task 1.3, prior to being presented to the public during Task 2.2. The final route realignment and/or adjustments, based on the input received during Task 2 will be presented to the City of Murfreesboro Transportation Department staff during Task 1.4.

Task 3.2: Needs Assessment of Additional Routes

Kimley-Horn will conduct a needs assessment of up to three (3) potential additional routes including a Core City Flex route and a New Salem Road route as part of the evaluation of the existing six (6) Murfreesboro Transit routes. To identify potential new route alignments and connections, Kimley-Horn will:

- Conduct a site visit and ride each of the six (6) existing Murfreesboro Transit routes;
- Conduct interviews with up to three (3) Murfreesboro Transit drivers;
- Identify major travel nodes and activity centers within the Murfreesboro Transit service area that are currently not being served by one of the existing six (6) Murfreesboro Transit routes. This analysis will include the identification of major commercial and employment areas, health care facilities, etc.;
- Perform an analysis of U.S. Census Commuting (Journey to Work) data to identify travel patterns for travelers in the Murfreesboro Transit service area;
- Develop demographic information for the Murfreesboro Transit service area based on U.S. Census and American Community Survey data (most recent five-year dataset);
- Compare existing route alignments to the locations and concentrations of groups of potential transit users (i.e., low-income, disabled and elderly populations, and zero-or-one car households); and
- Document existing local and projected regional development patterns, information on future development, and likely changes to land use and development patterns over the next ten years using data provided by the City of Murfreesboro.

Based on this information, Kimley-Horn will develop an initial map and narrative summary of up to three (3) potential additional routes to serve major travel nodes, activity centers, and nodes of interest to various major ridership groups (students, seniors, work-trips, etc.) that are not currently being served by the existing six (6) Murfreesboro Transit routes.

Up to three (3) potential additional routes will be discussed and evaluated with the City of Murfreesboro Transportation Department staff during Task 1.2 and 1.3. The potential additional routes (if identified) will be discussed and evaluated with the City of Murfreesboro Transportation Department staff during Task 1.3, prior to being presented to the public during Task 2.2. Based on the public comments received during Task 2.2, the final additional routes (if identified) will be presented to the City of Murfreesboro Transportation Department staff during Task 1.4.

Task 3.3: Transit Route Realignment and/or Adjustment Recommendations

Kimley-Horn will prepare a memorandum based on discussions from Tasks 1 and 2. The memorandum will outline the recommended route realignment and/or adjustments to maintain effective and efficient service and connect the existing six (6) Murfreesboro Transit routes to the new multimodal transit facility, as well as recommendations for any additional routes (if identified).

Deliverables:

- Draft/Final Memorandum on Route Realignment and/or Adjustment Recommendations (one (1) electronic copy via email)


TRANSIT ROUTE AND SHELTER STUDY
**EXHIBIT A
MURFREESBORO, TENNESSEE**

- Map of Proposed/Final Route Realignment and/or Adjustment Recommendations (GIS shapefiles and one (1) electronic copy via email)

Task 4: Planning and Research to Identify Potential Shelter Locations
Task 4.1: Transit Shelter Location Evaluation

Kimley-Horn will prepare a proposed transit shelter map based on discussions from Tasks 1 and 2. Kimley-Horn will use this data to create a graphical map identifying the recommended transit shelter locations. Kimley-Horn will rely on input from the City of Murfreesboro Transportation Department staff and available GIS data to make recommendations for bus shelter locations. Items to be considered during transit shelter locations will consist of:

- Information and data provided by the City of Murfreesboro Transportation Department
- Proximity to attractions (retail, commercial, recreational uses, etc.)
- Proximity to residential areas
- Proximity to office buildings
- Available right-of-way (based on available GIS data)
- Site visit performed by Kimley-Horn staff

Task 4.2: Transit Shelter Location Recommendations

Kimley-Horn will prepare a memorandum based on discussions from Tasks 1 and 2. Kimley-Horn will rely on input from this meeting to perform transit shelter style and amenity research. Kimley-Horn will provide up to three (3) transit shelter facility recommendations and will prepare a rough order of magnitude cost (ROM) estimation, as well as a GIS map of the recommended transit shelter locations.

It is understood the City of Murfreesboro would prefer bus shelter locations in close proximity to existing utility poles to provide electricity for lighting.

Deliverables:

- Draft/Final Memorandum on Transit Shelter Facility Recommendations (one (1) electronic copy via email)
- Map of Proposed/Final Transit Shelter Locations (GIS shapefiles and one (1) electronic copy via email)

Task 5: Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional meetings / conference calls outside of those referenced in this Exhibit
- Public Presentation(s)
- Design Phase Services
- Construction Phase Services
- Others as requested by the Client

The specific scope of these tasks will be defined if the City of Murfreesboro Transportation Department elects to move forward with any Additional Services.



TRANSIT ROUTE AND SHELTER STUDY

**EXHIBIT A
MURFREESBORO, TENNESSEE**

Phase II

At the conclusion of Phase I, Kimley-Horn will prepare a scope of services and fee proposal for Phase II activities. A more detailed summary of Phase II activities will be developed, but in general Phase II activities are anticipated to consist of:

Task 6: Data Collection Services

Kimley-Horn, through a subconsultant, will collect base mapping and survey data necessary for the development of the design plan sheets for the transit shelter locations identified in Task 4 (Phase I).

Task 7: NEPA Documentation/FTA Coordination

Kimley-Horn will gather environmental data, conduct site visits, prepare maps, and photographic documentation to support the completion of the FTA Region 4 Categorical Exclusion (CE) Worksheet for the transit shelter locations identified in Task 4 (Phase I).

Task 8: Design Phase Services

Kimley-Horn will prepare construction plans and related documents for the transit shelter locations identified in Task 4 (Phase I).

Task 9: Submittals and Permitting Services

Kimley-Horn will compile the Construction Plans, Engineer's Opinion of Probable Construction Cost and Technical Specifications for the transit shelter locations identified in Task 4 (Phase I).

Task 10: Limited Construction Phase Services

Kimley-Horn will provide limited construction phase services for the City of Murfreesboro for the transit shelter locations identified in Task 4 (Phase I).

Schedule

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

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1-4 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 1 – Project Coordination Services	\$18,090.00
Task 2 – Public and Stakeholder Outreach	\$15,595.00
Task 3 – Planning and Research to Identify Route Realignment	\$40,937.00
Task 4 – Planning and Research to Identify Potential Shelter Locations	\$28,597.00
Maximum Labor Fee	\$103,219.00

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project



TRANSIT ROUTE AND SHELTER STUDY

**EXHIBIT A
MURFREESBORO, TENNESSEE**

related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn will perform the services described in Task 5 (Additional Services) of the Scope of Services on a labor fee plus expense basis. Effort associated with Task 5 will not be performed without written authorization by the OWNER.

EXHIBIT B

DISPUTE RESOLUTION

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

EXHIBIT C
FEDERAL AND TDOT REQUIRED CLAUSES

FEDERAL AND TDOT REQUIRED CLAUSES

This Document is incorporated as part of the Agreement between the City of Murfreesboro and Kimley-Horn and Associates, Inc, to the extent applicable to the scope of services provided by Kimley-Horn as part of the Project referenced above. The City of Murfreesboro's purchasing procedures are governed by the State of Tennessee, the City of Murfreesboro, and various Federal laws, executive orders, and regulations, by Office of Management and Budget Circular A-102, Executive Order 12612, Federalism and Federal Transit Administration Circular 4220.1F "Third Party Contracting Requirements". These require, among other things, that purchases (including purchases for fixed assets, materials and supplies, construction, and/or services) utilizing federal grant funds be made according to approved plans and specifications, including the Federal and State clauses set forth below:

1. **Public Accountability.** If the "City or Contractor" (Grantee) is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The City shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Tennessee Department of Transportation (Grantor State Agency) shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

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

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

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

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

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

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

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

4. **Prompt Payment.** All non-TVM contracts with subcontractors if threshold for a DBE program met 49 CFR Part 26.29(a)

The prime contractor shall pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment City makes to the prime contractor.

5. **Return of Retainage.** All non-TVM contracts with subcontractors if threshold for a DBE program met 49 CFR Part 26.29(b)

The prime contractor shall make prompt and full payment of retainage to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The City may use one of the following methods to ensure compliance with this requirement:

1. *The City may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.*
2. *The City may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.*
3. *The City may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the City's payment to the prime contractor.*

6. **Notice to FTA and USDOT Disputes, Breaches, Defaults, and Litigation.** Notice to FTA and USDOT Inspector General of information related to fraud, waste, abuse, or other legal matters. 2021 MA §39.(b)

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Contractor is located. The Contractor must include a similar notification in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

1. *The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.*
2. *Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interest in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.*
3. *Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Contractor is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient/Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including division tasked with law enforcement or investigatory functions.*
7. **Davis-Bacon Act.** (2 CFR 200 Appendix II (D); 4220.1F.IV.2.i.(5); 2021 MA 16d(4)) Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding \$2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 et seq., and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.
8. **Gratuities and Kickbacks - Copeland Anti-Kickback Act.** (2 CFR 200 Appendix II (D); 4220.1F.IV.2.i.(6); 29 CFR 3.1 and 3.11; 18 USC §874; 40 USC §3145; 2021 MA 16d(4))
 - a. Contractor shall comply with the provisions of the Copeland Anti-Kickback Act, 18 U.S.C. Section 874, as amended, and implementing DOL regulations, which prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up part of his or her compensation to which he or she is otherwise entitled.
 - b. Contractor shall comply with Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29

CFR Part 3, impose record keeping requirement on all third party contracts for construction, alteration, or repair exceeding \$2,000.

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

- 9. **Contract Work Hours and Safety Standards Act.** (2 CFR 200 Appendix II (E); 4220.1F.IV.2.i.(7); 40 USC 3701 – 3708; 2021 MA 16d(5); 2021 MA 24(a))
 - a. Wages based on 40 hour standard work week
 - b. Pay at 1.5 times standard rate for hours over 40
 - c. No unsanitary, hazardous, or dangerous conditions
 - d. Does not apply to supplies, materials, articles available on the open market.

The Common Grant Rules require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704, and its implementing DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701 (b)(3)(A)(iii), increased the threshold for construction safety protections to \$100,000 from \$2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.

10. Debarment and Suspension.

- a. The City certifies, to the best of its knowledge and believe, that the Selected Contractor:
 - i. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - ii. has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - iii. is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

- iv. has not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
 - b. The City will provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, the Selected Contractor is excluded or disqualified, or presently falls under any of the prohibitions of sections i-iv.
 - c. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by an Federal department or agency to be:
 - i. Debarred from participation in any federally assisted Award;
 - ii. Suspended from participation in any federally assisted Award;
 - iii. Proposed for debarment from participation in any federally assisted Award;
 - iv. Declared ineligible to participate in any federally assisted Award;
 - v. Voluntarily excluded from participation in any federally assisted Award; or
 - vi. Disqualified from participation in any federally assisted Award.
 - vii. By signing this Agreement, Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of the awarded Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
11. **Lobbying Certification.** (4220.1F.IV.2.a.(4); 49 CFR Part 20)
- a. Contractors that apply or bid for an award exceeding \$100,000 must file the lobbying certification before the awarding of the contract, and if applicable, a lobbying disclosure from a prospective third party contractor. See, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
 - b. The Contractor certifies, to the best of its knowledge and belief, that:
 - i. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

12. Standard Form LLL and Quarterly Updates (when required). 49 CFR Part 20

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

14. Disadvantage Business Enterprise (DBE) – (49 CFR Part 26)

- a. **Policy.** It is the policy of the Department of Transportation that disadvantage business enterprises, as defined in 49 CFR part 26, shall have the equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds under the Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to the awarded Agreement.
- b. **DBE Obligation.** The City and its contractors agree to ensure that disadvantage business enterprises as defined in 49 CFR Part 26 have the equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the awarded Agreement. In this regard, the City and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts assisted by the Department of Transportation.

15. Access to Records

- a. Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the awarded Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Contractor shall maintain all books, records, accounts and reports required under the Contract for a period of not less than three years after the date of termination or expiration of the awarded contract, except in the event of litigation or settlement of claims arising from the performance of the awarded Contract, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

16. Federal Funding, Incorporation of Federal Transit Administration (FTA) Terms, and Federal Changes.

- a. The awarded Agreement includes, in part, certain Standard Terms and Conditions required by Department of Transportation (DOT), whether or not expressly set forth in the Agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or successor circulars) is automatically hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the awarded Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.
- b. This Agreement is subject to a financial assistance agreement between the City and the Federal Transit Administration of the US Department of Transportation, and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to the awarded Agreement and are incorporated by reference as if fully set forth herein.
- c. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between the City and FTA, as they may be amended or promulgated from time to time during the term of this Agreement collectively "Federal Requirements". These Federal Requirements may change, and the changed Federal Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of the awarded Contract.

17. Energy Conservation Requirements – Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42USC §6321 et seq.

18. Civil Rights Requirements.

a. Nondiscrimination.

- i. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 12132, and Federal transit law

at 49 USC §5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. 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.

- ii. Contractor further acknowledges that the City is a federal government contractor, and that by virtue of this Contract, Contractor is a federal government subcontractor. Therefore, in accordance with federal law, Contractor specifically acknowledges and agrees as follows:
 - 1. **The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
 - 2. **The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
 - 3. **The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

- b. **Equal Employment Opportunity. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit laws at 49 USC §5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the awarded Contract. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be

limited to, the following: employment; upgrading demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

- c. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.
 - d. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.
19. **No government obligation to third parties.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the awarded Agreement and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the awarded Contract. Contractor shall include this Clause in each subcontract and shall not modify the Clause, except to identify the subcontractor who will be subject to its provisions.
20. **Program fraud and false or fraudulent statements or related acts.**
- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, shall apply to actions pertaining to the awarded Contract. Upon execution of the awarded Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the awarded Agreement or the FTA assisted project for which the awarded Agreement work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
 - b. Contractor also acknowledges that this Agreement is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
21. **Seismic Safety.** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under the awarded contract, including work performed by a

subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Amendment to WRRF Sodium Hypochlorite 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

Second amendment for Sodium Hypochlorite contract with Dycho Company, Inc. providing for a price increase.

Staff Recommendation

Approve amendment to contract with Dycho Company and approve supplement to FY23 budget line item from \$50,000 to \$175,000.

Background Information

The City's reuse water system irrigates several hundred acres of City-owned land, the Gateway District, Old Fort golf course, Siegel Soccer Complex, and several other areas. Environmental regulations require that reuse water be disinfected with Sodium Hypochlorite, more commonly known as bleach.

The original contract with Dycho was executed in May of 2020. The first amendment was approved in June of 2022. This second amendment reflects increased costs since those times, due to inflation, the volatility in fuel, and supply issues. This Second amendment increase the unit price 28%, to \$2.43 per gallon. The new contract prices will be good through June 30, 2023.

Staff requests a budget amendment to MWRD's FY23 operating budget for Sodium Hypochlorite line item, increasing that by \$125,000. These funds will be transfer from the future capital expense sinking fund such that the Department's overall FY23 budgeted expenses remain unchanged.

Council Priorities Served

Responsible Budgeting

Providing for the disposal of treated water is necessary to comply with environmental requestions and avoids the significant cost that would be incurred to construction alternative disposal means.

Fiscal Impact

None. The proposed budget amendment transferring funds will result in no overall impact to the MWRD FY23 budget.

Attachments

Second Amendment to Contract with Dycho Company, Inc.

**SECOND AMENDMENT
TO THE CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
DYCHO COMPANY INC.
FOR BLEACH**

This Second Amendment ("Second Amendment") to the Contract, entered into May 7, 2020 ("Contract"), is effective as of this ____ Day of ____, 2022, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Dycho Company Inc., ("Contractor"), a corporation of the State of Tennessee.

RECITALS

WHEREAS, on May 7, 2020, the City entered into the Contract with Contractor for Bleach at \$0.82 per gallon; and,

WHEREAS, pursuant to the First Amendment, the term of the Contract is from July 1, 2022 to December 31, 2022; and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to Section 2 of the current Contract for an additional six months; and,

WHEREAS, the City is allowing the Contractor a fuel cost-related price adjustment to \$2.43 per gallon delivered per Section 11 of the original contract:

NOW THEREFORE, the City and Contractor mutually agree as follows:

1. **Extension:** The term of the current Contract is hereby extended for a period from January 1, 2023, until June 30, 2023.
2. **Fuel Cost Adjustment:** The price in Section 4 of the Contract is hereby amended to \$2.43 per gallon delivered.
3. **No Other Amendment or Modification:** Except as provided herein, the parties make no other modifications or amendments, and all other terms of the Contract shall continue in full force and effect.

ENTERED this the ____ day of ____, 2022.

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor
Approved as to form:

DYCHO COMPANY, INC.

DocuSigned by:
By: Robert Shamblin
J. Robert Shamblin, President

DocuSigned by:

Adam F. Tucker
Adam F. Tucker, City Attorney



**THE
DYCHO
COMPANY**
INCORPORATED
P. O. BOX 513
NIOTA, TENNESSEE
37826

December 6, 2022

Murfreesboro Water Treatment Department
Attention: Director
P.O. Box 1477
Murfreesboro, TN 37133-1477

RE: ITB-29-2020 – Bleach for Water Resources

Dear Sirs:

Per the contract section 2 term requirements, please accept our notice that we are unable to extend and renew this contract at the current price. The manufacturer of this chemical has raised prices significantly multiple times over the past 6+ months. Firm twelve (12) month pricing continues to be too volatile and they will not support beyond 6 months.

I understand you may be required to rebid this supply. However, I have been authorized to offer to you a six (6) month contract with support at \$2.43/gal delivered plus fuel surcharge as applicable. This price of \$2.43/gal will be effective January 1, 2023 thru June 30, 2023. Please advise if this is acceptable to you by December 15, 2022 so that we may secure this six (6) month allocation immediately. Prices are continuing to rise.

Thank you for the opportunity to discuss your requirements. Please feel free to contact us should you have any additional questions.

Sincerely,

THE DYCHO COMPANY, INC.

J. Robert Shamblin
President

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Advanced Metering Infrastructure Equipment Purchasing 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

Agreement with United Systems to purchase AMI Equipment.

Staff Recommendation

Approve addendum to provide a unit-based contract with United Systems & Software, Inc.

Background Information

United Systems is a sole source provider of Itron equipment within our region. Itron is the manufacturer that supports the Department's AMI system, which is a wireless cellular-based communications network water meter readings on a continuous basis.

The proposed contract amendment sets unit prices to purchase leak sensors which monitor for service line and watermain leaks. The attached amendment contract also sets unit prices for encoder receiver transmitters (ERT) and antennas. ERTs communicate the meter readings via cellular networking cards.

MWRD budgets \$100,000 allowance for the purchase the above equipment. The Department maintains only necessary to meet demands. Purchases are, therefore, made in batches as needed throughout the year to replace failed components or add components for new water meter installations. Each purchase amount is determined by the unit price established in the attached contract times the number of components needed.

Council Priorities Served

Responsible budgeting

Purchasing equipment as needed reduces inventory carrying costs. Additionally, continuous monitor of water consumption allows customers to be notified of leak detection, saving customers money and reducing system rates through conservation of hundreds of thousands of gallons of drinking water.

Fiscal Impact

The expense, estimated to be less than \$100,000 per year, is funded by MWRD FY23 Capital Budget.

Attachments

Addendum to United Systems & Software Contract

**ADDENDUM TO UNITED SYSTEMS & SOFTWARE, INC. TERMS & CONDITIONS
FOR QUOTATION SEPTEMBER 16, 2022
FOR THE CITY OF MURFREESBORO**

This Addendum (herein "Addendum") amends the United Systems & Software, Inc. Terms and Conditions of Sale ("Terms") for Quotation September 16, 2022 ("Quotation") for the City of Murfreesboro on behalf of Murfreesboro Water and Sewer, as well as all attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreements (all of which are herein "Agreement") between United Systems & Software, Inc. ("Seller" or "USS") and the City of Murfreesboro, Tennessee ("Buyer"). In consideration of using USS's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Terms or the Agreement (including, without limitation, Section 1 of the Terms), the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control it being acknowledged and agreed to by the parties that this Addendum shall be executed and entered into after execution of the Agreement regardless of what order the Agreement and this Addendum are actually executed. Unless defined herein, capitalized terms in this Addendum shall have the meaning set forth in the Agreement.
2. **Term; Firm Pricing.** Notwithstanding any other provision in the Terms or the Agreement (including, without limitation, Section 3 of the Terms), the term of the Agreement shall begin on the effective date of the Agreement and shall terminate one (1) year from the date thereof. During this term, USS's pricing shall be firm with respect to the items listed on the Quotation. Pricing for all other items shall be in accordance with the Terms.
3. **Termination for Convenience.** The Agreement may be terminated by Buyer upon thirty (30) days written notice to USS. Such termination will not be deemed a breach of contract by either party. Should Buyer exercise this provision, Buyer will compensate USS for all satisfactory and authorized services completed as of the termination date, and USS will refund to Buyer any funds paid by Buyer in excess of such amount. Upon such termination, USS will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
4. **Payment Terms.** Notwithstanding any other provision in the Terms or the Agreement (including, without limitation, Section 9 of the Terms), payment terms are Net 30, payable in U.S. Dollars.
5. **Indemnity and Limitation of Liability.** Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private entities and, therefore, prohibits an agreement by Buyer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement (including, without limitation, Section 6 of the Terms) requiring Buyer to indemnify or hold harmless USS or any other person or entity and any limitation of liability in favor of USS is enforceable only to the extent permitted by Tennessee law provided Buyer's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 et seq. No provision of this Agreement shall act or be deemed a waiver by Buyer of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq.
6. **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Public Records Act, set out in T.C.A. § 10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Buyer must, upon proper request, release public documents and records as defined by T.C.A. § 10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to USS or provide USS with notice or the time to obtain a protective order. Buyer does not have the burden of establishing that information is not confidential information

or that its release is authorized to release the records. This section 5 serves to meet such burden and authorization of disclosure.

7. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
8. **Selection of Jurisdiction and Venue, Waiver of Jury Trial, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, Buyer is a sovereign entity subject only to those courts with jurisdiction over Buyer. Notwithstanding any other provision in the Agreement to the contrary (including, without limitation, Section 12 of the Terms), if a dispute, claim, or cause of action should arise between the parties (hereinafter "claim") the claim shall be brought in the state courts in Murfreesboro, Rutherford County, Tennessee or the Federal court for the Middle District of Tennessee, and the parties hereby expressly waive any objections and thereby consent to the jurisdiction and venue of said courts. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. Service of process on Buyer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Buyer does not agree to any other service of process procedure.
9. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private entities and, therefore, prohibits an agreement by Buyer to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees, paralegal fees, investigator fees, court costs, or any other expenses related to litigation. In the event of litigation between Buyer and USS each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.
10. **Non-appropriation.** USS acknowledges that Buyer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Buyer fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to Buyer, such termination shall not be a breach of this Agreement. Furthermore, this provision shall extend to any and all obligations imposed upon Buyer to reimburse USS for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations to USS following the date of termination under this section 10.
11. **No Taxes.** As a tax-exempt entity, Buyer shall not be responsible for sales or use taxes incurred for products or services. Buyer shall supply USS with its Sales and Use Tax Exemption Certificate upon USS's request.
12. **Binding Effect.** This agreement is the entire agreement between Buyer, (including Buyer's employees and other end users) and USS. No employee of Buyer or any other person, without authorization of the Murfreesboro City Council can bind Buyer to any contract or agreement and anything contrary contained in the Agreement, the Terms of Service or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with Buyer's employees or other end users, to the contrary are null, void and without effect as it applies to Buyer.
13. **No Liability of City Officials and Employees.** No member, official, or employee of Buyer shall be personally liable to USS or any other person or entity, including a third-party beneficiary, in the event any provision of the Agreement is unenforceable, there is any default or breach by Buyer, for any amount which may become due and the Agreement, or on any obligations under the terms of the Agreement.
14. **Parties to Receive Notice:** Any notices contemplated by the agreement to Buyer shall also be sent via certified United States mail addressed to:

City of Murfreesboro
Legal Department
111 West Vine Street

Murfreesboro, TN 37130

15. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties. This includes any changes to pricing, fees, rates and charges.
16. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
17. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
18. **Counterparts.** This Addendum may be executed in one or more counterparts by Buyer and USS. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
19. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

United Systems & Software, Inc.

City of Murfreesboro, Tennessee



Shane McFarland, Mayor

Signature


Date: 10/12/2022

Date: _____

Will Taylor
Printed Name

Region Manager
Title

Approved as to form:
DocuSigned by:



Adam F. Tucker, City Attorney




Quotation September 16, 2022

For:
Murfreesboro Water and Sewer

Attn: Charles Hancock

Prepared By:

Will Taylor, Regional Manager

Territory Office:

Phone: 615.388.4877 - Email: willt@united-systems.com

Purchase Order Number

TBD

Shipping Method

Best

Pricing Terms:

1 Year

Delivery Date

~140 Days

Qty	Item # - Description	Unit Price - \$	Line Total - \$
1	LDS-1601-001 OpenWay Riva Leak Sensor(OLS) - 5 FT Itron Connector	\$185.00	\$185.00
1	Itron 100W+ Endpoints ERW-1300-403	\$115.00	\$115.00
1	CFG-0900-003 100W Through-the-Lid remote mount antenna Kit	\$85.00	\$85.00
Total -			\$

General— Unless specifically stated to the contrary, prices do not include shipping and/or sales tax, if applicable. Likewise, this quotation does not include technical services related to setup, installation & configuration of proposed items unless specifically stated above. Endpoint orders not in box quantity are assessed a broken box fee of \$25. All related invoices shall be paid on a Net 10 Day basis. This quotation shall remain firm for duration of FY '23-24, unless modified in writing by USS prior to USS acceptance.

TERMS AND CONDITIONS OF SALE ("Terms")

1. All references in this document to "Seller" shall include United Systems & Software, Inc., or "USS", whether or not performing any or all of the scope hereunder or specifically identified herein. All references to "Buyer" shall include all parent(s), subsidiaries and affiliates of the entity placing the order. Buyer and Seller may be referred to individually as a "Party" and collectively as "Parties".

2. All sales to Buyer are subject to these Terms, which shall prevail over any inconsistent terms of Buyer's purchase order or other documents. Additional or different terms and conditions in any way altering or modifying these Terms are expressly objected to and shall not be binding upon Seller unless specifically accepted in writing by Seller's authorized representative. No modification or alteration of these Terms shall result by Seller's shipment of goods following receipt of Buyer's purchase order, or other documents containing additional, conflicting or inconsistent terms. There are no terms, conditions, understandings, or agreements other than those stated herein, and all prior proposals and negotiations are merged herein. These Terms are binding on the Parties, their successors, and permitted assigns.

3. Prices on Seller website, catalogs or in Seller quotes are subject to change without notice, and all such prices expire and become invalid if not accepted within 10 calendar days from the date of issue, unless otherwise noted by Seller in writing. Price extensions if made are for Buyer's convenience only, and they, as well as any mathematical, stenographic or clerical errors, are not binding on Seller. Prices shown do not include any sales, excise, or other governmental tax or charge payable by Seller to any federal, state or local authority. Any taxes now or hereafter imposed upon sales or shipments will be added to the purchase price, and Buyer shall reimburse Seller for any such tax or provide Seller with an acceptable tax exemption certificate. All prices and other terms provided to Buyer shall be kept confidential except to the extent a Party is required by law to disclose the same.

4. Seller shall not be liable for delay or default in delivery resulting from any cause beyond Seller's reasonable control, including, but not limited to, governmental action, strikes or other labor troubles, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, manufacturers' shortages, availability or timeliness of transportation, materials, fuels, or supplies, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event: (a) the time for Seller's performance shall be extended reasonably and the Parties shall adjust all affected dates accordingly; (b) the purchase price shall be adjusted for any increased costs to Seller resulting from such Force Majeure Event; and (c) Buyer shall not be entitled to any other remedy.

5. Seller is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. Notwithstanding this As-Is limitation, Seller shall pass through to Buyer any transferable manufacturer's standard warranties with respect to goods purchased hereunder. BUYER AND PERSONS CLAIMING THROUGH BUYER SHALL SEEK RECOURSE EXCLUSIVELY FROM MANUFACTURERS IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF GOODS, AND THIS SHALL BE THE EXCLUSIVE RECOURSE OF BUYER AND PERSONS CLAIMING THROUGH BUYER FOR

DEFECTIVE GOODS, WHETHER THE CLAIM OF BUYER OR THE PERSON CLAIMING THROUGH BUYER SHALL SOUND IN CONTRACT, TORT, STRICT LIABILITY, PURSUANT TO STATUTE, OR FOR NEGLIGENCE. BUYER SHALL PASS THESE TERMS TO SUBSEQUENT BUYERS AND USERS OF GOODS. SELLER EXCLUDES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER ASSUMES NO RESPONSIBILITY WHATSOEVER FOR SELLER'S INTERPRETATION OF PLANS OR SPECIFICATIONS PROVIDED BY BUYER, AND BUYER'S ACCEPTANCE AND USE OF GOODS SUPPLIED HEREUNDER SHALL BE PREMISED ON FINAL APPROVAL BY BUYER OR BY BUYER'S RELIANCE ON ARCHITECTS, ENGINEERS, OR OTHER THIRD PARTIES RATHER THAN ON SELLER'S INTERPRETATION. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY OUT OF THE PERFORMANCE OR BREACH OF THESE TERMS, SHALL SELLER BE LIABLE FOR (a) ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES SUCH AS LOSS OF USE, LOST PROFITS, ATTORNEYS' FEES OR DELAY DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR CAUSED BY SELLER'S BREACH OF THIS AGREEMENT, (b) ANY CLAIM THAT PROPERLY IS A CLAIM AGAINST THE MANUFACTURER, OR (c) ANY AMOUNT EXCEEDING THE AMOUNT PAID TO SELLER FOR GOODS FURNISHED TO BUYER WHICH ARE THE SUBJECT OF SUCH CLAIM(S). ALL CLAIMS MUST BE BROUGHT WITHIN ONE YEAR OF ACCRUAL OF A CAUSE OF ACTION.

6. Buyer shall indemnify, defend, and hold Seller its officers, directors, employees and agents harmless from any and all costs (including attorneys' and accountants' fees and expenses), liabilities and damages resulting from or related to any third party (including Buyer's employees) claim, complaint and/or judgment arising from Buyer's use of any goods furnished hereunder, as well as any negligent, intentional, or tortious act or omission of Buyer or any material breach by Buyer of these Terms.

7. When goods are delivered to Buyer in Seller's own vehicles, the F.O.B. point shall be Buyer's designated delivery site. In all other cases the F.O.B. point shall be Seller's store or warehouse and all responsibility and costs of shipping and delivery beyond the applicable F.O.B. point shall be borne by Buyer. Title and risk of loss shall pass to Buyer at the applicable F.O.B. point, which for goods not delivered in Seller's own vehicles shall be when Seller delivers the goods to the common carrier. All claims for shortage of goods or for loss or damage to goods as to which Seller has the risk of loss shall be waived unless Buyer, within 10 calendar days after receipt of the short or damaged shipment, gives Seller written notice fully describing the alleged shortage or damage. Partial shipments are permitted at Seller's discretion.

8. Any change in product specifications, quantities, destinations, shipping schedules, or any other aspect of the scope of goods must be agreed to in writing by Seller, and may result in a price and delivery adjustment by Seller. No credit for goods returned by Buyer shall be given without Seller's written authorization. All returns are subject to a restocking charge.

9. Unless otherwise agreed in writing, payment terms are Net 10, payable in United States of America ("U.S.") dollars. Notwithstanding the foregoing, all orders are subject to Seller's continuing approval of Buyer's credit. If Buyer's credit is not approved or becomes unsatisfactory to Seller then Seller, in its sole discretion, may suspend or cancel performance, or require different payment terms, including but not limited to cash on delivery or in advance of shipment. In addition, Seller may in its discretion require an advance deposit of up to 100% of Seller's selling price for any specially manufactured goods ordered by Buyer hereunder. Payments due hereunder shall be made in the form of cash, check, or money order, or other tender approved in writing by Seller. Seller may, in its sole discretion, apply Buyer's payment against any open charges. Past due accounts bear interest at the lesser of 1.5% per month or the maximum rate permitted by applicable law, continuing after Seller obtains judgment against Buyer. Seller may exercise setoff or recoupment to apply to or satisfy Buyer's outstanding debt. Buyer shall have no right of setoff hereunder, the same being expressly waived hereby.

10. Buyer shall not export or re-export, directly or indirectly, all or any part of the goods or related technology obtained from Seller under these Terms except in accordance with applicable export laws and regulations of the U.S. Further, a Buyer that is a non-U.S. company or citizen shall similarly limit any export or re-export activity to that which would be deemed compliant with U.S. export laws and regulations if performed by a U.S. company or citizen.

11. Buyer shall pay Seller all costs and expenses of collection, suit, or other legal action brought as a result of the commercial relationship between them, including, but not limited to, all actual attorneys' and paralegals' fees, and collection costs, incurred pre-suit, through trial, on appeal, and in any administrative or bankruptcy proceedings. Any cause of action that Seller has against Buyer may be assigned without Buyer's consent to United Systems & Software, Inc.

12. This Agreement, Buyer's account, and the business relationship between Buyer and Seller shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The Parties agree that any legal action arising under or related to this Agreement shall be brought in Marshall County, Kentucky, and any right to object to such venue or to assert the inconvenience of such forum is hereby waived.

13. If Buyer fails to comply with these Terms, Seller may terminate or restrict any order immediately upon notice to Buyer. Buyer certifies that it is solvent and that it will advise Seller immediately if it becomes insolvent. Buyer agrees to send Seller written notice of any changes in the form of ownership of Buyer's business within 5 days of such changes. Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.

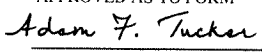
14. The invalidity or unenforceability of all or part of these Terms will not affect the validity or enforceability of the other terms. The parties agree to replace any void or unenforceable term with a new term that achieves substantially the same practical and economic effect and is valid and enforceable.

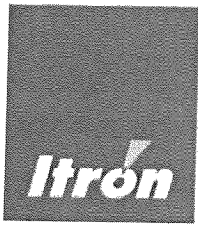
15. The following provisions shall survive termination, cancellation and completed performance of this Agreement as long as necessary to allow the aggrieved party to fully enforce such clauses: 5, 6, 9, 10, 11 and 12.

Purchase Authorization—Buyer further agrees that this is a complete and exclusive statement of Agreement between the parties, which supersedes all implied, oral, and written communications between the parties relating to this Agreement. This Agreement shall be effective as of this ____ day of _____, 2022.

Buyer Name & Title: _____

Purchase Order Number: _____

DocuSigned by:

 Adam F. Tucker, City Attorney
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Authorized Direct Distributor

December 2, 2022

Murfreesboro Water Resources Department

VENDOR RELATIONSHIP

Founded in 1977, United Systems has worked in the utility industry from the outset and this experience provides an invaluable perspective on your needs. This understanding, coupled with the skills of our multi-disciplined technical staff, enable us to provide AMR & AMI solutions and services that address your operation's distinct requirements. Since 1999, United Systems has offered EMR, AMR & AMI solutions. Currently, we serve more than 500 clients across a nineteen-state region.

As an Itron Distributor, United Systems provides local support and consultation for Itron AMI / AMR systems. At any time during the life of the system, United Systems will service your system, with supplemental support from Itron's service group.

Once the system is on-line, Itron typically handles the day-to-day support responsibility for the Itron software and hardware, with all calls being routed to Itron Customer Care Specialists in the Global Services Center. From the Center, Itron can deliver support across all meter reading products and systems from a single location, resulting in speedier and more efficient resolution to a wide range of customer needs. The Center maintains hours of 8:00 EST to 5:00 PST (or 8:00 EST), with Customer Care Specialists on-call 24-hours per day for emergencies.

Unlike many suppliers, United Systems' in-house experts brings some unique advantages to system delivery and installation. Most suppliers are distribution houses that represent a myriad of products with AMR & AMI systems being one of many product lines. Conversely, United Systems is completely vested in technology and specializes in the delivery & on-going support of AMR & AMI solutions. Our project management skills include CIS/Billing software interface services, software & hardware installation, user training, field training, testing & troubleshooting, meter & radio endpoint installation and life-cycle system support.

United Systems' is fully certified by Itron in the delivery of technical services and project management for the Itron ChoiceConnect AMI hardware solutions. Our team of experts is one of very few AMR/AMI organizations in the nation to reach this distinction with four (4) in-house technicians available to deliver expertise & assistance throughout the AMI system implementation.

United Systems is also the sole direct distributor of Itron water products in the State of Tennessee.

We look forward to serving your needs during this project!

Sincerely,

A handwritten signature in black ink, appearing to read "Brian R. Boyd".

Brian R. Boyd
Vice President
United Systems & Software, Inc.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: High Service Pump Station Programmable Logic Controller Replacement

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Task Order for M/R Systems to replace the existing High Service Pump Station Programmable Logic Controller (PLC).

Staff Recommendation

Approve Task Order with M/R Systems for replacing the High Service Pump PLC.

Background Information

In August 2021, the City contracted with J. Cumby Construction (Cumby) for the High Service Pump Station and Membrane Feed Pump Improvements project. That project included replacing the station's PLC. Cumby subcontracted with M/R Systems on the specialty work of installing the PLC.

Recently, the company supplying the PLC provided notice it was discontinuing production of the equipment. An alternative supplier has been identified. Lead time for delivery of the alternative PLC is 13-weeks and will require additional time for programming an installation. An operational plan will be implemented to accommodate this delay. However, Cumby will complete their scope of work other than the subcontracted PLC installation.

Staff proposed to remove the PLC installation from Cumby's scope of work to close out that contract. The City will contract directly with M/R System to complete the PLC installation when the equipment arrives. MWRD currently has a master service agreement with M/R System, and this installation will be added to the scope of that master service agreement. Cumby will credit the City the cost of the installation, \$92,743, at the close of its contract. These project funds will be used for the M/R System installation work under their master service agreement.

Council Priorities Served

Responsible Budgeting

Maintaining plant infrastructure assures continued reliability of high-quality drinking water for the community.

Fiscal Impact

None. There is no net impact on the project budget, which is funded by MWRD working capital reserves.

Attachments

MR Systems Task Order for High Service Pump PLC Replacement



TASK ORDER NO. 2022001

To the AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

For STONES RIVER WATER TREATMENT PLANT HSP PLC REPLACEMENT

This Task Order made and entered into by and between **MURFREESBORO WATER RESOURCES DEPARTMENT**, hereinafter called the "OWNER" and **MR SYSTEMS**, hereinafter called the "ENGINEER," shall be incorporated into and become a part of the Master Services Agreement between Owner and Engineer for Professional Services entered into by the parties hereto on the 4th of April 2018, (the "AGREEMENT").

PURPOSE

This Task Order authorizes and directs the ENGINEER to proceed in providing to the OWNER professional engineering services and materials for upgrading of the control system at the STONES RIVER WATER TREATMENT PLANT HIGH SERVICE PUMP AREA.

ENGINEER'S SCOPE OF SERVICES

The Scope of Services is enumerated within Exhibit A.

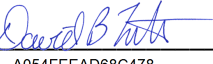
COMPENSATION

As consideration for providing the services enumerated within Exhibit A of this Task Order, the OWNER shall compensate the ENGINEER in accordance with the AGREEMENT. The specific method and/or amount of compensation for this Task Order is enumerated in Exhibit B and is entitled "Q22-10609, Rev. 0, HSPS Schneider PLC," 4 pages.

TASK ORDER NO. 2022001 – Stones River Water Treatment Plant HSP PLC Replacement

IN WITNESS WHEREOF, the parties hereto have executed Task Order No. – 2022001 as a part of the
“Agreement between Owner and Engineer for Master Services Agreement - Task Order Edition” on
this, the _____ day of _____ 2023.


MR SYSTEMS

DocuSigned by:
By:  _____
A054FEEAD68C478...

Printed: David Foster _____

Title: Chief operating officer _____

WITNESS:

DocuSigned by:
By:  _____
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Printed: Mike Nixon _____

Title: Project Manager _____

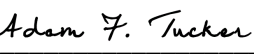
CITY OF MURFREESBORO – MURFREESBORO WATER RESOURCES DEPARTMENT

By: _____

Printed: _____

Title: _____

APPROVED AS TO FORM:

DocuSigned by:
By:  _____
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Printed: Adam F. Tucker _____

Title: City Attorney _____

TASK ORDER NO. 2022001 – Stones River Water Treatment Plant HSP PLC Replacement

EXHIBIT A – SCOPE OF SERVICES

- Replace Allen-Bradley ControlLogix PLC controls that resides within the High Service Pump Station Control Panel with Schneider (Modicon) equipment.
- Field Service engineering will be provided to install the new subpanel into the existing enclosure and make the necessary wiring terminations and wire labeling.
- New PLC and SCADA programming will be provided to replace the current Allen-Bradley controls as well as the necessary onsite commissioning work to verify the new system.
- This also includes updated drawings.

TASK ORDER NO. 2022001 – Stones River Water Treatment Plant HSP PLC Replacement

EXHIBIT B – COMPENSATION

Customer: Murfreesboro Water & Sewer Department
Project: HSPS Schneider PLC
MR Quote #: Q22-10609, Rev. 0



November 15, 2022

Quote Expiration

January 14, 2023

Bill of Materials and Labor

Qty	Tag/Loop	Description
-----	----------	-------------

HSPS Schneider PLC Change

Submittals

Product Delivery, Handling and Storage

Spare Parts (None)

Instructions To Owner

Two (2) of four (4) hour training during commissioning
 One (1) of four (4) hour training after startup

Automatic Control System Software

MR Systems is NOT making any changes to the current iFix system with the exception of integrating the new VFDs and Schneider PLC.

Software Development

Electrical Control Wiring

Electric/Electronic Input Devices

Field Device Identification

Marking

Identification

Operating and Maintenance Instructions

Control Diagrams

System Test and Startup

High Service Building Control Panel PLC Upgrades

MR Systems approach is to replace the existing Allen-Bradley ControlLogix PLC with a Schneider (Modcon) PLC. The best approach is to replace the rear subpan with the new Schneider PLC and associated components. The field I/O will terminate as was planned with the previous Bedrock design. Customer has indicated that interposing relays for the discrete outputs will remain with the previously designed Bedrock panel even though the Schneider discrete output module are isolated (relay contacts).

Below is a brief step-by-step process for the hardware replacement:

Power the panel down. All power and field wiring on the rear subpanel would be de-terminated. The rear subpan would be removed.

The new rear subpan would be installed. All power and field wiring we would landed on the new terminals.

Customer: Murfreesboro Water & Sewer Department
Project: HSPS Schneider PLC
MR Quote #: Q22-10609, Rev. 0



November 15, 2022

Quote Expiration

January 14, 2023

Bill of Materials and Labor

Qty	Tag/Loop	Description
------------	-----------------	--------------------

The panel would then be powered back up and a panel I/O check would be performed to verify proper I/O.

Below is a brief explanation of the software development:

Save the existing program. The current program will be re-written in the Schneider software. Changes would also be made for I/O reassignments for optimization due to the removal of VFD hardwired I/O and new HSP Pump #4 and new Pumps Bypass I/O.

Below is a brief explanation of onsite testing:

We will need to do a basic point-to-point check to ensure proper I/O operation and full functional testing.

1

Subpanel & Schneider PLC Upgrades

BMENUA0100 OPC UA Server/Client Module
 BMEXBP1200 12-slot Enet backplane - one slot for PS + 12 slots
 BMEXBP0800 8-Slot Enet Backplane - One slot for Power Supply + 8 slots
 BMXCPS3500 Power Supply, 115/240 Vac Input, 36W Output
 BMEP582040 M580 CPU, 3x10/100 Ethernet Ports, 1 USB ProgPort, 8MB
 BMXXBE2005 Extension Rack Kit, includes: 2 extension rack modules
 BMXAMI0810 Analog Input Modules, 8 multi-range (U&I) Channels, Isolated
 BMXAMO0410 Analog Output Modules, 4 multi-range (U&I) channels, Isolated
 BMXDDI1602 Digital DC Input Modules, (16) 24 Vdc, Sink (positive logic)
 BMXDRA0815 Relay discrete output modules. 8 NO Type A - Isolated relays

Reuse the following from Bedrock subpanel design -- Rear subpanel, Panduit, relays, DIN rail, wire, terminals, etc.

NOTES:

Any and all Vibration monitoring equipment are to be supplied and installed by others.

Project Labor

One Lot	Project Engineering, Electrical Design, Mechanical Design, Drafting & Administrative Labor (including Travel & Living expenses) to perform final system design and to prepare Submittals and Record Drawings as required by the Contract Documents.
One Lot	HMI Software Applications Development & Graphics Design Labor (including Travel & Living expenses) as required by the Contract Documents.
One Lot	PLC Control Strategy Design & Programming Labor (including Travel & Living expenses) to be performed as required by the Contract Documents.
One Lot	Field Service (including Travel & Living expenses) to provide installation supervision calibrations, startup, training, etc. as required by the Contract Documents.
One Lot	Electrical Installation or Terminations (including Travel & Living expenses) to provide installation of conduit, wire, etc. as required by the Contract Documents.

Customer: Murfreesboro Water & Sewer Department
Project: HSPS Schneider PLC
MR Quote #: Q22-10609, Rev. 0



November 15, 2022

Quote Expiration

January 14, 2023

Bill of Materials and Labor

Qty	Tag/Loop	Description
1 Year		Onsite Comprehensive Warranty (including Travel & Living expenses)
One Lot		Freight
		Subtotal of Labor and Materials: \$92,743
		State Sales Tax - NOT INCLUDED: \$
		Total Project Cost: \$92,743

General Notes:

- A *** Sales Representation ***
Jay Simile of MR Systems is our local Regional Manager. Jay may be reached at 678-325-2809 (Office) or 770-653-1881 (Cell).
- B *** Technical Questions ***
For technical or scope of supply questions contact Mike Nixon, of MR Systems. Mike may be reached at 678-325-2869 (Office) or 615-613-4902 (Cell).
- C *** Installation of Conduit and Wire ***
This quotation **DOES NOT INCLUDE** the supply or physical installation of conduit or wire unless specifically noted above.
- D *** Equipment Installation ***
This quotation **DOES NOT INCLUDE** physical installation of field instruments, pipe, tubing, fittings, isolation valves, instrument stands, instrument mounts, control panels, antennas, masts, wooden poles, or other devices or other equipment unless specifically noted above.
- E *** Wiring Terminations ***
This quotation **INCLUDES** the termination of field wiring to field instruments, control panels, RTU panels, and/or other devices supplied under this scope of supply. Terminations of wiring to equipment supplied by Others are
- F *** Fiber Optics Cable ***
This quotation **DOES NOT INCLUDE** the supply or physical installation of Fiber Optic Cable.
- G *** Fiber Optic Cable Termination ***
This quotation **DOES NOT INCLUDE** termination or testing of fiber optics cable.
- H *** Coaxial Cable Installation ***
This quotation **DOES NOT INCLUDE** the physical installation of coaxial cable or other related components.
- I *** Installation of Communications Towers or Poles ***
This quotation **DOES NOT INCLUDE** the supply or physical installation of Communication Towers or Poles.
- J *** Contractor License Information ***
MR Systems' Tennessee Electrical Contractors License Number is 00057223 (Unlimited).
- K *** This Line Is Intentionally Left Blank ***

Customer: Murfreesboro Water & Sewer Department
Project: HSPS Schneider PLC
MR Quote #: Q22-10609, Rev. 0



November 15, 2022

Quote Expiration

January 14, 2023

Bill of Materials and Labor

Qty	Tag/Loop	Description
L		* Terms and Conditions * MR Systems General Terms & Conditions of Sale apply to any order resulting from this quotation. Please refer to the link provided below for a copy of our General Terms and Conditions of Sale. https://www.mrsystems.com/sellersterms/
M.		* Performance & Payment Bonds * If you desire MR Systems to provide Performance and Payment Bonds for this project, please let our local sales representative know and we will provide you with an adder for the cost of these bonds.

Revision Notes:

Rev. 0

First Issue - 2022-11-15 - MGN

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Amendment of Contract with Calgon Carbon Corporation

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

Second Amendment to Calgon Carbon Corporation contract for replacement of existing granular activated carbon in specified contactors.

Staff Recommendation

Approve Second Amendment with Calgon Carbon Corporation.

Background Information

MWRD contracted with Calgon Carbon Corporation to remove existing granular activated carbon (GAC) media, clean the contactor, and install virgin granular activated carbon media in specified contactors at the Stones River Water Treatment Plant. In July 2022, the contract was amended, and the GAC media was replaced at the contract amount of \$122,840 per contactor.

For the July 2023 GAC media replacement, Calgon has request a price adjustment due to market conditions for the commodity materials involved.

The cost for the work in accordance with the contract and the price adjustment is \$143,560 per contactor. MWRD believes the request is reasonable and rebidding the work would not result in beneficial savings.

Council Priorities Served

Responsible Budgeting

Maintaining plant infrastructure assures continued reliability of high-quality drinking water for the community.

Fiscal Impact

The cost of the amendment, \$20,720 per contactor, will be funded by the FY24 capital budget.

Attachments

Second Amendment to Contract with Calgon Carbon Corporation

**SECOND AMENDMENT
TO THE CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
CALGON CARBON CORPORATION**

This Second Amendment ("Second Amendment") to the Contract, entered into July 1, 2021 ("Contract"), is effective as of this ____ day of _____, 2022, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Calgon Carbon Corporation, a corporation of the State of Delaware ("Contractor").

RECITALS

WHEREAS, on July 1, 2021 the City entered into the Contract with Contractor for the purchase and replacement of Granular Activated Carbon Media at the stated amount of \$1.66/pound for a contract per year total of \$122,840 for the City's Water Resources Department; and

WHEREAS, pursuant to the First Amendment, the term of the Contract is from July 1, 2022, to June 30, 2023; and

WHEREAS, the City may extend the Contract term pursuant to Section 2 of the Contract for up to two (2) remaining additional terms; and

WHEREAS, due to market conditions beyond Contractor's control, Contractor has requested a price adjustment to the Contract; and

WHEREAS, The City is allowing the contractor a price adjustment to \$1.94/pound for a contract per year total of \$143,560 pursuant to Section 11 of the Contract.

NOW THEREFORE, the City and Contractor mutually agree to extend and modify the current Contract as follows:

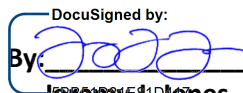
1. The Contract is extended for one (1) additional term to begin on July 1, 2023, and end on June 30, 2024.
2. Beginning July 1, 2023, the parties agree to a price adjustment to \$1.94/lb for an estimated total contract price adjustment from \$122,840 to \$143,560 per contractor.

Except as provided herein, no other changes to the Contract are contemplated by this Second Amendment, and all other terms and conditions of the Contract and First Amendment remain in full force and effect.

CITY OF MURFREESBORO

CALGON CARBON CORPORATION:

By: _____
Shane McFarland, Mayor

DocuSigned by:
By: 
Jeremy J. Jones, DWS Project Manager

Approved as to form:

DocuSigned by:


Adam F. Tucker, City Attorney



Alan,

October 24, 2022

Calgon Carbon announced the initial global price increase that went into effect October of 2021 for all customers. The requested price increase from Murfreesboro 17% which is on the lower end of what has been imposing on customers not currently under contract. We value your business and are willing to extend the current agreement based on acceptance of this increase. Current delivered and installed price is \$1.66/pound, and the proposed price will be \$1.94/pound. Please see the information attached below reflecting some the factors impacting our business and the industry.

Calgon Carbon manufactures and supplies a variety of products, and each of our product lines has been subject to escalating costs associated with:

- Worldwide supply chain challenges brought on by the pandemic
- Metallurgical grade bituminous coal for our manufacturing plants
- Natural Gas and diesel fuel increases with no end in site
- Labor and energy to operate our facilities
- Freight to move our materials overseas and over land
- Other key raw materials, especially acids

Calgon Carbon has done the upmost to absorb some of these cost increases, but now it is necessary to increase prices by 10% to 25% or more, depending on the products and services supplied. Please see some of the data in the charts below. Unfortunately, we're not seeing any of these costs leveling off or decreasing based on available industry information.

The continuing impact of the global pandemic and the resulting economic challenges have impacted costs and availability of a broad spectrum of materials and services. Cost increases for bituminous coal, coconut char, and wood, the primary raw materials used for producing activated carbon, have been significant. Energy costs, including electricity, natural gas, and diesel continue to trend upward. The entire global supply chain has seen operating and transportation costs escalations and the challenges are expected to continue.

While we had hoped to avoid any price increases, in order to provide our customers, with the reliable supply the quality activated carbon products and services they are accustom to. We cannot continue to absorb these costs. We value the business that you have entrusted to us and look forward to working with you to continue serving you.

Sincerely,

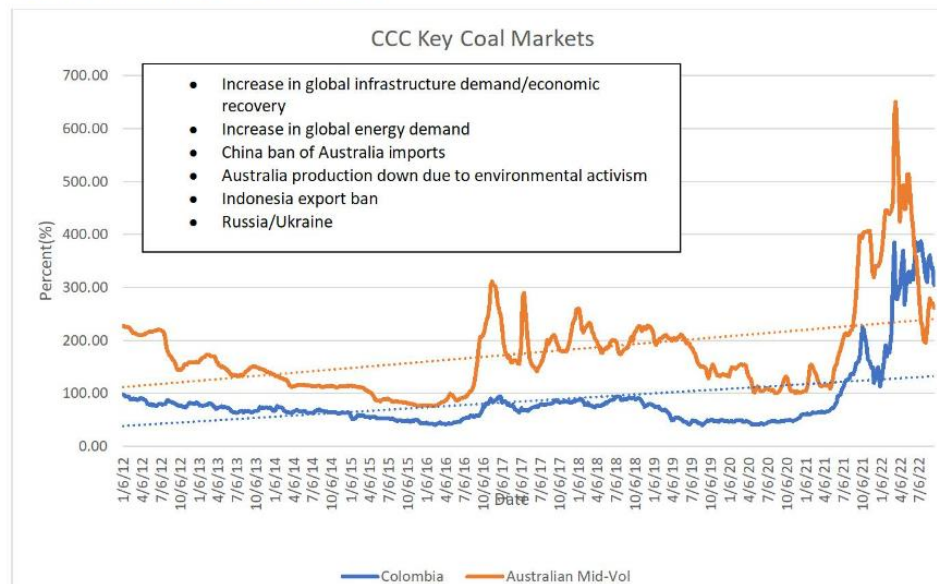
Michael Prevade

National Accounts Manager Drinking Water Solutions

724-417-0405

2022			
Virgin Indices	Description	Wt%	Yr% change
WPU0614	PPI Commodity data for Chemicals and allied products	35%	33.51%
PCU32419-32419-	PPI industry data for Other petroleum and coal products mfg	35%	16.07%
WPU3012	PPI Commodity data for Transportation services	30%	20.04%
Weighted Average			23.36%

COAL MARKET CHANGE

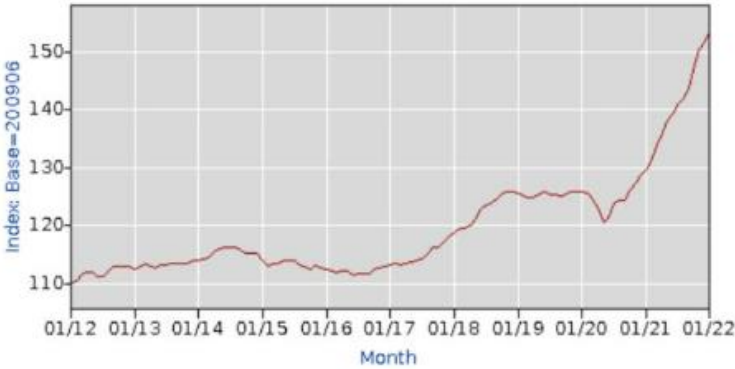


IHS Markit weekly coal and petcoke prices		
(US dollars per metric ton)		
	Colombia (Puerto Bolivar)	MCC2 Australian mid- vol PHCC
Sept 2020 - 2021 Average	78.54	149.08
Sept 2021 - 2022 Average	260.33	388.89
% Change	231%	161%

Freight Graph from US Bureau of Labor Statistics

PPI Commodity Data

Series Id: WPU3012
Not Seasonally Adjusted
Series Title: PPI Commodity data for Transportation services-Truck transportation of freight, not seasonally adjusted
Group: Transportation services
Item: Truck transportation of freight
Base Date: 200906



COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Mechanical and Electrical Services Contract Extension

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

A one-year extension of the existing Mechanical/Electrical Services Contract with John Bouchard and Sons (JB&S).

Staff Recommendation

Approve First Extension of Agreement with John Bouchard & Sons Co.

Background Information

In February 2022, Council approved a task order agreement the JB&S. That agreement provided for three one-year extensions. A task order agreement is necessary to supplement the work of Staff on specific projects. This contract aided staff in the preventative maintenance as well as emergency repairs necessary at the Water Treatment and Water Resource Recovery Facilities.

Staff believes it is beneficial to extend the agreement with JB&S. The company has provided critical services in a timely and cost-effective manner throughout the term of the City's original agreement.

Council Priorities Served

Responsible budgeting

A task order contract provides for timely repairs in the event of an emergency and is a cost-effective means of supplementing staff for preventative repairs necessary to avoid emergencies.

Fiscal Impact

All tasks are budget through MWRD operating budget or the Department's working capital reserves.

Attachments

1. First Extension of Agreement
2. Task Order List - 2022

**MURFREESBORO WATER RESOURCES DEPARTMENT
MURFREESBORO, TENNESSEE**

FIRST EXTENSION OF AGREEMENT

This First Agreement Extension is made as of this ____ day of _____ pursuant to the terms of the **Water/Wastewater System Mechanical/Electrical Services Contract** (the "Agreement") dated February 3, 2022, by and between John Bouchard and Sons Co ("Contractor") and the City of Murfreesboro, Tennessee (the "Owner").

Recitals

- A. Article 9-Contract Documents of the Agreement incorporates by reference the Instructions to Bidders as set forth in the Contract Documents and Specifications for the Water/Wastewater System Mechanical/Electrical Services Contract dated February 3, 2022.
- B. Part 10.2 and 15.7 of the Instructions to Bidders of the Agreement provides that Contractor and the City may agree to extend the Agreement for a period of twelve months no more than three times.
- C. No previous extensions of the Agreement have been made and Owner and Contractor now desire to extend the Agreement for a twelve month period.

Agreement

- 1. Contractor and the Owner mutually agree to extend this agreement an additional 12 months, from February 3, 2023 to February 3, 2024, in accordance with Part 10.2 and 15.7 of the Instructions to Bidders of the Agreement.
- 2. No provisions of the Agreement except as specifically stated herein are amended.

John Bouchard and Sons Co.

David G Proctor IV 11/30/22
By: David Proctor
Its: Project Manager

CITY OF MURFREESBORO

Shane McFarland, Mayor

Approved as to Form:

Adam Tucker, City Attorney

Murfreesboro Water Resources Task Order List - 2022			
Task Order #	Description	Status	Amount/Estimate
22-01	Boisolidis Polymer System Upgrade at WRRF	Under Construction	\$1,285,723.30
22-02	GAC Valve Acuator Replacement at WTP	Almost Complete-Waiting on Invoice	\$103,964.00
22-03	Thompson LN PS - Pump 2 & 3 Check Valve Replacements	Waiting on Parts	\$26,965.94
22-04	County Farm Road PS - Bubbler Line	Complete - Waiting on Invoice	\$9,413.00
22-05	Clarifier 3 Repairs at WRRF	Waiting on Parts	\$20,000.00
22-06	SWPS Pressure Transducer	Being Scheduled	\$21,841.73
22-07	Raw Water Pump & Motor #3 Rebuild	To Be Approved	\$49,992.50
	Total		

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Asphalt Purchases Report
Department: Water Resources
Presented by: Darren Gore, Assistant City Manager
Requested Council Action:

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

Summary

Report of asphalt purchases.

Staff Recommendation

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

Background Information

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

Pursuant to the City Code, a purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. §6-56-304(7).

Council Priorities Served

Responsible budgeting

Proper procurement ensures best cost savings to the Department and our customers.

Maintain public safety

Maintaining safe drivability of roadways affected by water resources operations focuses on customer service.

Fiscal Impacts

The overall costs, \$150,000 to \$175,000 per year, are funded by MWRD's operating budget.

Attachments

Asphalt Purchases Report

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2022

	Blue Water		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$65.00	\$75.00	\$69.00	\$78.50	\$73.54	\$86.22	
Aug	\$65.00	\$75.00	\$69.00	\$78.50	\$73.57	\$86.26	
Sep	\$65.00	\$75.00	\$69.00	\$78.50	\$73.17	\$85.73	
Oct	\$65.00	\$75.00	\$80.51	\$87.91	\$71.98	\$84.09	
Nov	\$65.00	\$75.00					
Dec	\$65.00	\$75.00					
Jan	\$65.00	\$75.00					
Feb	\$65.00	\$75.00					
Mar	\$65.00	\$75.00					
Apr	\$65.00	\$75.00					
May	\$65.00	\$75.00					
Jun	\$65.00	\$75.00					

MWRD OPERATIONS & MAINTENANCE

Asphalt Purchases FY 2022

<i>Invoice Date</i>	<i>Approval</i>	<i>Vendor</i>	<i>Type</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>	<i>FY Total</i>
7/20	DH	Vulcan	307-BM	\$58.39	18.60	\$1,086.05	\$1,086.05
7/20	DH	Vulcan	307-BM	\$58.39	18.38	\$1,073.21	\$2,159.26
7/20	DH	Vulcan	307-BM	\$58.39	18.56	1,083.72	\$3,242.98
7/20	DH	Vulcan	307-BM	\$58.39	18.27	1,066.79	\$4,309.77
7/26	DH	Hawkins	411- E	\$66.50	18.70	1,243.55	\$10,074.44
7/26	DH	Hawkins	307-BM	\$59.00	13.60	802.40	\$10,876.84
8/10	DH	Vulcan	411-E	\$67.35	13.66	920.00	\$11,796.84
8/17	DH	Vulcan	307-BM	\$58.51	10.72	627.23	#REF!
10/15	DH	Hawkins	411-E	\$66.50	16.48	1,095.92	\$16,493.88
10/20	DH	Hawkins	307-BM	\$62.75	16.69	1,047.30	\$17,541.18
11/30	DH	Hawkins	307-BM	\$60.00	22.34	1,340.40	\$18,881.58
11/30	DH	Hawkins	307-BM	\$60.00	19.28	1,156.80	\$20,038.38
11/30	DH	Hawkins	307-BM	\$60.00	17.25	1,035.00	\$21,073.38
11/30	DH	Hawkins	307-BM	\$60.00	20.26	1,215.60	\$22,288.98
11/30	DH	Hawkins	307-BM	\$60.00	19.00	1,140.00	\$23,428.98
11/30	DH	Hawkins	411-E	\$67.50	17.31	1,168.43	\$24,597.41
11/30	DH	Hawkins	307-BM	\$65.00	22.37	1,454.05	\$26,051.46
11/30	DH	Hawkins	307-BM	\$65.00	19.89	1,292.85	\$27,344.31
11/30	DH	Hawkins	307-BM	\$65.00	22.86	1,485.90	\$28,830.21
11/30	DH	Hawkins	307-BM	\$65.00	17.69	1,149.85	\$29,980.06
11/30	DH	Hawkins	307-BM	\$65.00	3.06	198.90	\$30,178.96
12/13	DH	Hawkins	307-BM	\$60.50	21.02	1,271.71	\$31,450.67
12/13	DH	Hawkins	411-E	\$68.25	14.47	987.58	\$32,438.25
12/18	DH	Hawkins	411-E	\$68.25	17.62	1,202.57	\$33,640.82
12/18	DH	Hawkins	411-E	\$68.25	3.54	241.61	\$33,882.43
12/28	DH	Hawkins	307-BM	\$60.50	18.00	1,089.00	\$34,971.43
12/28	DH	Hawkins	307-BM	\$60.50	13.77	833.09	\$35,804.52
12/29	DH	Hawkins	307-BM	\$60.50	15.84	958.32	\$36,762.84
1/31	DH	Hawkins	411-E	\$68.25	11.80	805.35	\$39,868.19
2/18	DH	Hawkins	307-BM	\$60.75	11.91	723.53	\$40,591.72
2/18	DH	Hawkins	307-BM	\$58.00	20.29	1,176.82	\$41,768.54
5/23	DH	Hawkins	411-D	\$82.50	4.01	86.51	\$41,855.05

[illegible]

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Rezoning property along North Rutherford Boulevard
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Rezone approximately 16.01 acres located along the west side of North Rutherford Boulevard north of East Main Street.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

Albion of Murfreesboro, LLC presented a zoning application [2022-423] for approximately 16.01 acres located along the west side of North Rutherford Boulevard to be zoned PRD (Planned Residential District), including a PRD amendment of approximately 11.7 acres, approximately 4.2 acres to be rezoned from RM-16 (Multi-Family Residential District) to PRD, and approximately 0.02 acres to be rezoned from CU (Colleges and Universities District) to PRD. During its regular meeting on November 2, 2022, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 8, 2022, Council held a public hearing and approved this matter on First Reading. A revised pattern book is included in the agenda materials for second reading with a revised Sheet 21, which clarified the language regarding site landscaping.

Council Priorities Served

Improve economic development

The approval of the zoning request will help to facilitate the proposed investment into this aging multi-family development.

Attachments:

1. Ordinance 22-OZ-44
2. Albion at Murfreesboro Apartments PRD pattern book (revised for second reading)

ALBION AT MURFREESBORO APARTMENTS

**REQUEST REZONING TO
PLANNED RESIDENTIAL DISTRICT (PRD)**

ALBION AT

**MURF
REES
BOR** 

APARTMENTS

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

Submitted December 9, 2022 for Second and Final Reading at the January 5, 2023 City Council Meeting

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Company Name: Huddleston-Steele

Profession: Civil Engineer

Attn: Clyde Rountree, RLA

Phone: 615.509.5930

Email: rountree.associates@yahoo.com

Company Name: Albion Residential

Profession: Owner/Developer

Attn: Justin Tringl

Phone: 773.844.9327

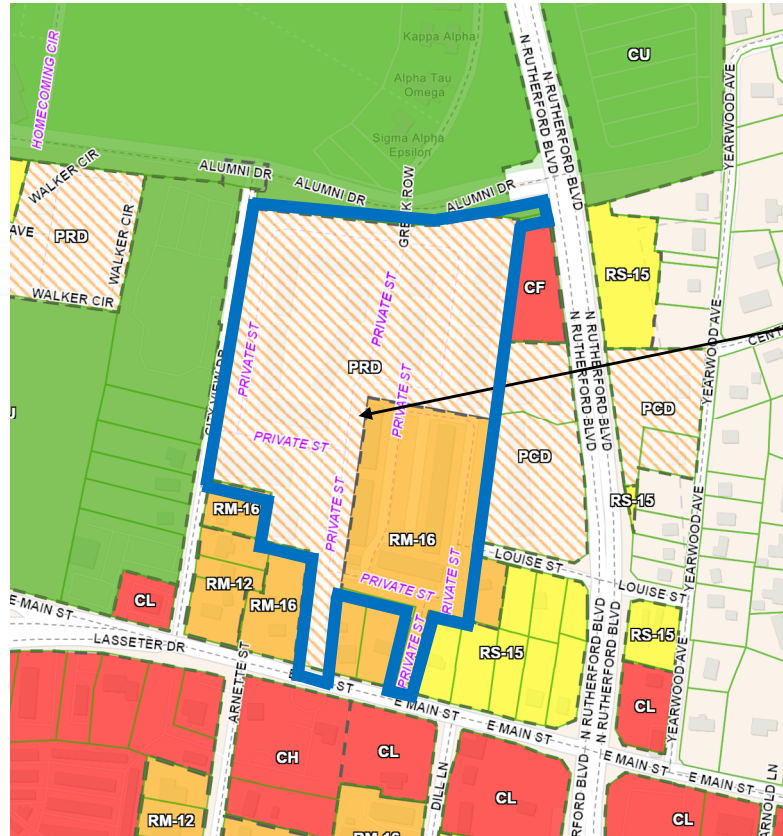
Email: jtringl@albion-residential.com

SUMMARY

The project is located at 285 N. Rutherford Blvd containing one (1) 16.013 AC +/- parcel and is adjacent to the MTSU campus, south of Alumni Drive. However, it is not part of the campus. The project scope consists of a bifurcation from 4BR/4BA units being separated into two separate units with updated interior finishes and upgraded low-flow plumbing fixtures. The existing 2BR/2BA and 3BR/3BA units on the property would remain the same layout with all updated interior finishes and upgraded low-flow plumbing fixtures. Existing number of bedrooms on the property is 816. The new layout will take this number down to 654. This is a total reduction of 164 bedrooms and bathrooms from the site. By reducing the number of bedrooms on the property, we are able to reduce the maximum occupancy by 324 persons. Eight (8) apartment buildings (labeled B, C, D, F, M, N, O and P) are included in the bifurcation as shown on page 13. As to the unit counts, the project will change from 252 to 360 units. This is a density change from 15.74 units/AC to 22.48 units/AC. The remaining seven (7) apartment buildings will be receiving new interior paint and finishes and exterior cleaning only with no architectural changes. The club house will be renovated with new finishes, a relocated Fitness Center and Lounge/Gaming Room, add and added Package Room and a upgraded Kitchen Bar area.

- A walk through meeting with the City of Murfreesboro was conducted on July 8, 2022.
- The project will address CPTED standards for security.
- The Owner will be offering law enforcement personnel a reduced rental rate.
- Dumpster enclosures facing Alumni Drive (2 total) will be fully enclosed to meet City standards.
- All siding and other exterior finishes will be pressure washed.
- All existing dryer vent caps will be replaced.
- New property and building address signage and branding elements are proposed.
- All non operational exterior building and site lighting lamps will be replaced.
- The Volleyball Court will be removed to accommodate an expanded drainage pond.
- The Dog Park will be relocated and upgraded.

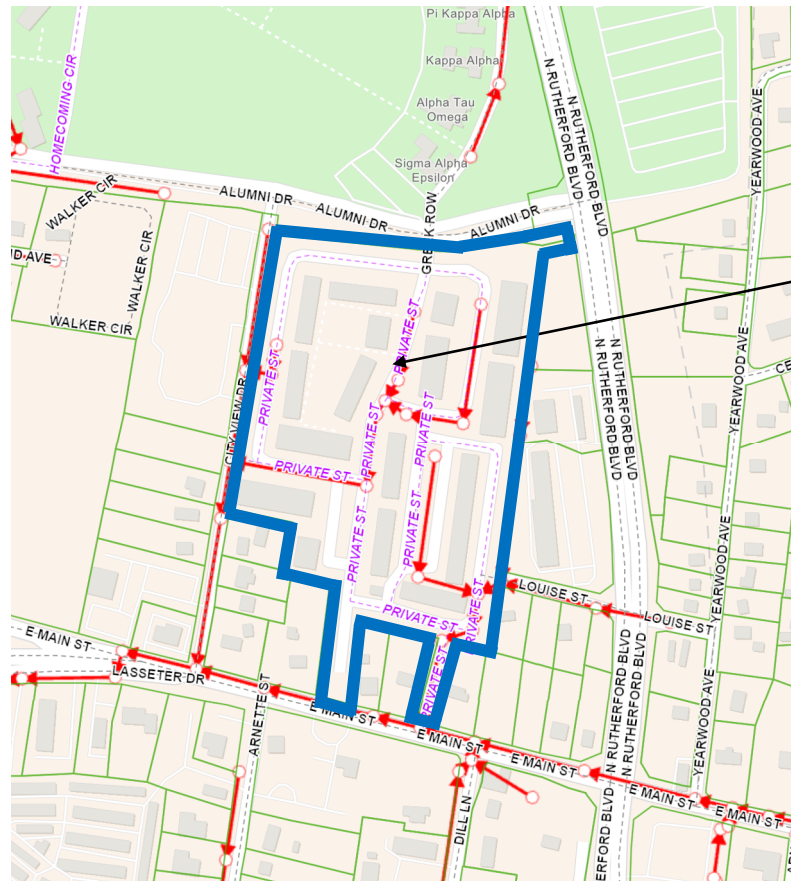
ZONING MAP



The property is currently zoned PRD (11.83 AC), RM-16 (4.163 AC) and CU (0.02 AC). The proposed rezoning is to cover the entire property under the PRD zoning.

SITE

UTILITY MAP - SEWER



Albion received approval of their sewer Allocation Variance by City Council on June 30, 2022.

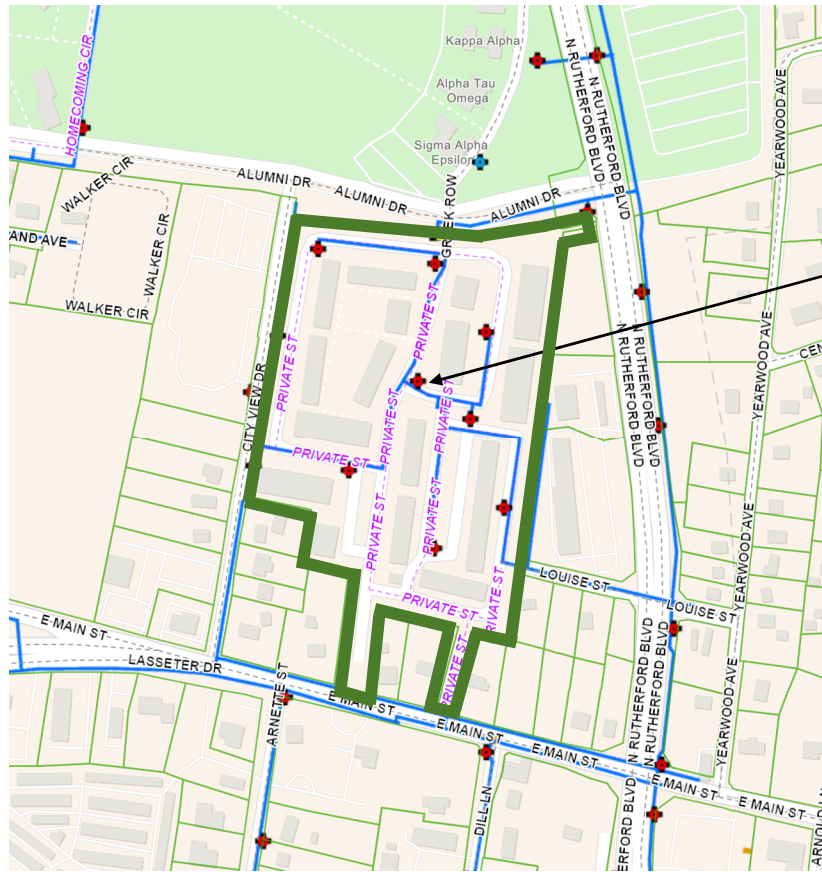
SITE

LEGEND

SEWER



UTILITY MAP - WATER



SITE

- The project received approval of the sewer Allocation Variance by City Council on June 30, 2022.
- The bifurcation of the apartments results in a reduced water usage due to less overall occupants living on the property.
- All faucets, shower heads and fixtures (bifurcation and all others) will be replaced with low flow products.
- There are two existing master water meters on site. It was agreed that the City of Murfreesboro will not required sub-metering. However, the City will monitor the water usage over time. If a reduction in usage is not observed after the bifurcation, then the sub-metering of each building will need to be installed.

Water Supply Fixture Units		
	WSFU's	Flow (GPM)
Existing	4567.2	600
New	4324.2	559
Reduction	-243	-41

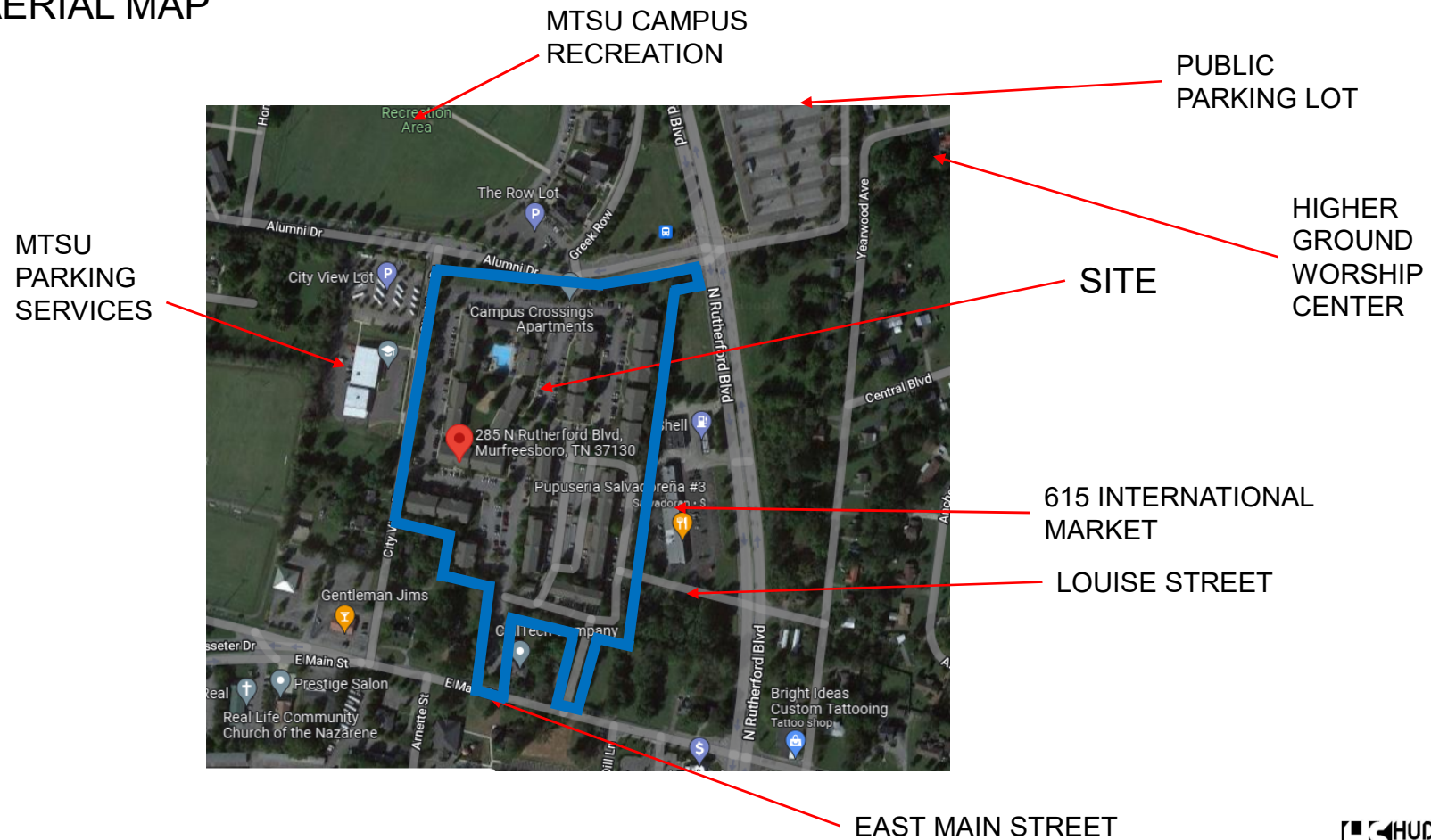
Note: Water Supply Fixture Units (WSFU's) a unit of measure, based on the rate of discharge, time of operation and frequency of use of a fixture, that expresses the hydraulic load imposed by that fixture on the water supply and sanitary plumbing installation.

Legend:

Water

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AERIAL MAP



ROADWAY MAP

PRIMARY
ENTRANCE

ALUMNI DR.

CITY VIEW DR.

SECONDARY
ENTRANCE —

EAST MAIN ST.

SITE

• N RUTHERFORD BLVD

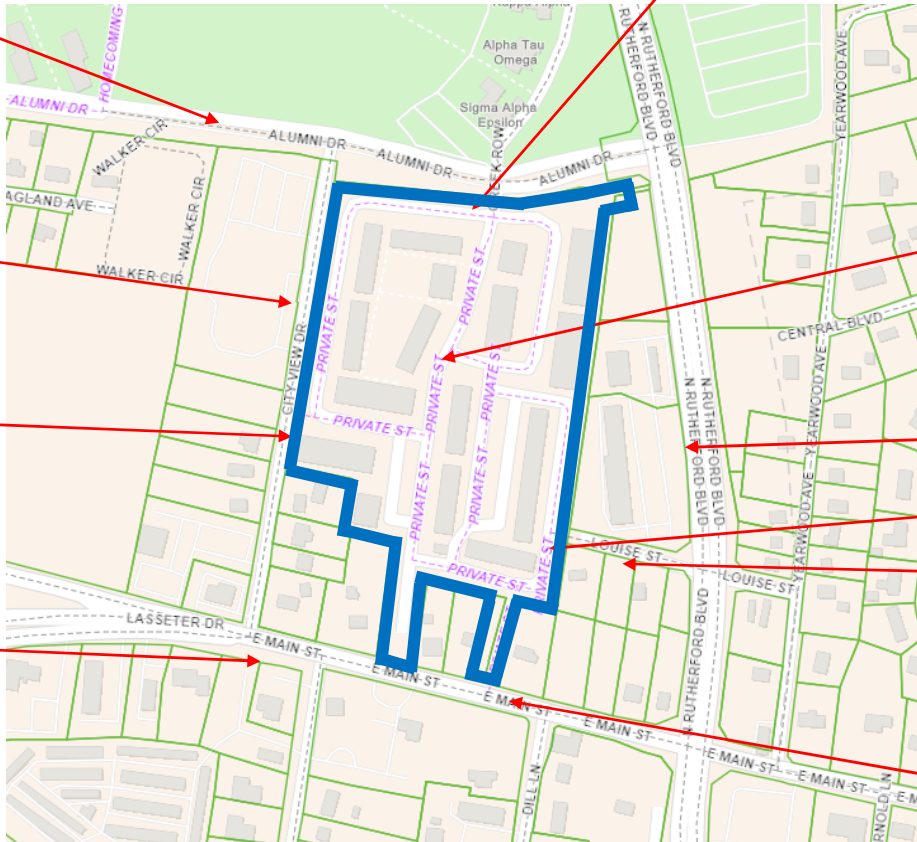
SECONDARY ENTRANCE

LOUISE STREET

Road Classification Legend:
Private Roadways

SECONDARY ENTRANCE

The main entrance access into the complex is from Alumni Drive, which is not a public roadway. Secondary entrances comes Louise Street that connects to North Rutherford Blvd., East Main Street and City View Drive.

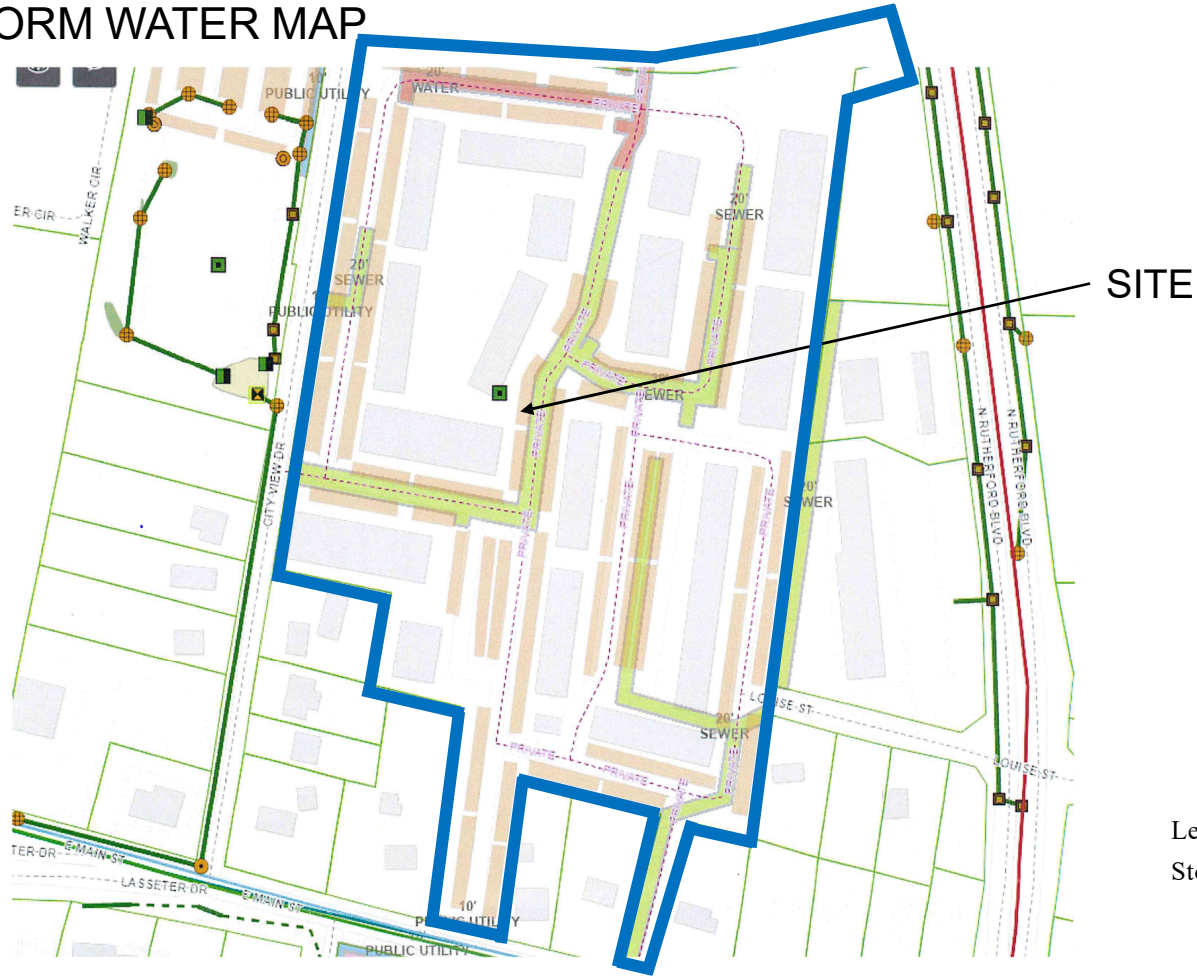


Page 8

Roadway Map

ALBION AT MURFREESBORO APARTMENTS PRD

STORM WATER MAP

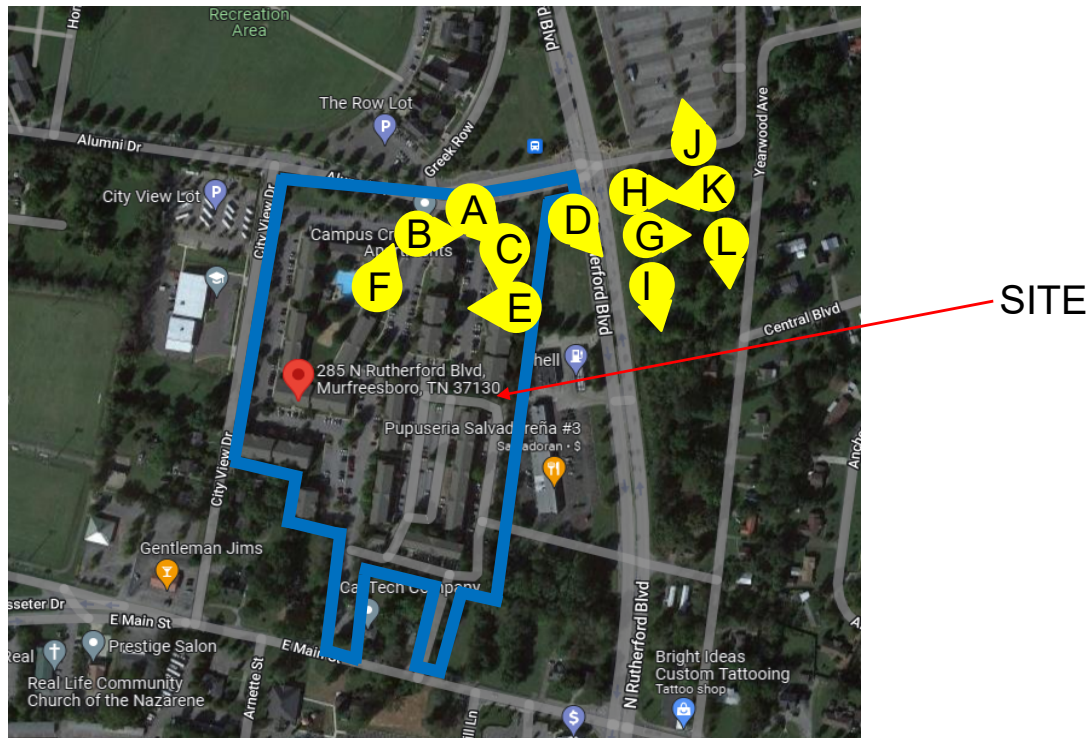


- Upgrades will be made to the existing retention pond at the center of the property
- Areas with pervious pavement will be repaired to proper functioning.
- Drainage pipe will be cleaned with all silt removed for the pipe to return to proper functioning.
- Drainage swales will be cleaned up and returned to proper functioning.
- See page 16 for overall Storm water mitigation plan.

Legend:

Stormwater 

EXISTING CONDITION PHOTOS- KEY MAP



EXISTING CONDITION PHOTOS

CAMPUS CROSSINGS



Page 11

Existing Condition Photos

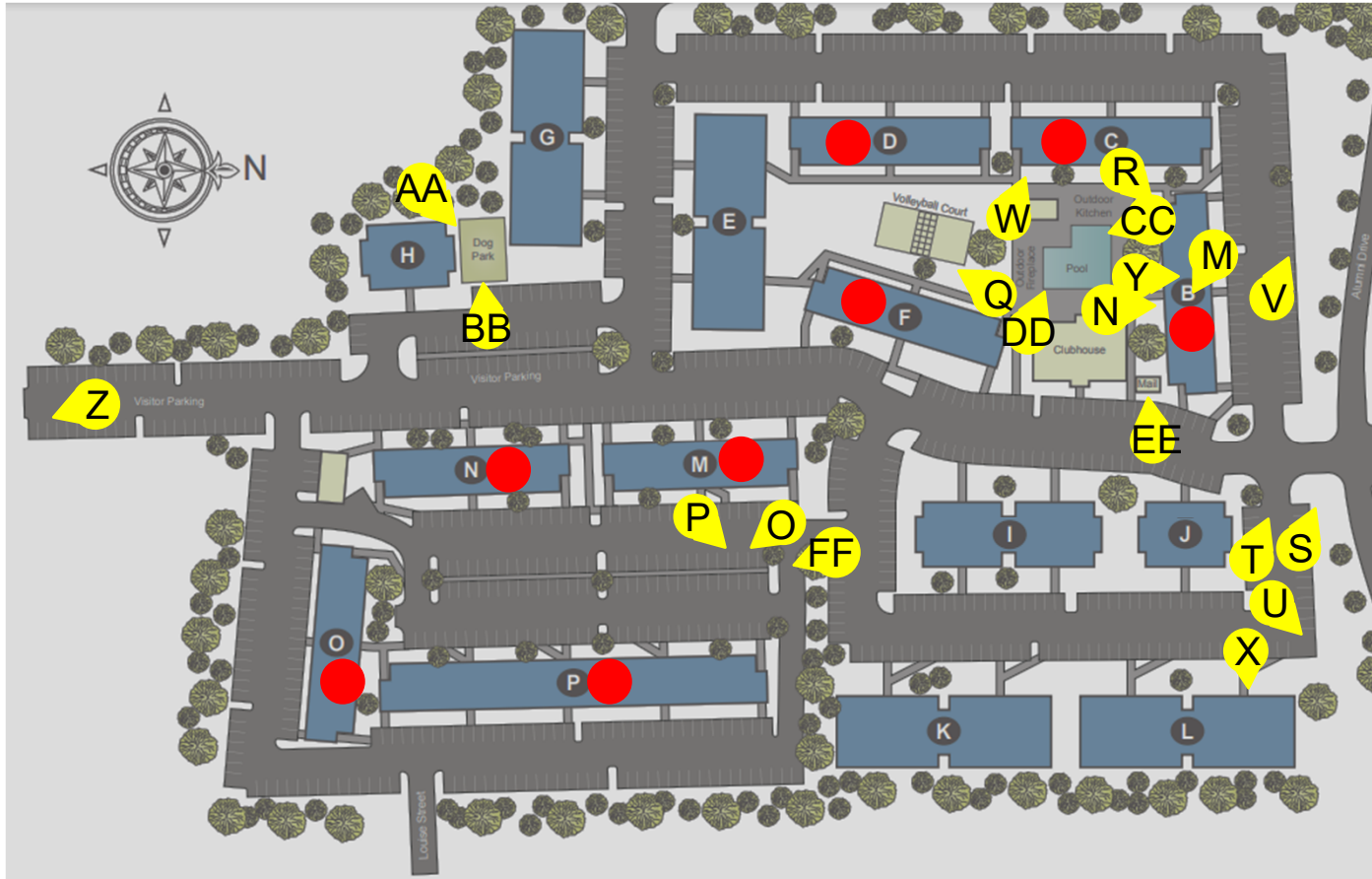
HS HUDDLESTON-STEELE
ENGINEERING, INC.
2115 N.W. BROAD STREET, MURFREESBORO, TN 37129
TELEPHONE: 615-893-4084 FAX: 615-893-0080

ALBION AT MURFREESBORO APARTMENTS PRD

EXISTING CONDITION PHOTOS



SITE ISSUES – KEY MAP

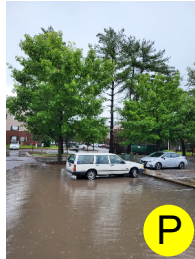
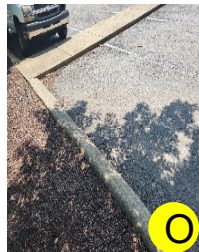


- Letters within dark gray circles represent the building labels.
- Eight (8) apartment buildings (labeled B, C, D, F, M, N, O and P) and designated with a red circle are included in the bifurcation.
- Seven (7) apartment building (labeled E, G, H, I, J, K and L) will keep the existing layout with updated interior finishes.
- See page 26 for fencing upgrades and relocated Dog Park notes.

EXISTING CONDITION PHOTOS – SITE ISSUES - PROPOSED SOLUTIONS



Areas with damaged vinyl siding will be replaced.



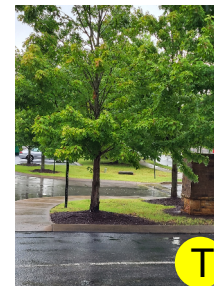
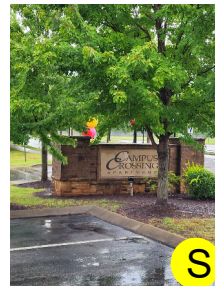
All pervious asphalt parking spaces will be repaired, restored and thoroughly cleaned to properly function.



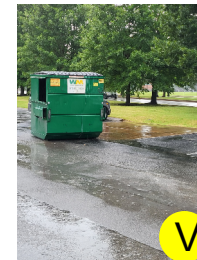
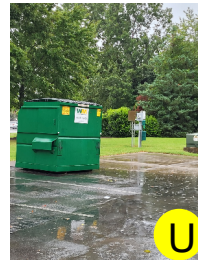
Outdoor Volleyball court will be removed. The area will be used as a retention pond. Grass and landscaping will be planted in this area.



Areas of HVAC units on grade will be screened using opaque panels and/or landscaping.



The Alumni main entrance will be upgraded with a new monument sign, sidewalk from Alumni Dr. to the Clubhouse and additional landscaping. The monument sign on N. Rutherford Blvd will also be updated.



Two (2) Garbage dumpsters in the front of the property will be upgraded with enclosures that comply with City of Murfreesboro standards. The Owner will combine the other 6 dumpster locations to provide 3 new double dumpster locations with hardie and brick column fence enclosures.

EXISTING CONDITION PHOTOS – CPTED SITE ISSUES - PROPOSED SOLUTIONS



The rear patios of 1st floor units adjacent to Alumni Dr. will be provided with landscaping for privacy and security.



Areas under stairs will be sufficiently illuminated with security lighting – lamp replacement.



All existing building signage will be updated with new addresses and branding. All trees obstructing building signage will be trimmed back to prevent obstruction. Directional signage will also be added.

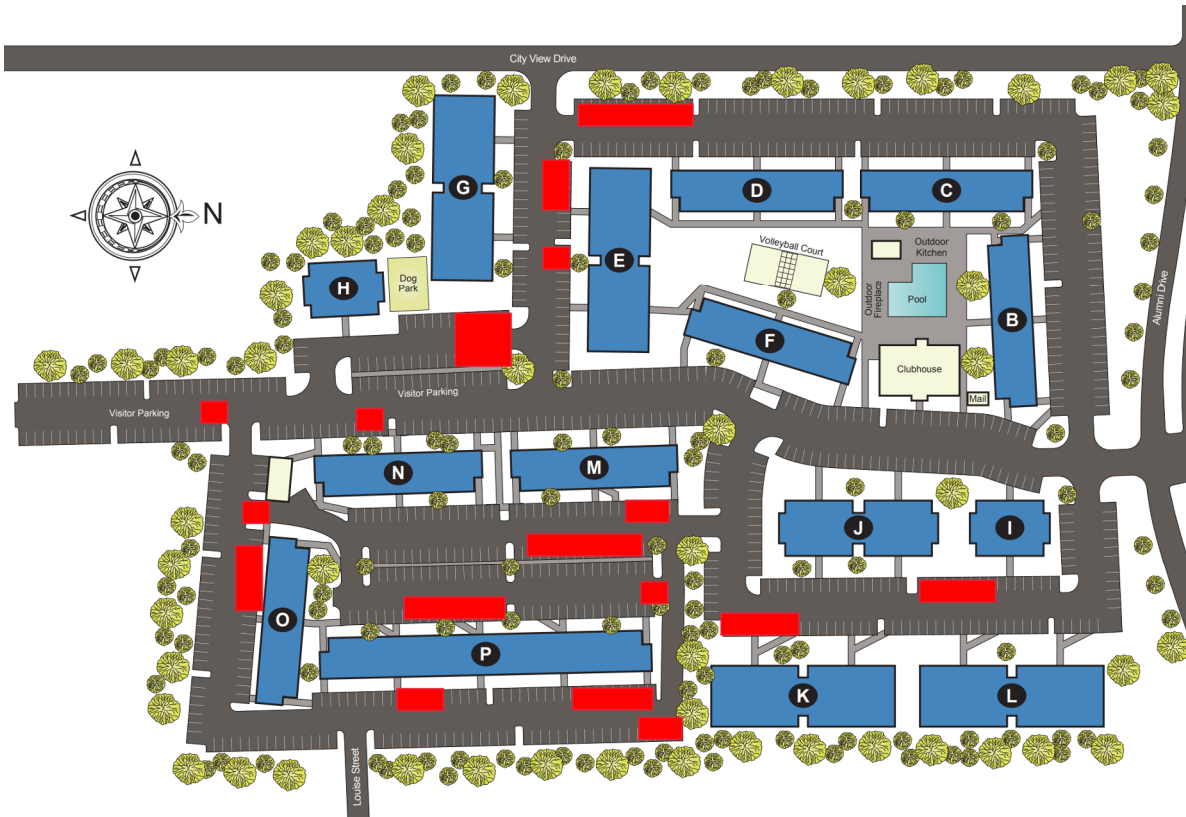


The area between the South visitor parking lot and E. Main St. will be fenced in for security and aesthetics with a black aluminum picket type fence (wrought iron appearance). Thus reducing non-residents from cutting through the property.

Other CPTED improvements:

- The Owner will be offering law enforcement personnel a reduced rental rate.
- All trees will be trimmed to prevent any obstruction to site lighting.
- Trees will be trimmed to increase natural surveillance – including a minimum of 6 ft from the ground.
- All perimeter trees and bushes will be trimmed to prevent any areas of concealment and to not impair the view of pedestrians.
- Bushes around windows will be trimmed to not exceed 3 ft in height.
- All exterior building and site lighting lamps that are not operational will be replaced – includes parking areas, breezeways, alcoves, recesses, etc.
- The fencing on the East side of the property parallel to N. Rutherford Blvd will be repaired.

DRAINAGE AND STORMWATER SITE ISSUES - EXISTING OBSERVATIONS



Drainage and Stormwater improvements:

- The areas shown in red have been observed to be subject to storm water ponding.
- Page 9 shows pervious asphalt areas throughout the site.

DRAINAGE AND STORMWATER SITE ISSUES - PROPOSED MITIGATION PLAN

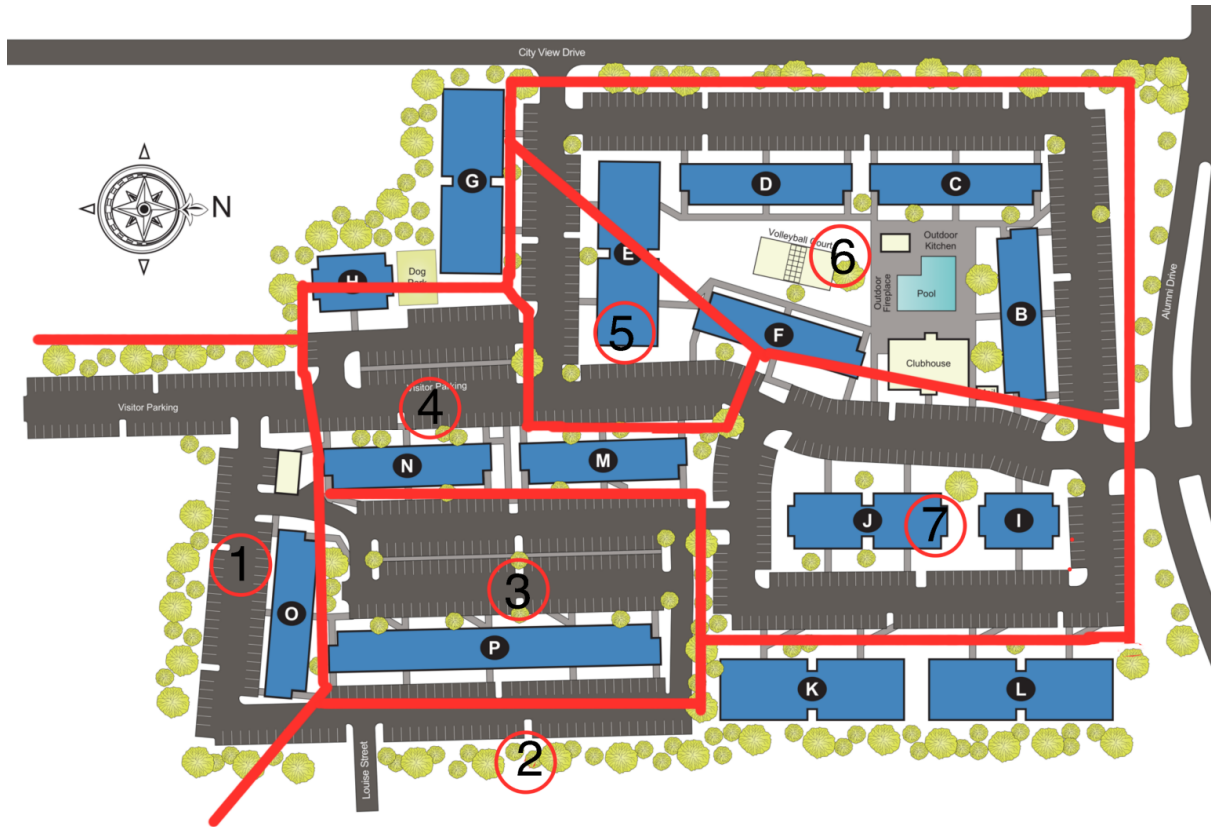
Albion's desire is for their occupants to have a pleasant and safe environment, which includes proper site drainage. Per discussions with the City of Murfreesboro, a two-tiered mitigation plan is shown below.

PLAN #1 – Cleaning and maintenance of the existing system (see pages 17 and 18 for graphic references):

- All pervious asphalt pavement (parking spaces) installed with the original development will be repaired, restored and thoroughly cleaned to restore the intended function.
- All parking areas where asphalt has been compromised or where potholes have formed will be repaired – like for like – pervious with pervious and impervious with impervious.
- Net pervious area on the site will be unchanged by this project. There will be no increase in impervious area.
- All existing area drains located in the parking areas will be cleaned including piping. A camera inspection will be performed on the inside of the piping to confirm that there are no blockages.
- There will be no reduction in the number of parking spaces.
- Additional curbing will be installed where necessary to prevent movement of sediment into the pervious asphalt.
- Albion currently has proposals to initiate cleaning, maintaining and addressing the parking drainage issues.
- Outdoor Volleyball court will be removed and the associated retention area will be increased.
- Provide the Maintenance Agreement and Plan on file with the City of Murfreesboro. Agreement must be signed by a creditor.
- Provide geo-tech certification letter for the proper drainage function.

PLAN #2 – ONLY if PLAN #1 does not mitigate the storm water site issues, then replacement of asphalt, addition of piping and drains will be implemented to restore the system to proper functionality. Should additional drainage be needed, some of the “excess parking” will be allowed to convert for drainage needs.

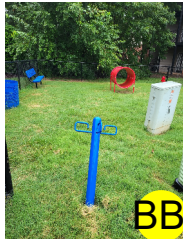
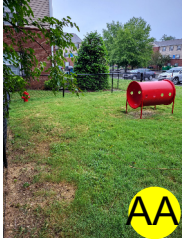
DRAINAGE AND STORMWATER SITE ISSUES - PROPOSED SOLUTIONS



Drainage and Stormwater improvements:

- The zones shown will be cleaned in phases as numbered . This allows the owner to minimally impact the residents.

SITE AMENITY UPGRADES



Outdoor Dog Park will be relocated and upgraded with additional updated equipment. See page 26 for new location.

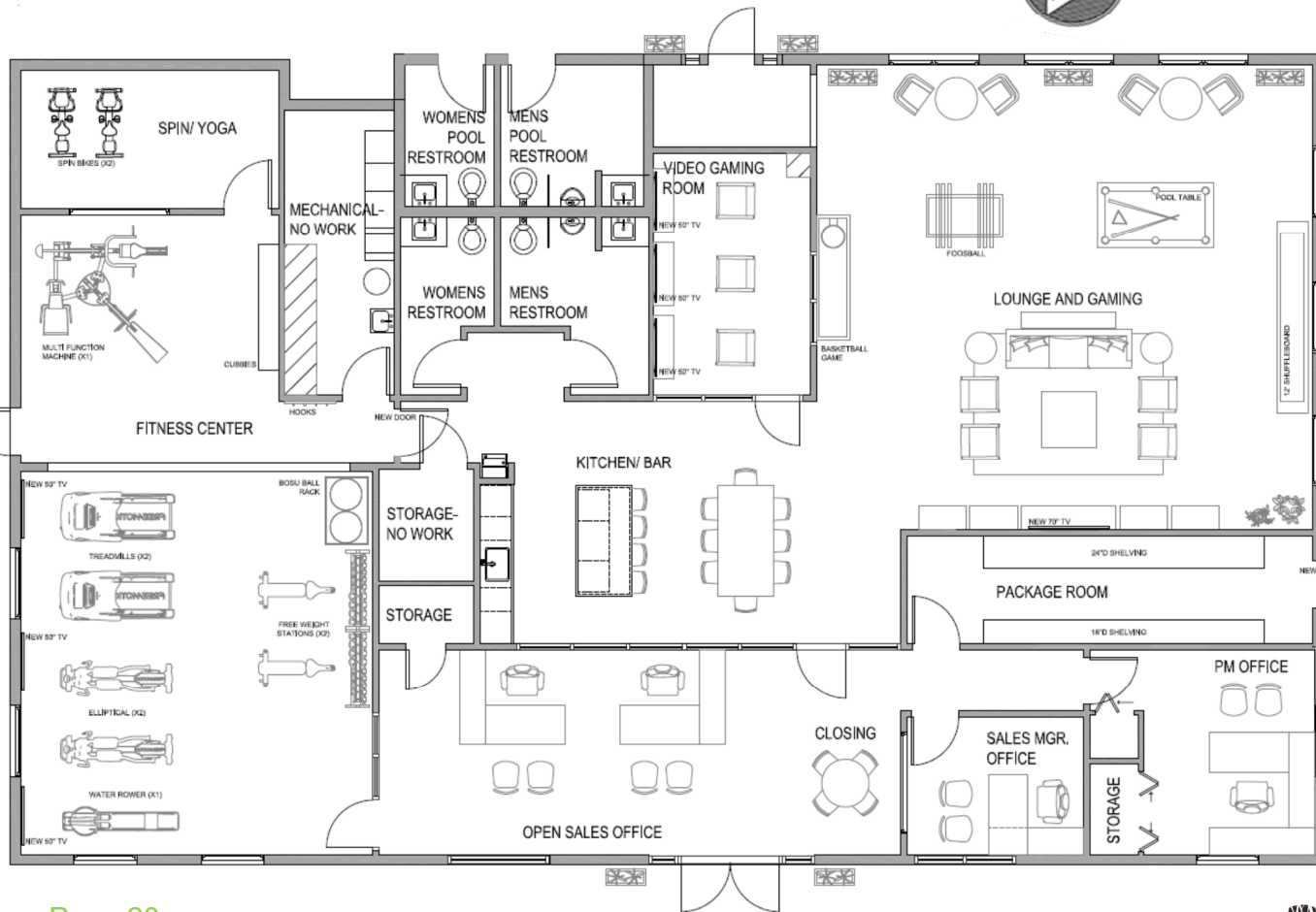


Mail Kiosks (2 total) will be replaced due to the change in quantity of total living units from bifurcation.



The entire pool area will be upgraded with new furniture, fixtures, equipment and security cameras.

CLUBHOUSE UPGRADE PLAN



The existing Fitness Center will be swapping locations with the Lounge/Gaming Room.



A Package Room will be added to the Clubhouse for all deliveries – this will keep the property looking tidy and prevent theft.



The Clubhouse Kitchen Bar area will be completely upgraded.

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- GENERAL:

- There are 8 existing free standing dumpster locations. Refer to the legend above for the proposed plan.
- Dead, dying or missing trees in parking lot islands will be replaced throughout the property.
- Bury gutter extension pipes and direct away from HVAC units throughout the property (especially around Bldg C) and adjust the grade adjacent to the bldgs as necessary.

Page 22

Unit Type Tables and Bedroom Counts

New Unit Mix		
Type	Unit SF	Count
2BR/2BA	890	48
3BR/3BA	1198	96
1BR/1BA	710	108
Studio	400	54
2BR/2BA	1000	54
Net New Units		108
Total Units		360
Total Bedrooms		654
Bedroom Reduciton		-164

BUILDING BIFURCATION BEFORE/ PHASING NOTES

8 apartment buildings (labeled B, C, D, F, M, N, O and P) and designated with a red circle are included in the bifurcation.

Phase 1 – September 1 – November 15th 2022

- The first batch of non-bifurcation units will be renovated. All units in buildings K and L will be completed.
- Tree and landscaping trimming throughout the property will be completed, and enhancements made to site lighting will start
- Initial parking lot repairs and discovery will be completed

Phase 2 – November 1 – December 31st 2022

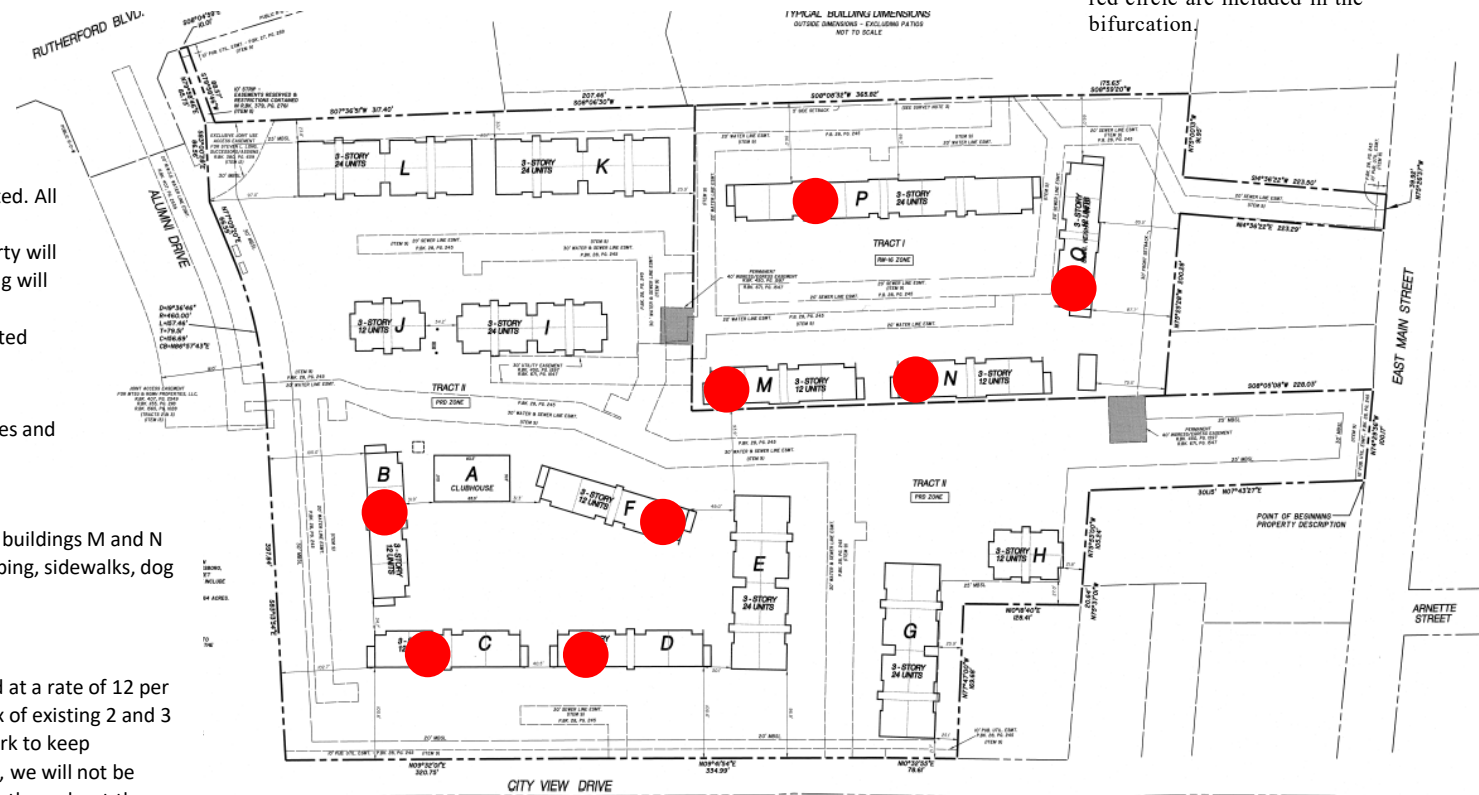
- The clubhouse on site will be updated with new finishes and furnishings.

Phase 3 – January 1st – May 31st 2023

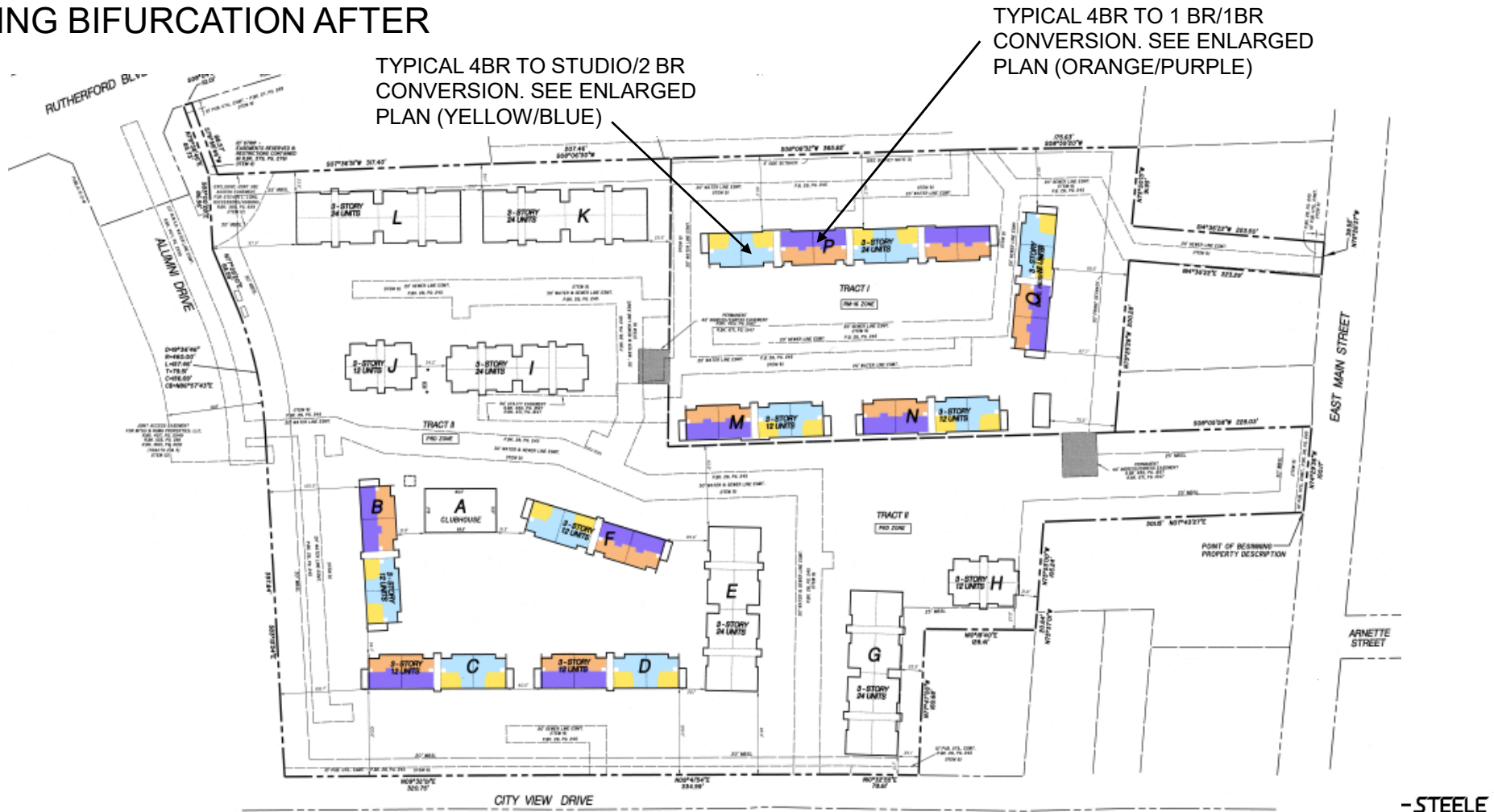
- The first 48 bifurcation units will be renovated – all of buildings M and N
- Exterior amenity upgrades will happen – new landscaping, sidewalks, dog park, and pool deck furnishings

Phase 4 – June 1st 2023 – September 1st 2024

- The remaining units on the property will be renovated at a rate of 12 per month. The units renovated every month will be a mix of existing 2 and 3 bedroom units and 4 bedroom bifurcations. As we work to keep occupancy and not displace residents on the property, we will not be taking entire buildings offline, but likely stacks of units throughout the property. This allows us to keep as many residents in place as possible and work around their lease expirations.



BUILDING BIFURCATION AFTER



UNIT BIFURCATION: EXISTING ARCHITECTURAL PLANS (1ST/2ND/3RD FLOORS)

Current 4BR/4BA



UNIT BIFURCATION: NEW ARCHITECTURAL PLANS (1ST/2ND/3RD FLOORS)



1 Bedroom Unit / 1 Bedroom Unit Floor Plans

SCALE: 1/4"=1'-0"

UNIT 21-10



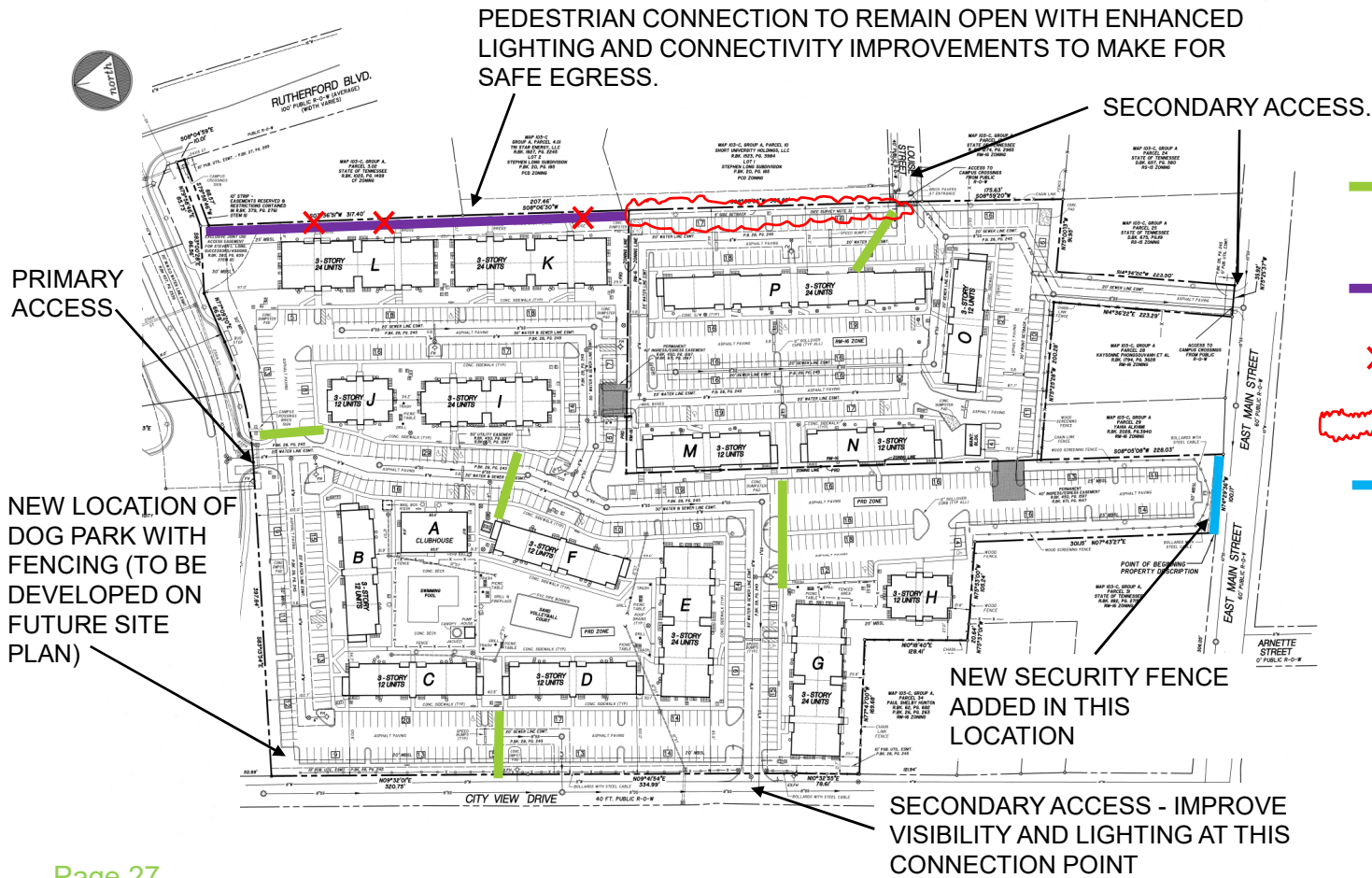
Studio Unit / 2 Bedroom Unit Floor Plans

SCALE: 1/4"=1'-0"

UNIT 21-10

- Every new bifurcated unit will have a new stackable washer and dryer. All new dryers will be a ventless condensing type.
- All existing buildings are fully sprinklered.
- Existing water heaters are 80 gallon.

PARKING, CONNECTIVITY & FENCING LOCATIONS



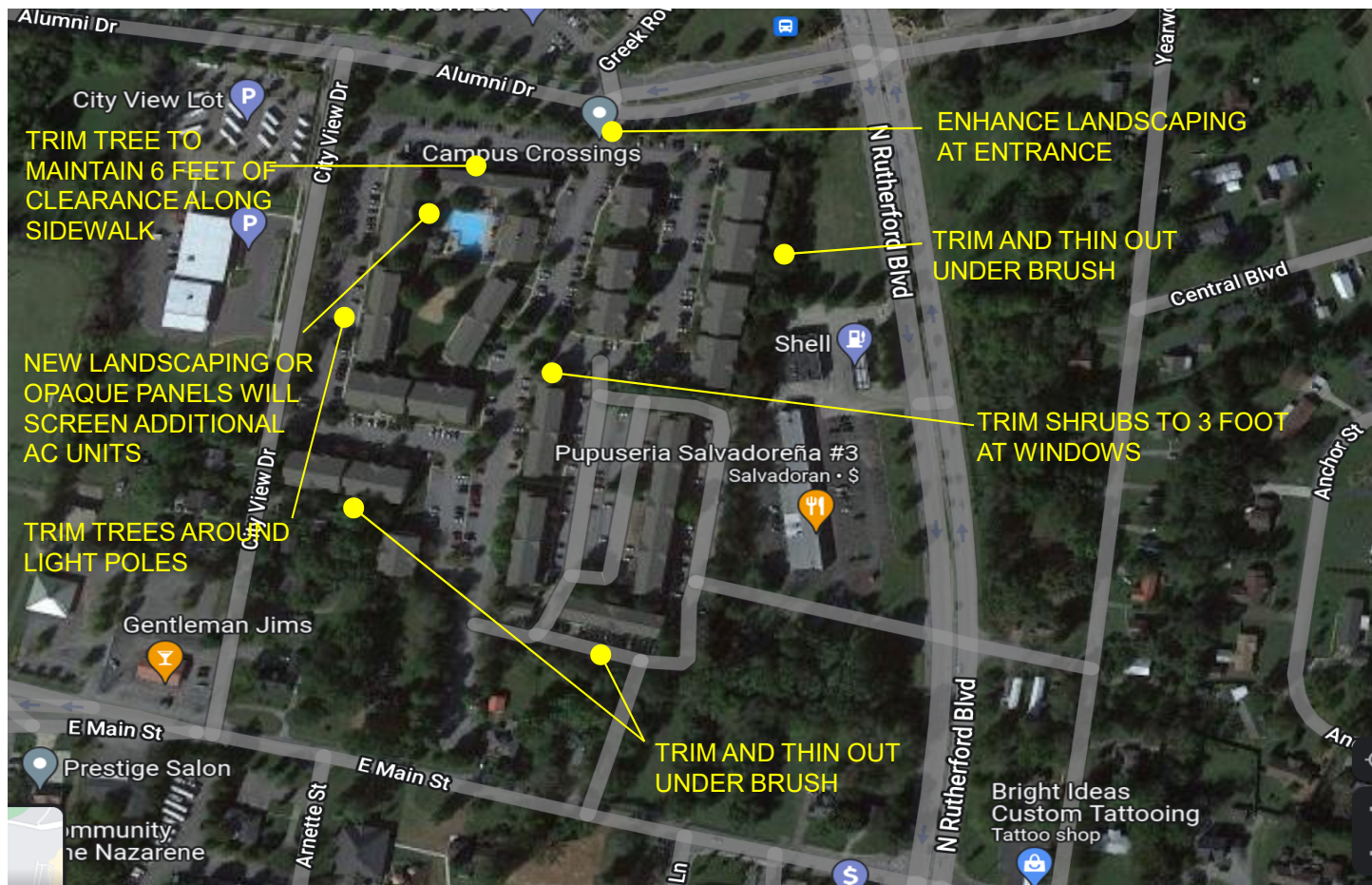
LEGEND:

- GREEN LINES INDICATE NEW ENHANCED CROSSINGS INTERNAL TO THE SITE. THESE WILL BE PAINTED WITH CROSS HATCHING AND SIGNAGE ADDED
- PROPERLY REPAIR OPEN AREAS OF EXISTING CHAIN LINK TYPE FENCING
- X CLOSE ACCESS OPENINGS AND REMOVE PEDESTRIAN BRIDGE DUE TO SECURITY IN 3 LOCATIONS
- ADD NEW CHAIN LINK FENCING TO SEPARATE COMMERCIAL AND APARTMENTS
- ADD WROUGHT IRON TYPE FENCING ALONG EAST MAIN STREET

GENERAL:

- See page 22 for parking calcs.
- There will be no reduction in the number of parking spaces.
- The improved sidewalk areas will have trees trimmed and add lighting.

LANDSCAPE MAINTENANCE AND ENHANCEMENTS



- The current development consists mostly of mature trees and shrubs. The result of the mature trees is large shady areas that will not sustain landscaping planted below.
- The full shade conditions occur in many areas and prohibits the ability to grow foundation plants successfully.
- New landscaping is being added for screening new A/C units and existing A/C units on grade. Where landscaping is not used for this screening, the owner will build opaque screens to hide the units.
- The majority of the landscaping concerns are the result of overgrown and poorly maintained landscaping. As note on this aerial, attention will be placed on trimming the existing landscaping to CPTED standards.

DEVELOPMENT STANDARDS

Development Standards:

- Development will include renovation (bifurcation) of only 8 buildings.
- The maximum building height is not changing – all existing buildings.
- Parking is existing will be surface parking only.
- Solid waste will be utilizing a private hauler. The existing garbage dumpster locations will remain. Screen walls will be added on the visible dumpsters from the front of the property.
- Some new sidewalks will be provided.
- Mail delivery will be accommodated via two mail kiosks (both existing)
- Telecommunication and television equipment is existing to remain.
- New AC units will be located in the current existing locations – screening by landscaping or screen fences will be added.
- Building Elevation Materials: Vinyl Siding which is existing will be replaced as needed in damaged areas and cleaned.
- All buildings are existing to remain with existing setbacks.

General Applicability Section 13B for Planned Development

- 1. Ownership and division of land:* The site is owned by the developer identified on page 2. Map 103C, Group A, Parcel 02700 in one lot of record containing 16.013 +/- AC is currently zoned PRD and RM-16 in the City of Murfreesboro.
- 2. Waiver of BZA action:* No BZA actions will be required.
- 3. Common space and common elements:* A large central open space is existing.
- 4. Accessibility of site:* Site access will continue via Alumni Dr., City View Dr., Louise St. and East Main St. as (a community designated collector street in the 2040 Major Thoroughfare Plan (MTP) as a 3-lane roadway).
- 5. Off-street parking .* See page 22 for parking calculations.
- 6. Pedestrian circulation:* New Sidewalks or delineated crosswalks will be constructed with this project. See page 26.
- 7. Privacy:* Currently there is no plan for privacy matters at this location.
- 8. Relationship to zoning regulations and other zoning regulations:* A PRD is being requested for the subject property.
- 9. Development Period; Phasing.* The project shall be completed in multiple phases. See page 23.
- 10. Annexation:* No annexation is required for this site.
- 11. Landscaping:* Landscaping will be the responsibility of the new owner.

DEVELOPMENT STANDARDS

Section 13D – Planned Development Criteria Requirements

1. *Identification of existing utilities, easement, roadways, rail lines and public right-of-way crossings and adjacent to the subject property:* Shown in pattern book on pages 5-9.
2. *A graphic rendering of the existing conditions and/or aerial photograph(s) showing the existing conditions and depicting all significant natural topographical and physical features of the subject property;* Not applicable.
3. *A plot plan, aerial photograph, or combination thereof depicting the subject and adjoining properties including the location of structure on-site and within two hundred feet of the subject property and the identification of the use thereof;* Shown in pattern book pages 10-13.
4. *A drawing defining the general location and maximum number of lots, parcels or sites proposed to be developed or occupied by buildings in the planned development; the general location and maximum amount of area to be developed for parking;* Shown in pattern book pages 21 and 22.
5. *A tabulation of the maximum number of dwelling units proposed including the number of units with two or less bedrooms and the number of units with more than two bedrooms;* Shown in pattern book page 22.
6. *A tabulation of the maximum floor area proposed to be constructed, the F.A.R. (floor area ratio), the L.S.R. (livability space ratio), and the O.S.R. (open space ratio);* Not applicable in this situation.
7. *A written statement generally describing the relationship of the proposed planned development to the current policies and plans of the City and how the proposed planned development is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of this article;* Shown in pattern book page 3.

8. *If the planned development is proposed to be constructed in stages or units during a period extending beyond a single construction season, a development schedule indicating:*
(aa) *the approximate date when construction of the project can be expected to begin;*
(bb) *the order in which the phases of the project will be built;*
(cc) *the minimum area and the approximate location of common space and public improvements that will be required at each stage; and,*
(dd) *a breakdown by phase for subsections [5] and [6] above;* The PRD will be constructed in multiple phases. See page 23.

9. *Proposed means of assuring the continued maintenance of common space or other common elements and governing the use and continued protection of the planned development. For this purpose, the substance of any proposed restrictions or covenants shall be submitted;* A maintenance agreement for storm water shall be entered into and put on file with the City of Murfreesboro.

10. *A statement setting forth in detail either (1) the exceptions which are required from the zoning and Subdivision Regulations otherwise applicable to the property to permit the development of the proposed planned development or (2) the bulk, use, and/or other regulations under which the planned development is proposed;* **Exception #1: No new sub-meters will be added. Exception #2: Parking area pavement will not be replaced, but will be cleaned and/or repaired. All original pavement types will remain to allow proper drainage per the original site design intent. Two mitigation plans are provided on page 16. Exception #3: Front 2 garbage dumpsters facing Alumni drive will be provided with masonry enclosures that comply with City Standards. The Owner will combine the other 6 dumpster locations to provide 3 new double dumpster locations with brick corner pillars and hardie walls. Exception #4: New Landscaping Plan will follow the details on Sheet 21. Exception #5: If additional drainage is needed and the existing system cannot be made to function, then excess parking can be converted to drainage.**

11. *The nature and extent of any overlay zone as described in Section 24 of this article and any special flood hazard area as described in Section 34 of this article;* Not applicable in this situation.

12. *The location and proposed improvements of any street depicted on the Murfreesboro Major Thoroughfare Plan as adopted and as it may be amended from time to time;* The subject property is adjacent to East Main St., which is a community designated collector street in the 2040 Major Thoroughfare Plan (MTP) as a 3-lane roadway. Existing right-of-way and sidewalk in-lieu fees will be addressed as needed at that time.

13. *The name, address, telephone number, and facsimile number of the applicant and any professional engineer, architect, or land planner retained by the applicant to assist in the preparation of the planned development plans. A primary representative shall be designated;* See page 1.

14. *Architectural renderings, architectural plans or photographs of proposed structures with sufficient clarity to convey the appearance of proposed structures.* Building Architecture is not changing.

15. *If a development entrance sign is proposed the application shall include a description of the proposed entrance sign;* Signage is existing and being upgraded.

ORDINANCE 22-OZ-44 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable and/or to rezone to PRD (Albion at Murfreesboro Apartments PRD) a total of approximately 16.01 acres located at 285 North Rutherford Boulevard as follows: amend 11.7 acres in the Planned Residential Development (PRD) District, rezone approximately 4.2 acres from Residential Multi-Family Sixteen (RM-16) District to Planned Residential Development (PRD) District, and rezone approximately 0.02 acres from College and University (CU) District to Planned Residential Development (PRD) District; Albion of Murfreesboro, LLC, applicant, [2022-423].

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

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to modify the conditions of Planned Residential Development (PRD) District, as indicated on the attached map, for the purpose of incorporating an additional 4.22 acres into the PRD zoning and increasing the number of dwelling units on-site to a total density of 22.48 dwelling units per acre by modifying the interiors of the existing apartment buildings and to rezone the territory indicated on the attached map from Residential Multi-Family Sixteen (RM-16) District and College and University (CU) District to Planned Residential Development (PRD) District.

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

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

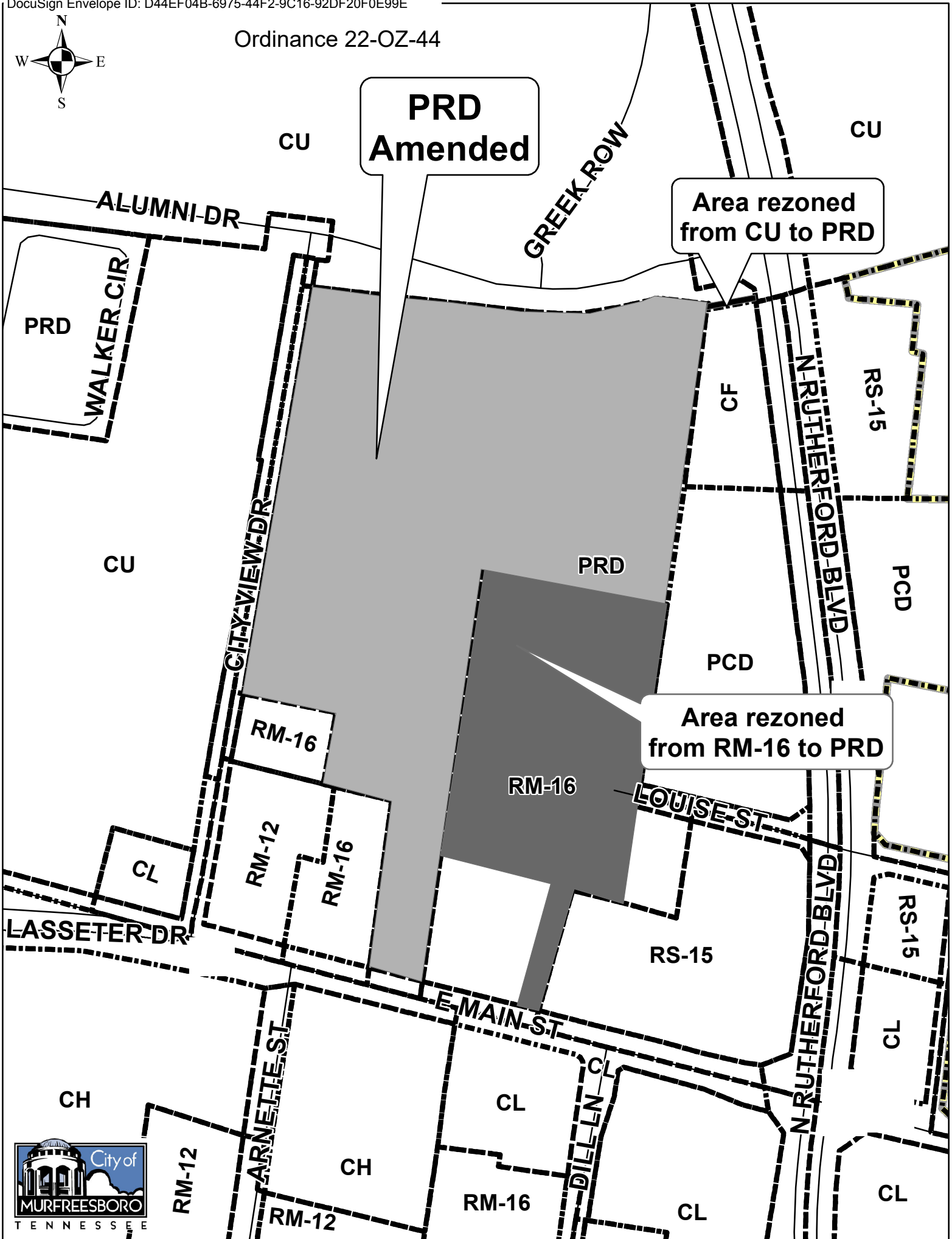
Jennifer Brown
City Recorder
SEAL

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
#3A2033E51F9401...

Adam F. Tucker
City Attorney

Ordinance 22-OZ-44



COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Zoning for property along Veterans Parkway
[Second Reading]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Zoning of approximately 14.4 acres located along Veterans Parkway and Franklin Road.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

Background Information

Harney Homes, LLC presented to the City a zoning application [2022-402] for 7.3 acres located along Veterans Parkway to be zoned CH (Commercial Highway District) and PRD (Planned Residential District) simultaneous with annexation and for the existing PRD zoning on the adjacent 7.1 acres to the south to be amended. During its regular meeting on November 2, 2022, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 8, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This rezoning will enable commercial development, which will create employment opportunities for the community and generate tax revenue for the City.

Attachments:

Ordinance 22-OZ-45

ORDINANCE 22-OZ-45 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 1.6 acres along Veterans Parkway as Commercial Highway (CH) District, simultaneous with annexation, to zone approximately 5.7 acres as Planned Residential Development (PRD) District (The Villas at Veterans PRD), simultaneous with annexation, and to amend the existing Villas at Veterans PRD zoning on 7.1 acres located along Franklin Road; Harney Homes, LLC, applicant [2022-425].

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

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to zone the territory indicated on the attached map and to modify the conditions of the Planned Residential Development (PRD) District, as indicated on the attached map, for the purpose of incorporating an additional 5.7 acres into the PRD to allow a total of 91 single-family residential attached dwelling units (townhomes) on approximately 13.01 acres.

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

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

Passed:

1st reading _____

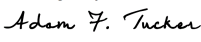
2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:

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Adam F. Tucker
City Attorney

SEAL



CITY LIMITS

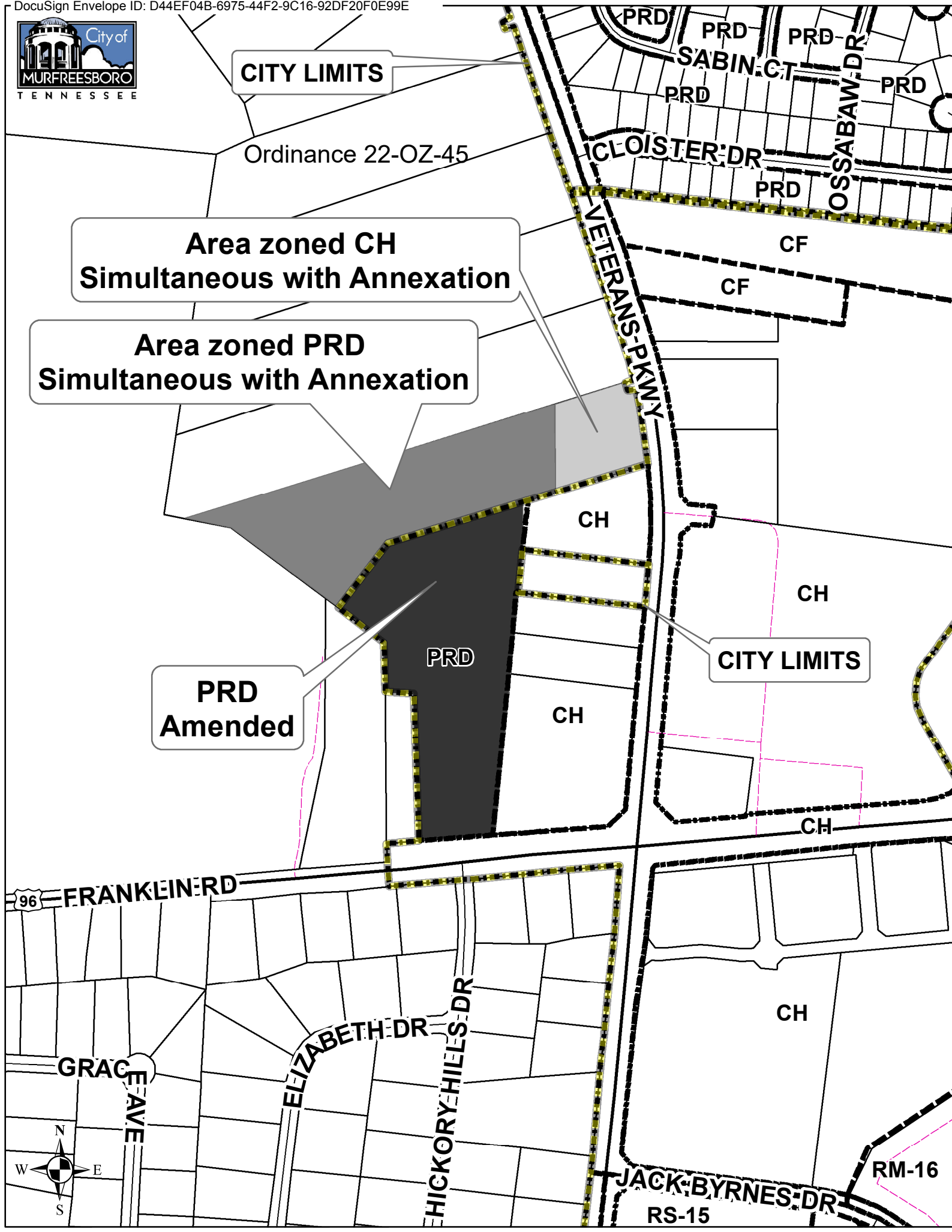
Ordinance 22-OZ-45

**Area zoned CH
Simultaneous with Annexation**

**Area zoned PRD
Simultaneous with Annexation**

**PRD
Amended**

CITY LIMITS



COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: FY23 City Schools Budget Amendment #5

Department: City Schools

Presented by: Trey Duke, Director

Requested Council Action:

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

Summary

Amendment #5 to FY23 City School budgets to recognize new revenues in the General Purpose Schools, School Federal Projects and Nutrition funds.

Staff Recommendation

Approve Resolution 23-R-01 amending the FY23 City Schools budgets as presented.

Background Information

On December 13, 2022, the MCS Board approved budget amendments totaling \$43,610 to recognize new revenues and expenditures.

General Purpose Schools Fund 141:

- Budget \$9,500 in new grant revenue received from The Community Foundation of Middle Tennessee to fund materials and supplies for the school-based mental health center at Cason Lane Academy.

School Federal Projects Fund 142:

- Budget \$9,786 for the Title III Immigrant grant to provide additional Imagine Learning licenses for multi-lingual learners and training for teachers.

Nutrition Fund 143 totaling \$24,324:

- Budget \$10,000 for the Titans/Dairy Alliance grant to promote healthy eating and physical activity. MCS will purchase two new milk coolers and PE supplies for Black Fox Elementary.
- Budget an additional \$14,324 for the USDA Supply Chain Assistance grant for a total allocation of \$195,519. Funds will be used to purchase locally produced food. The original award of \$181,195 was approved during the regular budget

approval process.

Council Priorities Served

Responsible budgeting

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

Fiscal Impact

These funds will be budgeted in the FY23 General Purpose Schools, School Federal Projects and Nutrition funds to recognize new revenues and expenditures.

Attachments

1. Resolution 23-R-01
2. Exhibit A MCS Budget Amendments

RESOLUTION 23-R-01 amending the 2022-2023 Murfreesboro City Schools Budget (5th Amendment).

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

WHEREAS, it is now desirable and appropriate to adjust and modify the 2022-2023 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

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

SECTION 1. The 2022-2023 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on attached Exhibit A.

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

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker
33A2035E31F901

Adam F. Tucker
City Attorney

Murfreesboro City Schools Budget Amendment (# 5)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

Council Approval January 5, 2023

BOE Approved 12/13/2022
Exhibit A to Resolution No. 23-R-01

Community Foundation Grant	BUDGET			AMENDMENT
Account Description	AS PASSED OR	AMENDED		INCREASE
	PREV AMENDED	BUDGET		(DECREASE)
<u>Revenues</u>				
Donations and Contributions	140,000	149,500		9,500
Total Increase in Revenues	\$ 140,000	\$ 149,500	\$	9,500
<u>Expenditures</u>				
Other Student Support - Other Materials	29,000	38,500		9,500
Total Increase in Expenditures	\$ 29,000	\$ 38,500	\$	9,500

CHANGE IN FUND BALANCE (CASH)

This amendment recognizes new revenue and expenditures for The Community Foundation of Middle TN grant in the amount of \$9,500. The grant will fund the initial set up of a school-based mental health center at Cason Lane Academy to support student de-escalation, skill-building, and re-entry into the classroom setting.

Murfreesboro City Schools Budget Amendment (#5)

Schools Federal Projects Fund 142
Fiscal Year 2022-2023

Council Approval January 5, 2023

BOE Approved 12/13/2022
Exhibit A to Resolution No. 23-R-01

Federal - Title III Immigrant Grant	BUDGET			
Account Description	AS PASSED OR	AMENDED		AMENDMENT
	PREV AMENDED	BUDGET		INCREASE
				(DECREASE)
<u>Revenues</u>				
Title III Immigrant Grant	-	9,786		9,786
Total Increase in Revenues	\$ -	\$ 9,786	\$	9,786
<u>Expenditures</u>				
Regular Instruction - Instructional Supplies	-	9,139		9,139
Support Services - Substitute Teachers	-	460		460
Support Services - Social Security	-	30		30
Support Services - Medicare	-	6		6
Transfers Out - Indirect Costs	-	151		151
Total Increase in Expenditures	\$ -	\$ 9,786	\$	9,786

CHANGE IN FUND BALANCE (CASH) -

This amendment recognizes new revenue and expenditures for the FY23 Title III Immigrant grant in the amount of \$9,785.91. This grant ends June 30, 2023.

Funds will be used to purchase 90 additional Imagine Learning licenses for ESL, substitute teachers for ESL staff training, and indirect costs.

Murfreesboro City Schools Budget Amendment (# 5)

School Nutrition Fund 143
Fiscal Year 2022-2023

Council Approval January 5, 2023

BOE Approved 12/13/2022
Exhibit A to Resolution No. 23-R-01

Titans Donation and NSLP Supply Chain Grant

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Donations & Contributions (Titans)	-	10,000	10,000
USDA Other (Supply Chain grant)	224,195	238,519	14,324
Total Increase in Revenues	\$ 224,195	\$ 248,519	\$ 24,324
<u>Expenditures</u>			
Nutrition - Food Supplies	3,168,645	3,182,969	14,324
Nutrition - Other Materials & Supplies	35,000	39,350	4,350
Nutrition - Food Service Equipment	900,000	905,650	5,650
Total Increase in Expenditures	\$ 4,103,645	\$ 4,127,969	\$ 24,324

CHANGE IN FUND BALANCE (CASH) -

This amendment recognizes new revenue and expenditures for the Titans/Dairy Alliance grant in the amount of \$10,000 to purchase two new milk coolers and PE supplies for Black Fox Elementary.

This amendment recognizes an additional award of \$14,324 for the USDA Supply Chain Assistance Grant for a total allocation of \$195,519. The original award of \$181,195 was approved during the regular budget approval process. Grant funds will be used to purchase locally produced foods items.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Town Creek Master Services Agreement and Task Orders
Department: Administration
Presented by: Sam A. Huddleston, Executive Director Development Services
Requested Council Action:

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

Summary

Master Services Agreements and Task Orders for the Town Creek daylighting project.

Staff Recommendation

Approve Master Services Agreement for professional services with Griggs and Maloney.

Background Information

The City recently solicited qualifications statements through a Request for Qualifications for professional services related to Town Creek Daylighting Project. Three responses were received and Griggs and Maloney was selected. Griggs and Maloney proposed an ARPA Master Services Agreement (MSA) and to use the MSA for future non-ARPA work by excluding the appropriate ARPA requirements at the time of the non-ARPA project authorization.

Additionally, Griggs and Maloney provided Town Creek Task Order proposals for two first task orders for Town Creek. Task Order 1 provides for Building Characterization (asbestos, HVAC, Fire Suppression) of existing buildings slated for demolition. Task Order 1 – Building Characterization will be funded from General Fund designated to Town Creek property acquisition for \$22,900. Task Order 2 provides for Site Survey of the Town Creek Phase 2 corridor and will be funded from ARPA funds designated for Town Creek Daylighting for \$110,000.

Council Priorities Served

Responsible budgeting

Utilization of federal stimulus funds for the stormwater elements of this project offset City funds to be applied toward local expenditures.

Improve economic development

This project and the related public improvements enhance the entrance to downtown Murfreesboro and encourage redevelopment in the Historic Bottoms.

Establish strong City brand

The proposed park features and walking trail connecting Murfree Spring to Cannonsburgh established identifying features at the entrance to the downtown.

Expand infrastructure

Replacement of 70+ year old drainage infrastructure with a more natural system provides a resilient drainage system.

Fiscal Impact

The expenses, \$133,900, will be funded by General Fund with funds earmarked for the project (\$22,900), and by ARPA funds (\$110,000).

Attachments

1. Griggs and Maloney Master Services Agreement
2. Task Order 1 – Building Characterization
3. Task Order 2 – Site Survey

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

PART 1 OF 4: MAIN AGREEMENT

For

TOWN CREEK PHASE 1 AND PHASE 2



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

745 South Church St., Suite 205
P.O. Box 2968 (37133-2968)
Murfreesboro, Tennessee 37130
(615) 895-8221 • (615) 895-0632 FAX

**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES—TASK ORDER EDITION**

MAIN AGREEMENT

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES—TASK ORDER EDITION

MAIN AGREEMENT

This Main Agreement is a part of the Agreement between **the City of Murfreesboro, Tennessee** (Owner) and **Griggs & Maloney, Inc.** (Engineer). Other terms used in the Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Main Agreement sets forth the general terms and conditions that apply to all duly executed Task Orders.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 General

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project, or for a portion of a Specific Project.
- B. The Main Agreement is not a commitment by Owner to issue any Task Orders.
- C. Engineer will not be obligated to perform any prospective Task Order unless and until (1) Owner and Engineer agree to the particulars of the assignment, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters, and include such particulars in the Task Order, and (2) Owner and Engineer both sign the Task Order.
- D. Each duly executed Task Order will be subject to the terms and conditions of (a) this Main Agreement; (b) the Main Agreement's exhibits; (c) any executed written amendments of the Main Agreement (see Exhibit C); (d) the specific Task Order itself; (e) the specific Task Order's exhibits; and (f) any amendments or modifications of the specific Task Order.

1.02 Task Order Procedure

- A. The general recommended format of a Task Order is presented in the accompanying Task Order Form. Commonly-used Task Order exhibits are presented in the accompanying Exhibits to Task Order document.
- B. Each specific Task Order will indicate:
 - 1. Project Background Data;
 - 2. Specific services to be performed by Engineer ("Scope"), including key deliverables;
 - 3. Additions or Modifications to Owner's Responsibilities;
 - 4. Task Order Schedule;

Main Agreement.

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5. Engineer's Compensation for Task Order; and
 6. Primary Subconsultants, if any.
- C. With respect to the Engineer's scope of services under a specific Task Order, each specific Task Order will either (1) be accompanied by and incorporate an Exhibit A, "Engineer's Services Under Task Order," and Exhibit B, "Deliverables Schedule," prepared for the specific Task Order, or (2) state a customized scope of services and deliverables schedule in the Task Order document itself or in an attachment.
- D. Upon signature of the Task Order by both parties (but no earlier than the Effective Date of the specific Task Order), Engineer will commence performance and furnish, or cause to be furnished, the services authorized by the Task Order.
- E. Task Orders may be amended as set forth in Paragraph 8.05.B of this Main Agreement.

1.03 Management of Engineering Services

- A. All phases of Engineer's services under each Task Order will include management of Engineer's Specific Project responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
 - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B to Task Order.
 - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.
 - c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
 2. Develop and submit detailed work plans from Exhibit A to Task Order tasks.
 3. Coordinate services within Engineer's internal team, and with Subconsultants and Engineer's Subcontractors.
 4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Specific Project that may affect, or be affected by, Engineer's services
 5. Prepare and submit engineering services progress reports to the Owner upon request. Include a summary of services performed in period, expected progress in next period, percent completion of current tasks, and a description of major issues or concerns.
 6. Conduct ongoing management tasks, including:
 - a. Maintaining communications records and files pertaining to or arising from Engineer's services;
 - b. With respect to Engineer's services and other directly relevant parts of the Specific Project, prepare for and participate in periodic progress meetings with Owner to

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discuss progress, schedule, budget, issues, potential problems and their resolution;
and

- c. Preparing agendas prior to and minutes following all Engineer-led meetings.
- B. Unless a different standard is expressly set forth in a specific Task Order, in all phases of Engineer's services, Engineer shall prepare draft and final Drawings in accordance with **Engineer's CAD standards**, using **AutoCAD** version **Autodesk** software. All drawings supplied to Owner shall be in PDF format.
- C. The source documents for the draft and final Specifications in all phases of Engineer's services will be **Engineer's standard specifications**, unless a different source document is expressly identified in the specific Task Order.

1.04 Sequencing and Coordination

- A. For each Task Order, the Work to be designed or specified by Engineer, upon which the Engineer's scope has been established, will be performed or furnished under one prime Construction Contract, unless specified otherwise in the Task Order.
- B. If the Work designed or specified by Engineer under a specific Task Order is to be performed or furnished under more than one prime Construction Contract, or if Engineer's services are to be separately sequenced with the work of one or more of Owner's consultants or contractors (such as in the case of fast-tracking), then:
 - 1. the Task Order's Deliverables Schedule will account for the need to sequence and properly coordinate Engineer's services as applicable to the Work under the Construction Contracts; or
 - 2. If the Task Order does not address such sequencing and coordination, then Owner and Engineer will jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order, whether the work under such contracts is to proceed concurrently or sequentially.
 - 3. The Fee Schedules will be adjusted for the additional Engineering Services required to coordinate with the respective Owner's consultants or multiple construction contracts.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Application of Owner's Responsibilities

- A. The responsibilities of Owner set forth in Article 2 apply to each Specific Project and each specific Task Order. Supplemental responsibilities of Owner applicable only to a specific Task Order may be stated in the specific Task Order.

2.02 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of the Specific Project, including Owner's:
 - 1. design objectives and constraints;

2. space, capacity, and performance requirements;
 3. flexibility and expandability needs;
 4. design and construction standards;
 5. budgetary limitations; and
 6. any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services under the Task Order; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Surveys, Mapping, and Utility Documentation.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 7. Data or consultations as required for the specific Task Order but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- D. If a specific Task Order requires Engineer to assist Owner in collating the various cost categories that comprise Total Project Costs, Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice).

- E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications prepared or furnished under a Task Order will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
- F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A to Task Order.
- G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Specific Project.

2.03 Owner's Instructions Regarding Bidding and Construction Contract Documents

- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
 - 1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in draft Construction Contract Documents;
 - 2. insurance and bonding requirements;
 - 3. protocols for electronic transmittals during bidding and construction;
 - 4. Owner's safety and security programs applicable to Contractor and other Constructors;
 - 5. diversity and other social responsibility requirements;
 - 6. bidding and contract requirements of funding, financing, or regulatory entities;
 - 7. other specific conditions applicable to the procurement of construction or contract documents;
 - 8. any other information necessary for Engineer to assist Owner in preparing, for each Specific Project, bidding-related documents (or requests for proposals or other construction procurement documents) and Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise) and other engineering or technical matters.
 - 1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Owner shall place and pay for advertisements for Bids in appropriate publications.

2.04 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for each Specific Project:
 - 1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - 2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
 - 3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B. Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for each Specific Project.
- D. With respect to the portions or phases of each Specific Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
 - 1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction including all permit fees, and
 - 2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Specific Project.
- E. Owner may delegate to Engineer or a Contractor or others the responsibilities set forth in Paragraphs 2.04.C and D.

2.05 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement and under each Task Order.
- B. Owner will provide Engineer with Owner's budget for each Specific Project, including type and source of funding to be used and will promptly inform Engineer if the budget or funding sources change.

- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement and under each Task Order.
- D. Owner shall arrange for safe 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 and under each Task Order.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement or any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement or any Task Order, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to a Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, then Owner shall define and set forth, in an exhibit to the governing Task Order, the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
 - 1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
 - 2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
 - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.

Main Agreement.

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- b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
- 3. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of each Task Order, as required.
- 4. Perform or provide the following:
 - a. All other Owner responsibilities expressly identified in any Task Order, not otherwise set forth in this Agreement.

2.06 Payment

- A. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4.

ARTICLE 3—TERM AND TIMES FOR RENDERING SERVICES

3.01 Term

- A. This Agreement will be effective and applicable to Task Orders issued hereunder for **three (3)** years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 Commencement

- A. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.

3.03 Time for Completion

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of a Specific Project, or of Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If the Contract Times to complete the Work under a Construction Contract are extended beyond the period stated in the governing Task Order, Owner will pay Engineer for the additional services during the extension based on the Standard Hourly Rates Method of Payment.
- E. If Engineer fails, for reasons within the control of Engineer, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages and the actual amount of resulting loss of state and/or federal funding, up to the cost of services provided, to the extent, if any, resulting from such failure by Engineer.

ARTICLE 4—INVOICES AND PAYMENTS

4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices; the terms of any progress reporting and special invoicing requirements in Paragraph 1.03, or as otherwise required in Exhibit A to the Task Order; and with the applicable terms of Appendix 1 to Main Agreement, Reimbursable Expenses Schedule, and Appendix 2 to Main Agreement, Standard Hourly Rates Schedule. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion, subject to the terms of Article 4. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and
 - 2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: Owner is exempt from State sales tax and will issue a tax exemption certificate to Engineer upon request. Owner shall not be responsible for any taxes that are imposed on Engineer. Furthermore, Engineer understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Owner.

4.03 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services must be identified in each specific Task Order (Task Order Form, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The two following bases of compensation are used for services under Task Orders, as identified in each specific Task Order:
 - 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 - 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
- C. The terms and conditions applicable to each of the two compensation methods are set forth in Paragraph 4.04.

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4.04 Explanation of Compensation Methods

A. Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Engineer's Subcontractors and Subconsultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Engineer's Subcontractor and Subconsultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges):
 - a. **Qualified Reimbursable Expenses**
 - b. **Permit Fees**
 - c. **Advertisement Fees**
 - d. **TDEC Review Fees**
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services completed during the billing period to the Lump Sum.

B. Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph 4.05 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Agreement as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services will be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Engineer's Subcontractor and Subconsultant charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Engineer's Subcontractor and Subconsultant charges, if any).

6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **January 15**) to reflect equitable changes in the compensation payable to Engineer.

4.05 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount includes the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Engineer's Subcontractor and Subconsultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in Paragraph 4.04.A.3 above.
- B. Expenses eligible for reimbursement under the Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order:
 1. Transportation (including mileage), lodging, and subsistence incidental thereto;
 2. Providing and maintaining field office facilities including furnishings and utilities;
 3. Toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items;
 4. Consultant charges; and
 5. Other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods must be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of **1.15**.
- E. Whenever Engineer is entitled to compensation for the charges of its **Consultants, those charges will be the amount billed by such Consultants to Engineer times a factor of 1.15**.
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.06 Other Provisions Concerning Payment

- A. Estimated Compensation Amounts

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1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination for Owner's convenience of Engineer's services under the Task Order. Upon notice, Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services under the Task Order for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer will be paid for all services rendered.

ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer's Subcontractors and Subconsultants: Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Compliance with Laws and Regulations, and Policies and Procedures
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations,
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures, and
 - c. changes after the Effective Date of the Task Order to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any construction contract documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in this Agreement.
- G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under a specific Task Order, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.
- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence the Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.

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- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.
- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Specific Project is completed.
 - 1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project.
 - 2. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:
 - a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other

project, or for any other use or purpose, without written verification or adaptation by Engineer;

- b. any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants;
 - c. Owner, to the extent permitted by law, shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and
 - d. such limited license to Owner shall not create any rights in third parties.
- B. If Engineer, at Owner's request, verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual property rights, then Engineer shall indemnify and hold harmless Owner in full for and from the costs of defending against, settling, or paying such claims.
- D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, all correspondence, Documents, text, data, drawings, information, and graphics related to each Specific Project, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
 - 1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP or in a specific Task Order.
 - 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to

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Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.

- B. If this Agreement does not include Exhibit F, or a specific Task Order expressly excludes the application of Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
 - 1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
 - 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 - 4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall procure and maintain insurance as set forth in Exhibit G.
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.
- E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
 - 1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies,

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documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation made available for review under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.

- F. All construction contracts entered into by Owner with respect to a Specific Project must require builder's risk or similar property insurance.
- G. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.
- I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so, requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension

- 1. By Owner: Owner may suspend Engineer's services under a specific Task Order for up to 90 days upon 7 days' written notice to Engineer.
- 2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under a Task Order:
 - a. if Owner has failed to pay Engineer for invoiced services and expenses under that Task Order, as set forth in Paragraphs 4.02.B and 4.02.C;

- b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
 - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under the Task Order.
 - 3. A suspension under a specific Task Order, whether by Owner or Engineer, does not affect the duty of the two parties to proceed with their obligations under other Task Orders.
- B. Termination for Cause—Task Order
 - 1. Either party may terminate a Task Order for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement and the specific Task Order, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, the Task Order will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - 2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate a Task Order for cause upon 7 days' written notice:
 - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
 - b. if the Engineer's services under the Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or
 - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
 - 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- C. Termination for Cause—Main Agreement: In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon 7 days' notice Engineer may terminate this Main Agreement and all Task Orders.
- D. Termination for Convenience by Owner: Owner may terminate a Task Order or this Main Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. Effective Date of Termination: If Owner terminates the Main Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later

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than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files. Engineer shall be entitled to compensation for such tasks.

- F. **Payments Upon Termination:** In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services that have been performed or furnished in accordance with this Main Agreement and the specific Task Order, and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
1. If Owner has terminated a Task Order for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Main Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Main Agreement for convenience, or if Engineer has terminated a Task Order for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Main Agreement.

6.06 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Main Agreement and any Task Order issued under this Main Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Main Agreement, or in any Task Order, without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 Main Agreement or any Task Order.
- C. Unless expressly provided otherwise in this Main Agreement:
 1. All duties and responsibilities undertaken pursuant to this Main Agreement or any Task Order will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

2. Nothing in this Main Agreement or in any Task Order will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in all Construction Contracts associated with this Main Agreement and its Task Orders.

6.07 Dispute Resolution

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.
- B. Mediation: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Main Agreement or any Task Order hereunder, or to any breach of this Main Agreement or any Task Order ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
- C. If the parties fail to resolve a dispute through mediation under Paragraph 6.07.B, then either or both may invoke the applicable dispute resolution procedures of Exhibit H. If Exhibit H is not included, or if no applicable dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

- A. This Main Agreement and all Task Orders (unless expressly stated otherwise) are to be governed by the Laws and Regulations of the state in which the principal office of the Owner is located: **State of Tennessee**
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of Owner's principal office; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which Owner's principal office is located.

6.09 Environmental Condition of Site

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order), Owner represents to Engineer that, as of the Effective Date of the Task Order, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern. For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.
 1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.

2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under a Task Order are not undisclosed Constituents of Concern.
 3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that for all Task Orders the Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Specific Project adversely affected thereby until such portion of the Specific Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- E. If the presence at a Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under a specific Task Order, then:
1. if the adverse effects do not preclude Engineer from completing its Specific Project services in general accordance with the Task Order on unaffected or marginally affected portions of the Specific Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Task Order will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
 2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its Specific Project services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate the Task Order for cause on 7 days' written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

- A. **Indemnification by Engineer:** To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to a Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. **Environmental Indemnification:** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under a Site, provided that:
 - 1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
 - 2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. **No Defense Obligation:** The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. **Percentage Share of Negligence:** To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. **Mutual Waiver:** To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under a specific Task Order, or such other period as required by Laws and Regulations, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Main Agreement or a Task Order will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All notices must be effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Main Agreement or in a Task Order will survive completion or termination for any reason.
- C. Severability: Any provision or part of the Main Agreement or any Task Order held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Main Agreement and any Task Order will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Specific Project is not completed, then no later than the date of Owner's last payment to Engineer under the applicable Task Order.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (as defined herein), terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of a specific Task Order.
 3. Agreement—This written contract for professional services between Owner and Engineer, including the Main Agreement, all exhibits and appendices to the Main Agreement identified in Paragraphs 8.01 and 8.02, all duly executed amendments, and

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all Task Orders, including all exhibits and duly executed amendments to such Task Orders.

- a. Main Agreement—See definition at Paragraph 7.01.A.28 below.
4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of a specific Task Order.
6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.
7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. Construction Contract—The entire and integrated written contract between the Owner and Contractor concerning the Work.
11. Construction Contract Documents—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

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14. **Construction Cost**—The cost to Owner of the construction of those portions of a Specific Project designed or specified by or for Engineer under a Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. **Constructor**—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer's Subcontractors), performing or supporting construction activities relating to a Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. **Contractor**—The entity or individual with which Owner enters into a Construction Contract.
17. **Documents**—All documents expressly identified as deliverables in this Main Agreement or in any Task Order, whether in printed or Electronic Document form, required to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.
18. **Drawings**—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. **Effective Date of the Main Agreement**—The date indicated in this Main Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Main Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. **Effective Date of the Task Order**—The date indicated in a specific Task Order on which the Task Order becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. **Electronic Document**—Any Specific Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
22. **Electronic Means**—Electronic mail (email), upload/download from a secure Specific Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text

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messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

23. Engineer—The individual or entity named as such in this Main Agreement.
24. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to a Specific Project as an independent contractor.
25. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
26. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
27. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
28. Main Agreement—The portion of the Agreement containing the general terms and conditions of the contract between Owner and Engineer, applicable to all Task Orders, including but not limited to provisions regarding task order procedures, Owner responsibilities, invoice and payment procedures, standard of care, ownership of documents, suspension and termination, and definitions.
29. Owner—The individual or entity named as such in this Main Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
30. Record Drawings—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
31. Resident Project Representative—As authorized by a specific Task Order, the representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR (if any) will be as set forth in each Task Order.
32. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

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33. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
34. Site—Lands or areas to be indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
35. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
36. Specific Project—A specifically identified and defined total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
37. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to a Specific Project as an independent contractor.
38. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
39. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
40. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

41. **Supplier**—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
42. **Task Order**—A document executed under this Main Agreement by Owner and Engineer (including incorporated exhibits and amendments if any), stating the scope of services, Engineer's compensation, times for performance of services, and other relevant information.
43. **Total Project Costs**—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
44. **Underground Facilities**—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
45. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
46. **Work Change Directive**—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. Terminology

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

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ARTICLE 8—EXHIBITS AND APPENDICES TO MAIN AGREEMENT; TASK ORDER FORM; EXHIBITS TO TASK ORDER; SPECIAL PROVISIONS

8.01 Exhibits to Main Agreement

The following exhibits are incorporated by reference and included as part of this Main Agreement, and as such are applicable to all Task Orders:

- A. Exhibit A, Federally Required Clauses for Projects Using ARPA Grant Expenses.
- B. Reserved.
- C. Exhibit C, Amendment to Main Agreement (form).
- D. Reserved.
- E. Reserved.
- F. Exhibit F, Electronic Documents Protocol (EDP).
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.

8.02 Appendices to Main Agreement

- A. The following appendices are incorporated by reference and made a part of this Main Agreement:
 - 1. Appendix 1—Reimbursable Expenses Schedule
 - 2. Appendix 2—Standard Hourly Rates Schedule

8.03 Resource Documents: Task Order Form and Exhibits to Task Order

- A. The parties acknowledge the accompanying documents, “Part 3 of 4: Task Order Form” and “Part 4 of 4: Exhibits to Task Order.” These documents are a resource for the parties’ use when a specific Task Order is issued. To the extent practical and applicable to a Specific Project, the parties will use the Task Order Form and Exhibits to Task Order as the basis for preparing the specific Task Order and its exhibits. The Task Order Form and Exhibits to Task Order are not a part of this Main Agreement or binding on the parties except to the extent they serve as the basis for a duly executed Task Order and its exhibits.

8.04 Executed Task Orders and Their Exhibits

- A. When a specific Task Order is duly executed by Owner and Engineer, the Task Order and its exhibits become an integral part of the Agreement, governed by the Main Agreement and its exhibits.

8.05 Total Agreement; Amendments to Main Agreement and Task Orders

- A. This Agreement (as defined herein) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings.
- B. Amendments:

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1. This Main Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Such written instruments should be based whenever possible on the format of Exhibit C to this Main Agreement.
2. Amendments and modifications to a Task Order may be made by execution of a new, expressly related Task Order, or by execution of a written amendment to the Task Order.
3. Nothing in any Task Order will be construed as revising or modifying the terms and conditions of the Main Agreement or its exhibits, except as expressly stated in such Task Order.

8.06 Designated Representatives

- A. With the execution of this Main Agreement, Engineer and Owner shall each designate a specific individual to act as representative under the Main Agreement. Such an individual must have authority to execute Task Orders, transmit instructions, receive information, and render decisions with respect to this Main Agreement, on behalf of the party that the individual represents.
- B. With the execution of each Task Order, Engineer and Owner shall each designate a specific individual to act as representative with respect to the Task Order. Such individual must have authority to transmit instructions, receive information, and render decisions with respect to the specific Task Order, on behalf of the party that the individual represents.

8.07 Engineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.07:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.08 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
 1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict

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of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.

2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Main Agreement's Effective Date is

Owner:

City of Murfreesboro

(name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Engineer:

Griggs & Maloney, Inc.

(name of organization)

By:

(individual's signature)

Date:

November 21, 2022

(date signed)

Name:

Ryan W. Maloney, P.E.

(typed or printed)

Title:

Principal

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

Administrative Assistant

(typed or printed)

Address for giving notices:

P.O. Box 2968

Murfreesboro, TN 37133

Designated Representative:

Name:

Ryan W. Maloney, P.E.

(typed or printed)

Title:

Principal

(typed or printed)

Address:

745 South Church Street, Suite 205

Murfreesboro, TN 37130

Phone:

(615) 895-8221

Email:

rmaloney@griggsandmaloney.com

APPROVED AS TO FORM

Adam Tucker

43A2035E51F9401

Adam F. Tucker, City Attorney

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

PART 2 OF 4: EXHIBITS TO MAIN AGREEMENT

For

TOWN CREEK PHASE 1 AND PHASE 2



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

745 South Church St., Suite 205

P.O. Box 2968 (37133-2968)

Murfreesboro, Tennessee 37130

(615) 895-8221 • (615) 895-0632 FAX

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Exhibit A—Reserved.

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FEDERALLY REQUIRED CLAUSES FOR PROJECTS USING ARPA GRANT EXPENSES

- **CONFLICT OF INTEREST - 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.
- **SUSPENSION & DEBARMENT** - Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

 - a. The awarded Proposer shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by an Federal department or agency to be:
 1. Debarred from participation in any federally assisted Award;
 2. Suspended from participation in any federally assisted Award;
 3. Proposed for debarment from participation in any federally assisted Award;
 4. Declared ineligible to participate in any federally assisted Award;
 5. Voluntarily excluded from participation in any federally assisted Award; or
 6. Disqualified from participation in any federally assisted Award.
 - b. By signing submitting a Proposal, Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C throughout the period of the awarded Agreement. Contractor further agrees to include a provision requiring such compliance in

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its lower tier covered transactions.

- **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)** - Contractors that apply for bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- **CIVIL RIGHTS COMPLIANCE.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.
- **CIVIL RIGHTS REQUIREMENTS.**
 - a. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 12132, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.
 - b. Equal Employment Opportunity. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, awarded Proposer shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment

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Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the awarded Contract. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment; upgrading demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

c. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Contractor shall refrain from discrimination against present and prospective employees for reason of age.

d. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

- Clause 10, If City makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

- **2 CFR 200.321 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

The City of Murfreesboro in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 41 U.S.C. 2000d to 2000d-4 hereby notifies all proposers that it will affirmatively insure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (“DBE’s”) will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, creed, color, sex, national origin, or handicap in consideration for an award.

- **DOMESTIC PREFERENCES FOR PROCUREMENTS.** (2 CFR § 200.322)

(a) As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(b) For purposes of this clause:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

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(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- **BONDING REQUIREMENTS.** (2 CFR § 200.326)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

- **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148).** (all prime construction contracts in excess of \$2,000 awarded by non-Federal entities) Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor can be found in the solicitation. Award of the contract or subcontract is conditioned upon the acceptance of the wage determination. The City will report all suspected or reported violations to the Federal awarding agency.

- **COPELAND “ANTI-KICKBACK” ACT.** Contractor must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City will report all suspected or reported violations to the Federal awarding agency.

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- **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)**. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- **CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED** - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- **PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.323)**. Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR § 200.216)**.

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(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

- **RECORDKEEPING REQUIREMENTS.** The City must maintain records and financial documents for five years after all funds have been expended or returned to the Department of Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

The City must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.

- **SINGLE AUDIT REQUIREMENTS.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁷

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Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: <https://www.whitehouse.gov/omb/office-federal-financial-management/> Recipients and subrecipients should consult the Federal Audit Clearinghouse to see examples of Single Audit submissions.

- **COMPLIANCE WITH APPLICABLE LAW & REGULATIONS.**

Recipient agrees to comply with the requirements of sections 602 and 603 of the Act, regulations adopted by Treasury pursuant to sections 602(f) and 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

Federal regulations applicable to this award include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and Treasury's implementing regulations at 31 CFR Part 19.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- Generally applicable federal environmental laws and regulations.
- Statutes and regulations prohibiting discrimination applicable to this award, include, without limitation, the following:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis

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- of race, color, or national origin under programs or activities receiving federal financial assistance;
 - The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- **HATCH ACT.** The City agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
- **PUBLICATIONS.** Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to City of Murfreesboro by the U.S. Department of the Treasury."
- **PROTECTIONS FOR WHISTLEBLOWERS.** The City shall inform its employees in writing of the rights and remedies provided under clause 16 of the Grant Agreement, in the predominant native language of the workforce. Specifically, clause 16 states:
 - In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
 - The list of persons and entities referenced in the paragraph above includes the following:
 - A member of Congress or a representative of a committee of Congress;
 - An Inspector General;
 - The Government Accountability Office;
 - A Treasury employee responsible for contract or grant oversight or management;

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- An authorized official of the Department of Justice or other law enforcement agency;
 - A court or grand jury; or
 - A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- **INCREASING SEAT BELT USE IN THE UNITED STATES.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), the City encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- **REDUCING TEXT MESSAGING WHILE DRIVING.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

EXHIBIT B—RESERVED

Exhibit B—Reserved.

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EXHIBIT C—AMENDMENT TO MAIN AGREEMENT

AMENDMENT TO MAIN AGREEMENT

Amendment No. _____

Owner: _____

Engineer: _____

Effective Date of Agreement: _____

Nature of Amendment: (Check those that apply)

- ☐ Modifications to responsibilities of Owner
- ☐ Modifications of payment to Engineer
- ☐ Modifications to term of Main Agreement
- ☐ Modifications to other terms and conditions of the Main Agreement

Description of Modifications: _____

Owner and Engineer hereby agree to modify the above-referenced Main Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner

Engineer

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

(Attach evidence of authority to sign.)

(Attach evidence of authority to sign.)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Exhibit C—Amendment to Main Agreement.

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EXHIBIT D—RESERVED

Exhibit D—Reserved.

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EXHIBIT E— RESERVED

Exhibit E—Reserved.

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EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Main Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

1.01 Electronic Documents Protocol

- A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals. References to "Project" will mean the Specific Project, or the facilities program or other combination of projects undertaken with Engineer's involvement, as the case may be.

1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Project-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any

applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or (3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is **25 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of this exhibit, or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless

this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

B. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in the following Attachment 1 to this EDP, including software version, if listed.

C. Format and Distribution of Deliverables

1. By definition, "Documents" as used in this Agreement are documents expressly identified as deliverables from Engineer to Owner. Exhibit A of each specific Task Order identifies various Documents that Engineer is required to deliver to Owner as part of Engineer's services; Exhibit B of each specific Task Order is a schedule of such Documents. Engineer will transmit such Documents to Owner in the formats identified in Attachment 1 to this Protocol. If no specific format is identified for a deliverable Document, the format will be Portable Document Format (PDF).
2. If a Document will be distributed to third parties, such as prospective bidders and contractors, reviewing agencies, or lenders, the transmittal format for distribution will

be as identified in Attachment 1 to this Protocol; provided, however, that if a format for distribution of a specific Document is expressly stated in a specific Exhibit A, then the Exhibit A format will take precedence. If no specific format is identified for distribution of a deliverable Document to third parties, the format will be Portable Document Format (PDF).

- a. If a format for Document distribution other than Portable Document Format (PDF) is specified, Owner shall first obtain a written, signed release from each third party to which the deliverable Document is distributed, establishing agreement to the following conditions:
 - 1) The content included in the Electronic Documents prepared by or for Engineer and covered by the request was prepared as an internal working document for Engineer's purposes solely, and is being provided to the third party on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, the third party is advised and acknowledges that the content may not be suitable for the third party's application, or may require substantial modification and independent verification by the third party. The content may include limited resolution of models; not-to-scale schematic representations and symbols; use of notes to convey design concepts in lieu of accurate graphics; approximations; graphical simplifications; undocumented intermediate revisions; and other devices that may affect subsequent reuse.
 - 2) Electronic Documents containing text, graphics, metadata, or other types of data that are provided to the Requesting Party are only for the convenience of the third party. Any conclusion or information obtained or derived from such data will be at the third party's sole risk and the third party waives any and all claims against Engineer or Owner arising from the use of the Electronic Documents covered by the request, or of any data contained in such Electronic Documents.
 - 3) The third party shall indemnify and hold harmless Owner, Engineer, and Engineer's Subcontractors and Subconsultants, from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from the third party's use, adaptation, or distribution of any Electronic Documents provided under the request.
 - 4) The third party agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the request and is limited to the third party's subcontractors and consultants. The third-party warrants that subsequent use by the third party's subcontractors and subconsultants will comply with all terms of the Construction Contract Documents and any specific instructions or conditions established by Owner.
- b. If Engineer is required to assist or participate in obtaining such releases from third parties, such services will be categorized as Additional Services.

D. Requests by Project-Related Parties for Electronic Documents in Other Formats

1. Owner may release (or direct Engineer to release) an Electronic Document version of a Document prepared by or for Engineer, including but not limited to a deliverable Document as set forth in Exhibit F Paragraph 1.01.C, in a format other than those identified in Exhibit F Paragraph 1.01.B or 1.01.C of the Electronic Documents Protocol, or elsewhere in the Agreement, only if (a) a Contractor or other Project-related party (Requesting Party) makes a good faith request for such release, (b) Owner determines in its sole discretion that such release is prudent and will be beneficial to the Project, and (c) Owner obtains Requesting Party's written consent to the four conditions set forth in Exhibit F Paragraph 1.01.C.2.a.1-4 above.
2. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under this Exhibit F Paragraph 1.01.D are Additional Services. Such services may include but are not limited to preparing the data in a manner deemed appropriate by Engineer. Owner may require reimbursement from the Requesting Party for the cost of such Additional Services, but compensation by Owner to Engineer for the Additional Services is not contingent upon Owner obtaining reimbursement from the Requesting Party.

EXHIBIT F—ATTACHMENT 1: SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices, and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas; meeting minutes; RFI's and Responses to RFI's; and Construction Contract administrative forms.	Email w/Attach	PDF	(2)
a.3	Contractor's Submittals (Shop Drawings, "Or Equal" requests, Substitute requests, documentation accompanying Sample submittals and other Submittals) to Owner and Engineer; and, Owner's and Engineer's Responses to Contractor's Submittals, Shop Drawings, Correspondence, and Applications for Payment	Email w/Attach	PDF	
a.4	Correspondence; Interim and Final Versions of reports, layouts, Specifications, Drawings, maps, calculations and spreadsheets, Construction Contract, Bidding/Proposal Documents, and Front-End Construction Contract Documents.	Email w/ Attach or LFE	PDF	(3)
a.5	Layouts, plans, maps, and Drawings to be submitted to Owner by Engineer for future use and modification	Email w/ Attach or LFE	DWG	
a.6	Correspondence, reports, and specifications to be submitted by Engineer to Owner for future word processing use and modification	Email w/ Attach or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner by Engineer for future data processing use and modification	Email w/ Attach or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification	Email w/ Attach or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of the Agreement and Construction Contract.			
(2)	Transmittal of written notices is governed by requirements of the Agreement and Construction Contract.			
(3)	Transmittal of Bidding/Proposal Documents and Front-End Construction Contract Documents will be in manner selected by Owner in Exhibit A, Paragraph 1.05.A.1.a. Unless otherwise expressly stated, these documents and the Construction Contract will be transmitted in PDF format, including transmittals to bidders and Contractor.			
Key				
EMAIL	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies.			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive.)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version 2018 or later.			
DWG	Autodesk® AutoCAD. dwg format Version 2013 or later			
DOC	Microsoft® Word. docx format Version 10.			
EXC	Microsoft® Excel .xlsx or .xml			
DB	Microsoft® Access .mdb			

EXHIBIT G—INSURANCE**ARTICLE 1—INSURANCE**

Paragraph 6.04 of the Main Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Main Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Commercial General Liability	
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
Automobile Liability	
Bodily Injury	
Each Person	\$---
Each Accident	\$---
Property Damage	
Each Accident	\$---
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Excess or Umbrella Liability	
Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000
Professional Liability	
Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$---
General Aggregate	\$---
Other Insurance [Pollution Liability]	
Each Claim	\$2,000,000
General Aggregate	\$2,000,000

Exhibit G—Insurance.

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- B. In accordance with Paragraph 6.04.C of the Main Agreement, the insurance that Owner must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$
Each employee\$	\$
Policy limit	\$
Commercial General Liability	
General Aggregate	\$
Personal and Advertising Injury	\$
Bodily Injury and Property Damage—Each Occurrence	\$
Automobile Liability	
Bodily Injury	
Each Person	\$
Each Accident	\$
Property Damage	
Each Accident	\$
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$
Excess or Umbrella Liability	
Each Occurrence	\$
General Aggregate	\$
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$
General Aggregate	\$
Other Insurance [Specify]	
Each Claim	\$
General Aggregate	\$

1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Main Agreement) as additional insureds:

Name of Additional Insured	Address
Griggs & Maloney, Inc.	P.O. Box 2968, Murfreesboro, Tennessee 37133
Smith's Quality Heating and Air	1309 Island View Court Nashville, Tennessee 37214
Hayes Fire Protection	142 Carmene Court East McMinnville, Tennessee 37110

- B. During the term of this Main Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

Exhibit G—Insurance.

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EXHIBIT H—DISPUTE RESOLUTION

ARTICLE 1—DISPUTE RESOLUTION METHOD

Paragraph 6.07 of the Agreement, Dispute Resolution, is supplemented to include the following Exhibit H Paragraph 1.01:

1.01 Arbitration

- A. Method for Resolution of Disputes: All Disputes between Owner and Engineer that have not been resolved by negotiations or mediation will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Exhibit H Paragraph 1.01). This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. Arbitration Provisions
 - 1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the selected arbitration administrator. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 - 2. The arbitrator(s) must be licensed engineers, architects, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Agreement. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
 - 3. If the applicable arbitration rules require a preliminary mediation, but the parties have already participated in mediation with respect to the Dispute, then the second mediation is not required.
 - 4. The rules of any arbitration must be supplemented to include the following: The award rendered by the arbitrators must be in writing, and include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
 - 5. The award rendered by the arbitrators will be consistent with this Agreement and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification in accordance with AAA rules.
 - 6. The arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Agreement expressly permits them to do so.
 - 7. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver

Exhibit H—Dispute Resolution.

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by that party of the right to present evidence or cross-examine witness. In such event, the other party will be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

8. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Agreement. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.
9. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner, Subconsultants to the Engineer, or Engineer's Subcontractors (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Exhibit H Paragraph 1.01 nor in the provision of such contract consenting to joinder will create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) **1.01, Mutual Indemnification; 1.02, Limitation of Engineer's Liability:**

1.01 Mutual Indemnification

- A. Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

1.02 Limitation of Engineer's Liability

- A. Engineer's Liability Limited to Amount of Insurance Proceeds: Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors (hereafter "Owner's Claims"), will be limited to (1) responsibility for payment of all or the applicable portion of any deductibles, either directly to the Engineer's insurers or in settlement or satisfaction, in whole or in part, of Owner's Claims, and (2) total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's applicable insurance policies up to the amount of insurance required under this Agreement.
 - 1. Such limitation will not be reduced, increased, or adjusted on account of legal fees paid, or costs and expenses of investigation, claims adjustment, defense, or appeal.
 - 2. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors, to Owner and anyone claiming by, through, or under Owner, for any and all such uninsured Owner's Claims will not exceed the greater of (i) \$100,000 or (ii) two-times (2x) the total amount of a Task Order.

APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE

Reimbursable Expenses are subject to review and adjustment on an annual basis. Rates and charges for Reimbursable Expenses as of the Effective Date of the Main Agreement are:

8"x11" Copies/Impressions	\$ 0.10 /page
Copies of Drawings	\$ 2.50 /sq. ft.
Mileage (auto)	\$ 0.68/mile
Permit Fees	at cost plus 15%
Subcontractors	at cost plus 15%
Meals	GSA Daily Rate
Lodging	\$150.00 per day

APPENDIX 2: STANDARD HOURLY RATES SCHEDULE

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in the Agreement and the governing Task Order.
3. The Standard Hourly Rates are subject to annual adjustment.

B. Schedule: Hourly rates for services performed on or after the date of the Agreement are:

Principal	\$195.00 - \$276.00/hour
Senior Project Manager/Engineer	\$180.00 - \$242.00/hour
Project Manager	\$135.00 - \$213.00/hour
Project Engineer	\$120.00 - \$184.00/hour
Engineer II	\$115.00 - \$133.00/hour
Engineer I	\$90.00 - \$104.00/hour
Planner/Historic Preservationist	\$120.00 - \$138.00/hour
Environmental, Health, and Safety Professional	\$120.00 - \$138.00/hour
Sr. Environmental Scientist	\$110.00 - \$127.00/hour
Environmental Scientist	\$80.00 - \$92.00/hour
Biologist	\$100.00 - \$115.00/hour
Sr. Geologist	\$110.00 - \$127.00/hour
Archaeologist	\$125.00 - \$144.00/hour
Environmental Specialist	\$90.00 - \$104.00/hour
Drafting/CAD Designer	
Resident Project Representative	\$90.00 to - \$144.00/hour
Registered Landscape Architect	\$150.00 - \$173.00/hour
Registered Land Surveyor	\$145.00 - \$167.00/hour
Planner	\$145.00 - \$167.00/hour
Senior Designer	\$140.00 - \$161.00/hour
Senior Technician	\$135.00 - \$156.00/hour
Designer	\$115.00 - \$133.00/hour
Technician	\$115.00 - \$133.00/hour
Survey Manager	\$145.00 - \$167.00/hour
One Man Survey Crew	\$150.00- \$173.00/hour
Two Man Survey Crew	\$200.00 - \$230.00/hour
Three Man Survey Crew	\$250.00 - \$288.00/hour
3-D Laser Scanning Survey Crew	\$275.00 - \$317.00/hour
Unmanned Aircraft Crew	\$300.00 - \$345.00/hour
Construction Manager	\$180.00 - \$207.00/hour
CEI Resident Engineer	\$155.00 - \$179.00/hour
Asphalt/Concrete Plant Manager	\$130.00 - \$150.00/hour
Senior Inspector	\$120.00 - \$138.00/hour
CEI Contract Specialist	\$110.00 - \$127.00/hour
Inspector	\$95.00 - \$110.00/hour

Appendix 2: Standard Hourly Rates Schedule.

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**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

**PART 3 OF 4: TASK ORDER NUMBER 01 –
BUILDING CHARACTERIZATION**

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

745 South Church St., Suite 205

P.O. Box 2968 (37133-2968)

Murfreesboro, Tennessee 37130

(615) 895-8221 • (615) 895-0632 FAX

TASK ORDER NO. 1

This is Task Order No. **1**,
consisting of 5 pages.

In accordance with Paragraph 1.01, Main Agreement, of the Agreement Between Owner and Engineer for Professional Services—Task Order Edition dated _____, Owner and Engineer agree as follows:

1. TASK ORDER DATA

a.	Effective Date of Task Order:	
b.	Owner:	City of Murfreesboro, Tennessee
c.	Engineer:	Griggs & Maloney, Inc.
d.	Specific Project (title)	Town Creek Phase I and II
e.	Specific Project (description):	Building Characterization – Asbestos Inspection; HVAC Refrigerant Recovery; and Fire Suppression System Decommissioning
f.	Related Task Orders Supplemented by this Task Order: Superseded by this Task Order:	NA

2. BASELINE INFORMATION

Baseline Information. Owner has furnished the following Specific Project information to Engineer as of the Effective Date of the Task Order.

2022 Town Creek Opportunities and Constraints Study – Ragan-Smith

Engineer's scope of services has been developed based on this information. As the Specific Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Task Order.

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Specific Project Title:	Town Creek Phase I and II Task 01 – Building Characterization
Type and Size of Site:	7 structures to be characterized for materials in need of management prior to demolition
Description of Improvements:	Pre-demolition building characterization including asbestos containing materials inspection, refrigerant recovery, and decommissioning of fire systems
Expected Construction Start:	
Prior Studies, Reports, Plans:	Town Creek Opportunities and Constraints Study
Site Location(s):	Murfree Springs Outlet to Front Street
Current Specific Project Budget:	\$25,000,000.00
Funding Sources:	City General Funds, ARPA Funding, Stormwater Funds
Known Design Standards:	City of Murfreesboro Standards, OSHA, TDEC-APC, 40 CFR Part 82 F
Known Specific Project Limitations:	As defined by the Town Creek Opportunities and Constraints Study
Specific Project Assumptions:	Building access is limited, As such, materials needing to be managed prior to demolition are not fully observable or quantifiable. Associated costs are estimated based on observable exterior elements and prior known use.
Other Pertinent Information:	

3. SERVICES OF ENGINEER ("SCOPE")

- A. The specific Basic Services to be provided or furnished by Engineer under this Task Order are:
Exhibit A to Task Order, "Engineer's Services for Task Order," as attached to this specific Task Order.
- B. The scope of this task includes Design Services described in Exhibit A for purposes of Engineer's compensation under this Task Order.
- C. Additional Services: Services not expressly set forth as Basic Services in Paragraph 3.A above, and necessary services listed as not requiring Owner's written authorization, or requiring additional effort in an immediate, expeditious, or accelerated manner as a result of unanticipated construction events or Specific Project conditions, are Additional Services, and

Task Order.

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will be compensated by the method indicated for Additional Services in this Task Order. All other Additional Services require mutual agreement and may be authorized by amending the Task Order as set forth in Paragraph 8.05.B.2 of the Main Agreement, with compensation for such other Additional Services as set forth in the amending instrument.

4. DELIVERABLES SCHEDULE

Engineer shall characterize buildings and issue summary report of findings for each structure within 60 days of authorization to proceed by Owner.

5. ADDITIONS TO OWNER'S RESPONSIBILITIES

- A. Owner shall have those responsibilities set forth in Article 2 of the Main Agreement, and the following supplemental responsibilities that are specific to this Task Order:

6. TASK ORDER SCHEDULE

It is anticipated that the design, approval, funding, and construction phase of this project will take thirty-nine (39) months. The task order schedule is within Exhibit B, attached.

7. ENGINEER'S COMPENSATION

- A. The terms of payment are set forth in Article 4 of the Main Agreement.
- B. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Building Characterization		
a) 111 NW Broad	\$2,300	Lump Sum
b) 117 NW Broad	\$2,800	Lump Sum
c) 121 NW Broad	\$2,700	Lump Sum
d) 205 NW Broad	\$2,500	Lump Sum
e) 215 NW Broad	\$2,700	Lump Sum
f) 219 NW Broad	\$4,200	Lump Sum
g) 315 Hickerson Drive	\$2,700	Lump Sum
2. Additional Services		

Task Order.

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Description of Service	Amount	Basis of Compensation
a) Allowance for Characterization of materials in need of management identified during performance of work beyond Task Order #1 scope of work.	\$3,000	Time & Expense
TOTAL COMPENSATION	\$22,900	

- C. Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Subconsultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

8. ENGINEER'S PRIMARY SUBCONSULTANTS FOR TASK ORDER, AS OF THE EFFECTIVE DATE OF THE TASK ORDER:

Name	Address
Smith's Quality Heating and Air	1309 Island View Court Nashville, Tennessee 37214
Hayes Fire Protection	142 Carmene Court East McMinnville, Tennessee 37110

* Griggs and Maloney may substitute listed subconsultants at its discretion.

9. EXHIBITS AND ATTACHMENTS:

- A. Exhibits to Task Order

Task Order.

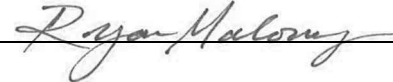
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Execution of this Task Order by Owner and Engineer makes it subject to the terms and conditions of the Main Agreement and its exhibits and appendices, which Main Agreement, exhibits, and appendices are incorporated by this reference.

OWNER:

ENGINEER:

By: _____

By: 

Print Name: _____

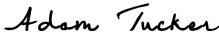
Print Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

APPROVED AS TO FORM

DocuSigned by:

43A2033E51F9401...
Adam F. Tucker, City Attorney

Engineer's License or Firm's

Certificate No. (if required): 110401State of: Tennessee

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

Address: _____

Address: 745 S. Church St., Ste. 205
Murfreesboro, TN 37130

E-Mail Address: _____

E-Mail Address: rmaloney@griggssandmaloney.com

Phone: _____

Phone: (615) 895-8221

Date: _____

Date: November 21, 2022

Task Order.

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

PART 4 OF 4: EXHIBITS TO TASK ORDER 01 – BUILDING CHARACTERIZATION

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D
Engineering & Environmental Consulting

745 South Church St., Suite 205
P.O. Box 2968 (37133-2968)
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EXHIBITS TO TASK ORDER

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EXHIBIT A—ENGINEER’S SERVICES UNDER TASK ORDER

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Article 2— ADDITIONAL SERVICES3

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Article 1 of the Main Agreement, Services of Engineer, is supplemented to include the following provisions:

1. Background Data

- a. Effective Date of Task Order: _____
- b. Owner: City of Murfreesboro
- c. Engineer: Griggs & Maloney, Inc.
- d. Specific Project (title): Town Creek Phase I and Phase II
- e. Specific Project (description): The Task Order #1 consists of building characterization – asbestos inspection; HVAC refrigerant recovery; and fire suppression system decommissioning.

Engineer shall provide Basic and Additional Services as set forth below.

ARTICLE 1—BASIC SERVICES

1.01 Management of Engineering Services

A. See Main Agreement, Paragraph 1.03.

1.02 Asbestos Inspection

A typical asbestos survey comprised the following activities:

- 1. Observing readily visible building materials in the buildings and identifying visible suspect asbestos-containing materials (ACM) through visual and tactile inspection. Suspect ACM typically includes building materials that are not solid wood, stone, metal, glass, or plastic.
- 2. Collecting bulk samples of each identified suspect material for asbestos concentration analysis through polarized light microscopy (PLM).

3. Determining the friability characteristic of each ACM as identified through PLM analysis. A friable material is one that can be crumbled, pulverized, or reduced to a powder under hand pressure.
4. Submitting the collected bulk samples to an accredited National Voluntary Laboratory Accreditation Program (NVLAP) and/or American Industrial Hygiene Association (AIHA) accredited laboratory for polarized light microscopy (PLM) analysis in accordance with Appendix A, Subpart F, 40 Code of Federal Regulations (CFR), Part 763, Section 1 as presented in the July 1, 1991 Edition of the CFR.
5. Evaluating the laboratory analytical results to determine if the materials identified as suspect contain a concentration of asbestos fibers and should be characterized as asbestos-containing. Regulatory agencies have established that materials comprising concentrations of forms of asbestos above one-percent (1%) through PLM analysis as described above are asbestos-containing. However, OSHA regulates all worker exposure to respirable asbestos fibers. Therefore, special consideration may be required for materials containing less than one percent, but detectible concentrations of asbestos.

A. Asbestos Use:

Asbestos is a naturally occurring fiber found in rock. Because of its durability and excellent fire resistance, it was used extensively from the early 1900s until the early 1970s in building material manufacture. The danger posed by asbestos is from breathing airborne asbestos fibers. The federal government has identified asbestos as a material that, through inhalation exposure, can cause cancer and asbestosis. The asbestos fibers become airborne when ACM are, or become, friable and are disturbed. Federal regulations began limiting the use of asbestos in building material manufacture in the 1970 resulting in a gradual phase out of its use. Generally, the use of asbestos in the manufacture of building materials for commercial building construction was limited to floor tile and associated mastic after 1979. However, some incidences of fireproofing materials containing asbestos being applied as late as the 1990's have been documented. Consequently, the identification of suspect ACM is generally based on the date of material installation and type or nature of the material or identification in building plans or lists of building materials.

B. Sample size:

A typical sample is approximately one square inch or one cubic inch of material depending on the material sampled. Such samples will be collected during the inspection from discreet or previously damaged locations if found. However, inspection behind other building materials may require destructive removal of overlying materials. Asbestos-containing materials may be hidden by other materials such as, but not limited to, multiple layers of flooring or wall board material covering other materials. NO REPAIR OF ANY MATERIAL is included in the scope of work for this project.

1.03 Refrigerant Recovery

- A. G&M will manage recovery of refrigerants from HVAC systems and refrigerated coolers for the 7 structures listed under Task Order #1 for building characterization prior to demolition. Refrigerant will be recovered by a licensed HVAC technician and disposed of in accordance with federal requirements.

1.04 Fire Suppression System Decommissioning

Two structures are anticipated to have one armed fire suppression system each, based on their past use as restaurant/food services. G&M has an allowance of \$600 per structure/system for decommissioning. System will remain and be demolished with the structure.

ARTICLE 2—ADDITIONAL SERVICES

2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Paragraph 7 of the governing Task Order.
 1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
 2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
 - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Specific Project;
 - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Implement coordination of Engineer's services with other parts of the Specific Project that are not planned or designed by Engineer or its Subconsultants, unless Owner

furnished to Engineer substantive information about such other parts of the Specific Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.

6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Specific Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Specific Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

EXHIBIT B—TASK ORDER DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Main Agreement are supplemented by the following paragraph and table.

Under the governing Task Order the Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

TASK 1 – BUILDING CHARACTERIZATION

Party	Action	Schedule
Owner	Authorize Engineer to Proceed	0 days
Engineer	Conduct Asbestos Inspection; Schedule subcontractor for refrigerant recovery and fire system decommissioning	Within 14 days of the receipt of Owners authorization
Engineer	Provide Summary Report	Within 60 days of the refrigerant recovery and fire system decommissioning
Owner	Submit comments regarding the report	Within 14 days of receipt
Engineer	Respond to comments/finalize report	Within 10 days of the receipt of Owner's comments

EXHIBIT C—RESERVED

NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)

Owner: _____ Owner's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Contractor: _____ Contractor's Project No.: _____
Project: _____
Contract Name: _____
Notice Date: _____ Effective Date of the Construction Contract: _____

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated _____ ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
Name (printed): _____
Title: _____

Exhibit E—Notice of Acceptability of Work.

Exhibits to Task Order. EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.

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EXHIBIT F—RESERVED

EXHIBIT G—RESERVED

EXHIBIT H—RESERVED

EXHIBIT I—RESERVED

**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

**PART 3 OF 4: TASK ORDER NUMBER 02 –
SITE SURVEY**

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

745 South Church St., Suite 205

P.O. Box 2968 (37133-2968)

Murfreesboro, Tennessee 37130

(615) 895-8221 • (615) 895-0632 FAX

TASK ORDER NO. 2

This is Task Order No. **2**,
consisting of 5 pages.

In accordance with Paragraph 1.01, Main Agreement, of the Agreement Between Owner and Engineer for Professional Services—Task Order Edition dated _____, Owner and Engineer agree as follows:

1. TASK ORDER DATA

a.	Effective Date of Task Order:	
b.	Owner:	City of Murfreesboro, Tennessee
c.	Engineer:	Griggs & Maloney, Inc.
d.	Specific Project (title)	Town Creek Phase I and II
e.	Specific Project (description):	ALTA Survey of Town Creek corridor 8 parcels, topography of corridor, plat and legal description for 223 NW Broad
f.	Related Task Orders Supplemented by this Task Order: N/A Superseded by this Task Order: N/A	01 – Building Characterization Task

2. BASELINE INFORMATION

Baseline Information. Owner has furnished the following Specific Project information to Engineer as of the Effective Date of the Task Order.

2022 Town Creek Opportunities and Constraints Study – Ragan-Smith

Engineer's scope of services has been developed based on this information. As the Specific Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Task Order.

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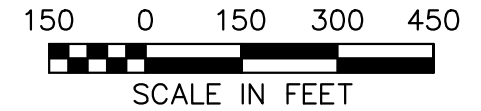
Specific Project Title:	Town Creek Phase I and II Task 02 – ALTA Survey
Type and Size of Site:	See Figure 1 – ALTA Survey Extents
Description of Improvements:	ALTA Survey of Town Creek Corridor – 8 Parcels, topography of corridor
Expected Construction Start:	
Prior Studies, Reports, Plans:	Town Creek Opportunities and Constraints Study
Site Location(s):	South Church Street to Front Street; NW Broad St. to Hickerson Dr. 30' top of bank, each side Town Creek to Lytle Creek confluence
Current Specific Project Budget:	\$25,000,000.00
Funding Sources:	City General Funds, ARPA Funding, Stormwater Funds
Known Design Standards:	City of Murfreesboro Standards, OSHA, TDEC-APC, 40 CFR Part 82 F
Known Specific Project Limitations:	As defined by the Town Creek Opportunities and Constraints Study
Specific Project Assumptions:	Owner provided potholing to determine utility depth. Owner provided Title Commitment (date & number) for each parcel, Schedule B Section 2 (ALTA)
Other Pertinent Information:	

3. SERVICES OF ENGINEER (“SCOPE”)

- A. The specific Basic Services to be provided or furnished by Engineer under this Task Order are: Exhibit A to Task Order, “Engineer's Services for Task Order,” as attached to this specific Task Order.
- B. The scope of this task includes Design Services described in Exhibit A for purposes of Engineer's compensation under this Task Order.
- C. Additional Services: Services not expressly set forth as Basic Services in Paragraph 3.A above, and necessary services listed as not requiring Owner's written authorization, or requiring additional effort in an immediate, expeditious, or accelerated manner as a result of unanticipated construction events or Specific Project conditions, are Additional Services, and will be compensated by the method indicated for Additional Services in this Task Order. All

Task Order.

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NOTE

SURVEY 30- FEET FROM TOP OF BANK ON EACH SIDE OF TOWN CREEK FROM FRONT STREET TO LYLE CREEK.

LEGEND

 SURVEY EXTENTS

**Figure 1: Task Order No. 2
Town Creek Survey Extents**

Town Creek Murfreesboro, Tennessee
Project No. 226-149 November 2022

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**GRIGGS & MALONEY
INCORPORATED**

Engineering & Environmental Consulting

P.O. BOX 2968, MURFREESBORO, TN 37133-2968
(615) 895-8221 * FAX (615) 895-0632

other Additional Services require mutual agreement and may be authorized by amending the Task Order as set forth in Paragraph 8.05.B.2 of the Main Agreement, with compensation for such other Additional Services as set forth in the amending instrument.

4. DELIVERABLES SCHEDULE

Engineer shall characterize buildings and issue summary report of findings for each structure within 60 days of authorization to proceed by Owner.

5. ADDITIONS TO OWNER'S RESPONSIBILITIES

- A. Owner shall have those responsibilities set forth in Article 2 of the Main Agreement, and the following supplemental responsibilities that are specific to this Task Order:

6. TASK ORDER SCHEDULE

It is anticipated that the survey field work and development of a base drawing to proceed with design will take 3 months. ALTA review and plat/legal description for 223 NW Broad will continue for an additional estimated 3 months, dependent on Owner's delivery of Title Commitments. The task order schedule is within Exhibit B, attached.

7. ENGINEER'S COMPENSATION

- A. The terms of payment are set forth in Article 4 of the Main Agreement.
- B. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Survey		
a) 111 NW Broad ALTA Survey	\$9,000	LUMP SUM
b) 117 NW Broad ALTA Survey	\$9,000	LUMP SUM
c) 121 NW Broad ALTA Survey	\$10,000	LUMP SUM
d) 205 NW Broad ALTA Survey	\$10,000	LUMP SUM
e) 215 NW Broad ALTA Survey	\$11,000	LUMP SUM
f) 219 NW Broad ALTA Survey	\$13,000	LUMP SUM
g) 315 Hickerson Dr. ALTA Survey	\$12,000	LUMP SUM
h) 223 NW Broad ALTA Survey plus plat exhibit and legal description for subdivision	\$15,000	LUMP SUM

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Description of Service	Amount	Basis of Compensation
i) Topographic Survey Entire Area (See Figure 1)	\$21,000	LUMP SUM
TOTAL COMPENSATION	\$110,000	

- C. Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Subconsultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

8. ENGINEER'S PRIMARY SUBCONSULTANTS FOR TASK ORDER, AS OF THE EFFECTIVE DATE OF THE TASK ORDER:

Name	Address
Johnson & Associates, Inc.	816 David Crockett Highway Winchester, Tennessee 37398

* Griggs and Maloney may substitute listed subconsultants at its discretion.

9. EXHIBITS AND ATTACHMENTS:

- A. Exhibits to Task Order

Task Order.

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Execution of this Task Order by Owner and Engineer makes it subject to the terms and conditions of the Main Agreement and its exhibits and appendices, which Main Agreement, exhibits, and appendices are incorporated by this reference.

OWNER:

ENGINEER:

By: _____

By: 

Print Name: _____

Print Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

APPROVED AS TO FORM

DocuSigned by:



43A2035E51F9401...

Adam F. Tucker, City Attorney

Engineer's License or Firm's

Certificate No. (if required): 110401State of: Tennessee

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

Address: _____

Address: 745 S. Church St., Ste. 205
Murfreesboro, TN 37130

E-Mail Address: _____

E-Mail Address: rmaloney@griggsmaloney.com

Phone: _____

Phone: (615) 895-8221

Date: _____

Date: November 21, 2022

Task Order.

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

PART 4 OF 4: EXHIBITS TO TASK ORDER 02 – SITE SURVEY

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
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EXHIBITS TO TASK ORDER

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EXHIBIT A—ENGINEER’S SERVICES UNDER TASK ORDER

Exhibit A Table of Contents

Article 1— BASIC SERVICES1

1.01 Management of Engineering Services1

1.02 Surveying – Boundary and Topographic1

1.03 Plat/Legal Description3

Article 2— ADDITIONAL SERVICES3

2.01 Additional Services Not Requiring Owner’s Written Authorization3

Article 1 of the Main Agreement, Services of Engineer, is supplemented to include the following provisions:

1. Background Data

- a. Effective Date of Task Order: _____
- b. Owner: City of Murfreesboro
- c. Engineer: Griggs & Maloney, Inc.
- d. Specific Project (title): Town Creek Phase I and Phase II
- e. Specific Project (description): The Task Order #2 consists of ALTA Survey of Town Creek corridor 8 parcels, topography of corridor, plat and legal description for 223 NW Broad.

Engineer shall provide Basic and Additional Services as set forth below.

ARTICLE 1—BASIC SERVICES

- 1.01 Management of Engineering Services
 - A. See Main Agreement, Paragraph 1.03.
- 1.02 Surveying – Boundary and Topographic
 - a. A boundary and topographical survey for the Property based on the current Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and plot the required details and information on the plat.
 - b. Provide Table A items 1, 2, 3, 4, 5, 7a, 7b(1), 7c, 8, 9, 10a, 10b, 11b, 13, 14, 16, 17, 18, 19, 20a from the current Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as a part of the survey for the Property.
 - c. Tie the survey to a minimum of two physical monuments for the Property that have been occupied.

- d. If the monuments that are occupied are not the basis of bearing, show the bearing and distance between the monuments with a tie to the Property or basis of bearing.
- e. Locate the measured monuments within an established, corrected network. Establish the network from a Virtual Reference System, NGS Data points, OPUS correction or other corrected system.
- f. List on the plat the corrected survey coordinate system used for the survey i.e. State plane coordinates, County coordinates, or UTM. The submitted AutoCAD file's coordinate system should match the corrected survey coordinate.
- g. Publish the coordinates for the occupied monuments using the selected corrected survey coordinate system on the plat for internal GIS purposes.
- h. Plot the contours to:
 - 1) Provide for the Property, including 10' beyond all property lines, and to the far side of adjacent street(s).
 - 2) Show any rapid change in grade on adjacent properties.
 - 3) Show 1' – 0" intervals for slopes under 10%.
 - 4) Show 2' – 0" intervals for slopes over 10%.
 - 5) Provide spot elevations of existing structures, curbs, crown of road(s), etc.
- i. Plot other substantial features on or adjacent to the Property observed in the process of conducting the survey such as above and below ground storage tanks, wells, ditches, canals, springs, seeps, swamps, other structures or foundations, etc.
- j. Plot the following items that are on or adjacent to the Property:
 - 1) Water lines: size and approximate depth
 - 2) Natural gas lines: size and approximate depth
 - 3) Sewer lines: size and invert elevation
 - 4) Storm drainage lines: size and invert elevation
 - 5) Fire hydrants: location
- k. Plot the driveway(s) and street(s) adjacent to the Property or on the opposite side of the street(s).
- l. Plot the location of trees 4" diameter or larger on or adjacent to the Property showing description and size.
- m. Provide the title block of the plat drawing to include:
 - 1) Project name
 - 2) Stake name
 - 3) Property address
 - 4) Property/Project number
- n. Submit the plat drawing as:
 - 1) Five (5) - 24" x 34" paper copies
 - 2) One pdf electronic copy

- 3) One AutoCAD (latest version) electronic copy. The submitted AutoCAD coordinates should match the coordinate system listed in 4f.

1.03 Plat/Legal Description

- A. G&M will provide a plat and legal description for the partial acquisition of 223 NW Broad St.

ARTICLE 2—ADDITIONAL SERVICES

2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Paragraph 7 of the governing Task Order.
 1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
 2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
 - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Specific Project;
 - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Implement coordination of Engineer's services with other parts of the Specific Project that are not planned or designed by Engineer or its Subconsultants, unless Owner

furnished to Engineer substantive information about such other parts of the Specific Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.

6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Specific Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Specific Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

EXHIBIT B—TASK ORDER DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Main Agreement are supplemented by the following paragraph and table.

Under the governing Task Order the Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

TASK 1 – BUILDING CHARACTERIZATION

Party	Action	Schedule
Owner	Authorize Engineer/Surveyor to Proceed	0 days
Engineer/ Surveyor	Conduct Field Survey	Within 21 days of the receipt of Owners authorization
Engineer/Surveyor	Provide Base Topo Information	Within 90 days of Owners authorization
Engineer/ Surveyor	Provide ALTA Survey and Plat/Legal Description	Within 180 days of the receipt of Owners authorization

EXHIBIT C—RESERVED

NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)

Owner:	Owner's Project No.:
Engineer:	Engineer's Project No.:
Contractor:	Contractor's Project No.:
Project:	
Contract Name:	
Notice Date:	Effective Date of the Construction Contract:

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated _____ ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
 Name (printed): _____
 Title: _____

Exhibit E—Notice of Acceptability of Work.

Exhibits to Task Order. EJCDC® E-505, Agreement between Owner and Engineer for Professional Services—Task Order Edition.

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 and American Society of Civil Engineers. All rights reserved.

EXHIBIT F—RESERVED

EXHIBIT G—RESERVED

EXHIBIT H—RESERVED

EXHIBIT I—RESERVED

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Construction Contract Beasie Rd/River Rock Connector

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

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

Summary

Agreement for construction of Beasie Rd/River Rock Connector Road project.

Staff Recommendation

Approve construction agreement with Bell and Associates, LLC, subject to approval by City Attorney.

Background Information

This project includes building a connector road approximately .30 miles from the north end of Beasie Road that extends west over to River Rock Blvd. This extension is a three-lane curb and gutter section with a sidewalk and multi-use trail on each side, respectively. This project also incorporates a three-lane bridge over the west fork of the Stones River as outlined in the 2040 Transportation Plan.

Bell and Associates submitted the lowest responsible bid in the amount of \$8,244,535. Bell and Associates have completed other projects within the City and has performed very well.

Council Priorities Served

Expand Infrastructure

Implementation of the 2040 Major Transportation Plan through the construction of new roadways.

Fiscal Impact

The construction costs, \$8,244,535, are within the total project budget and are funded by the FY18, FY19, and FY21 CIP and Water Resource Budgets.

Attachments

Agreement Between Owner and Contractor for Construction Contract.

AGREEMENT

BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Murfreesboro (“Owner”) and
____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: River Rock Boulevard / Beasie Road Connector and Approaches

ARTICLE 3 – ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Volkert.
- 3.02 The Owner has retained Volkert (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before May 17, 2024, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before June 14, 2024.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the

delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner ~~\$1000~~ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

See attached Bid Tabulation sheets

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 3 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

- 1. This Agreement (pages 1 to 7, inclusive).
- 2. Performance bond (pages to , inclusive).
- 3. Payment bond (pages to , inclusive).
- 4. Other bonds.
 - a. (pages to , inclusive).

NOTE(S) TO USER:

Such other bonds might include maintenance or warranty bonds intended to manage risk after completion of the Work.

- 5. General Conditions (pages to , inclusive).
- 6. Supplementary Conditions (pages to , inclusive).
- 7. Specifications as listed in the table of contents of the Project Manual.
- 8. Drawings (not attached but incorporated by reference) consisting of sheets with each sheet bearing the following general title: River Rock Blvd. – Beasie Road Connector
- 9. Addenda (numbers to , inclusive).
- 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages to , inclusive).
- 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Construction Administration Contract for the Beasie/River Rock Connector Project

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

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

Summary

Engineering services agreement for construction of the Beasie/River Rock connector project.

Staff Recommendation

Approval of the professional services contract with Energy Land & Infrastructure, LLC.

Background Information

Energy Land & Infrastructure will perform construction administration services for the Beasie Rd/River Rock connector project. These services, which are retained on most large construction projects, assists the City with administrative duties associated with the construction of the project. The estimate for professional services for the Beasie/River Rock connector project is \$155,540.

Council Priorities Served

Expand Infrastructure

Implementation of the 2040 Major Transportation Plan through the construction of new roadways.

Fiscal Impact

The expense, \$155,540, is part of the project construction costs, which is funded by the FY18, FY19, and FY21 CIP Budgets.

Attachments

Standard Form of Agreement between Owner and Engineer for Professional Services with Energy Land & Infrastructure, LLC.



ENERGY LAND & INFRASTRUCTURE

December 5, 2022

Chris Griffith
Executive Director of Public Works
City of Murfreesboro
111 W. Vine Street
Murfreesboro TN, 37130

**Re: Professional Services Agreement
Beasie Road / River Rock Blvd. Connector**

Dear Mr. Griffith,

Energy Land & Infrastructure, LLC (ELI) is pleased to present the attached Professional Services Agreement to provide Construction Engineering & Inspection (CEI) support services to City of Murfreesboro staff related to the Beasie Road / River Rock Boulevard Connector Project in the City of Murfreesboro. ELI proposes to perform these professional services on an hourly basis with a not-to-exceed budget estimate of **\$155,540.00**.

We appreciate the opportunity to serve the City in this capacity. If you agree to its terms, please sign and return a copy of the attached "Standard Form of Agreement Between Owner and Engineer for Professional Services".

Warmest regards,

ENERGY LAND & INFRASTRUCTURE, LLC

Timothy L. Haggard, PE, PLS
Associate Vice President

Attachments

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

WHEN
“STUDY AND REPORT PHASE” ARE DELETED AND
“RESIDENT PROJECT REPRESENTATION” IS PROVIDED BY OWNER

THIS IS AN AGREEMENT made as of _____, between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and Energy Land & Infrastructure, LLC., (ENGINEER).

OWNER intends to secure professional services to provide supplemental Construction Engineering and Inspection (CEI) support services to City of Murfreesboro staff related to the Beasie Road / River Rock Boulevard Connector Project for the City of Murfreesboro, TN (hereinafter called the Project).

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

**SECTION 1
BASIC SERVICES OF ENGINEER**

1.1 General

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

1.2 Construction Phase

During the Construction Phase:

1.2.1 General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions of the Construction Contract, C-700 (20013 ed.) of the Engineer's Joint Contract Documents Committees said the Standard General Conditions document is amended by Owner. The extent and limitations of the duties, responsibilities and authority of ENGINEER are provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing, OWNER will issue instructions to Contractor(s)

through ENGINEER or inform ENGINEER of instructions issued to Contractor(s) and ENGINEER will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions, as modified in writing.

1.2.2 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:

1.2.2.1 Engineer shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents, including adherence to construction schedule and milestones and ENGINEER shall keep OWNER informed of the progress of the work.

1.2.2.2. ENGINEER will be OWNER's agent under OWNER's supervision

1.2.2.3 The purpose of ENGINEER's visits to and representation by the OWNER's Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by

ENGINEER during the Construction Phase, and in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct, or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s) failure to furnish and perform their work in accordance with the Contract Documents.

1.2.3 Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s) work while it is in progress if ENGINEER believes that such work will not produce a complete Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.2.4 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.2.5 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples, and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

1.2.6 Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.

1.2.7 [reserved]

1.2.8 Disputes between OWNER and Contractor. ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.2.9 Applications for Payment. Based on ENGINEER's onsite observations as an experienced and qualified design professional, and on review of applications for payment and the accompanying data and schedules:

1.2.9.1 ENGINEER shall coordinate and confirm the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated and complies with the construction milestones, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.2.9.2 By recommending any payment, ENGINEER will not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes, or orders applicable to

their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that the title to any of the work, materials, or equipment has passed to OWNER free and clear of any lien, claims, security interest or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

1.2.9.3 If ENGINEER deems that CONTRACTOR has not progressed with the work to the point of compliance with established construction milestones, ENGINEER shall not recommend payment by OWNER, until such time as the appropriate milestone is met. In the event that construction milestones are not met repeatedly, the ENGINEER shall recommend to OWNER in writing the recommendation to notify CONTRACTOR's surety and apprise them of the delinquent progression of work. Upon OWNER's concurrence of recommendation, ENGINEER shall then notify the CONTRACTOR's surety in writing.

1.2.10 Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

1.2.11 Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.2.9.2.

1.2.12 Limitations of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s) work; however, nothing contained in

paragraphs 1.2.1 through 1.2.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

SECTION 2 ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

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

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

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

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

2.1.4 Providing renderings or models for OWNER's use.

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

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

2.1.7 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil 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 [reserved]

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

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

2.2 Required Additional Services

(See Sections 8.3 and 8.5)

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

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

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

2.2.3 Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.

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

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

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

SECTION 3 OWNER'S RESPONSIBILITY

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

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

3.2 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

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

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

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

3.4.2 appropriate professional interpretations of all the foregoing;

3.4.3 environmental assessment and impact statements;

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

3.4.5 other special data or consultations not covered in Section 2; all of which ENGINEER may use and rely upon in performing services under this Agreement.

3.5 Provide engineering surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.

3.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property

as required for ENGINEER to perform services under this Agreement.

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

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

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

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

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

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

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

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

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

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

SECTION 4 PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial operation of the Project, including extra work and required extensions thereto. If in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ENGINEER, all rates, measure, and amount of compensation provided herein shall be subject to equitable adjustments.

4.2 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.3 The Operational Phase will commence during the Construction Phase and will terminate one year after the date of Substantial Completion of the last prime

contract for construction, materials, and equipment on which substantial completion is achieved.

4.4 If OWNER has requested significant modifications or changes in the general scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.5 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.6 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials, or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.7 In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contract is to proceed concurrently and is to be included in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.2. through 4.7, inclusive, will be modified accordingly.

SECTION 5 PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expense of ENGINEER

5.1.1.1 As outlined in the Basic Services of Section 1, the following studies shall be conducted:

No studies are included under this contract. If studies are necessary, they may be added as additional services as described in 5.1.2 or negotiated separately.

5.1.1.1A One Prime Contract. If only one prime contract is awarded for construction, materials, and equipment for the Project, the ENGINEER shall perform their services on an hourly basis for an amount not to exceed **one hundred and fifty-five thousand, five hundred and forty dollars (\$155,540.00).**

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

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

5.1.2.2 Professional Associates and Consultants. For Services and Reimbursable Expenses of independent professional associates and consultant employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefor times a factor of 1.15. (See Section 8.4.)

5.1.2.3 Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration, or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of \$1,500.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

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

5.1.4 As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4; and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1.

5.2 Time of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon hours worked on the Project at the hourly rates in Section 8.4. OWNER shall pay ENGINEER upon its statement with 30 days, provided the statement are in proper order and all supporting documentation has been provided to OWNER.

5.3 Other Provisions Concerning Payments

5.3.1 [Reserved].

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the progress of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of 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. Salary Costs used as a basis for payment mean the fees specified in Section 8.4

5.4.2 Reimbursable Expenses mean the actual, reasonable expenses, if authorized in advance by OWNER, incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1.

SECTION 6 CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER; but it will not include ENGINEER's compensation or expenses, the cost of land, rights-of-way, or compensation for or damages to properties unless this Agreement so specifies; nor will it include OWNER's legal, accounting, insurance counseling, or auditing services, or interest and/or financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs defined in paragraph 1.2.5. See Section 8.3.)

6.2 Opinions of Cost

6.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Costs provided for herein are to be made on the basis of ENGINEER's experience and qualifications, and shall represent ENGINEER's best judgment as an experienced and qualified professional ENGINEER, familiar with the construction industry. ENGINEER cannot and does not guarantee that proposals, bids, or actual Total Project Costs or Construction Costs will

not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to Total Project Costs or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

6.2.2 If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project Costs or Construction Costs in excess of the then-established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2 Any Construction Cost limit so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.2.2.3 ENGINEER will determine, with advice and consent of OWNER types of materials, equipment, and component systems are to be included in the Drawings and Specifications, and to make reasonable adjustments in the general scope, extent, and character of the Project to bring it within the cost limit.

6.2.2.4 If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER; and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2. If the lowest responsible proposal or bid exceeds the established Construction Cost limit OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent, or character to the extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of the condition numbered "3", ENGINEER shall modify the Contract Documents necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER its fees and Reimbursable Expenses for such services. The providing of such service will be the limit of ENGINEER's responsibility in this regard;

and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not be liable for damages attributable to the rejected bid.

SECTION 7 GENERAL CONSIDERATION

7.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. OWNER may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five days written notice, which notice will direct the sequence and manner in which the termination will be implemented. Upon termination for convenience, OWNER will pay ENGINEER all fees and Reimbursable Expenses incurred to date of termination.

7.2 Reuse of Documents

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

7.3 Insurance

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

7.4 Controlling Law

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

7.5 Successors and Assigns

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

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

7.6 Dispute Resolution

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit C, "Dispute

Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit C or other provisions of this Agreement or under law.

SECTION 8 EXHIBITS AND SPECIAL PROVISIONS

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

8.1.1 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," and Appendix 1 to Exhibit A consisting of **two** pages.

8.1.2 Exhibit B, "Duties, Responsibilities, and Limitation of Authority of Project Manager," consisting of **three** pages.

8.1.3 Exhibit C, "Dispute Resolution," consisting of **three** pages.

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, during the term of the Agreement the maximum billing rates shall be as follows:

Senior Principal Engineer	\$210/hour
Principal Engineer	\$195/hour
Senior Project Manager	\$185/hour
Project Manager	\$170/hour
Senior Engineer	\$155/hour
Project Engineer	\$140/hour
Staff Professional (EI)	\$120/hour
Environmental Professional	\$110/hour
Designer/CAD Technician	\$100/hour
Survey Manager (RLS)	\$160/hour
Survey Project Manager	\$130/hour
Survey Crew (2-person)	\$165/hour
Survey Crew (1-person)	\$125/hour
Technical/Clerical Support	\$75/hour

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

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

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

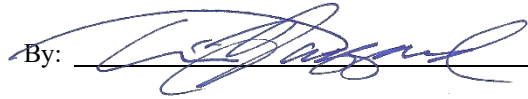
OWNER:

ENGINEER:

CITY OF MURFREESBORO

ENERGY LAND & INFRASTRUCTURE, LLC.

By: _____

By:  _____

Title: _____

Title: Associate Vice President

Address for giving notice:

Engineering Department
City of Murfreesboro
P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

Address for giving notice:

745 South Church, Suite 801
Murfreesboro, Tennessee 37130
Phone: 615-383-6300

APPROVED AS TO FORM:

DocuSigned by:


43A2038E51F9401
Attorney for the City of Murfreesboro, Tennessee

EXHIBIT A

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

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

2. Section 1.2, Construction is modified as follows:

Construction Phase Services are included in the Basic Services but do not include the services of a Resident Project Representative. It shall be the responsibility of the ENGINEER to attend, chair, and keep minutes of preconstruction conference(s), and provide copies of minutes to all attendees, make site visits, attend, chair, and keep minutes of construction progress meetings (on a frequency approved by OWNER), review shop drawings, make interpretations and clarifications, assist the OWNER in payment to the CONTRACTOR, and to assist the OWNER in preparation of closeout documents. Other services are available as a part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.

ENGINEER will provide twice weekly on-site inspections of erosion prevention and sediment control (EPSC) measures installed by the CONTRACTOR and provide comments and recommendations as needed or required for the Project.

3. Section 4, Periods of Service, Paragraph 4.2:

Basic Engineering Services shall be provided for a period not exceeding a maximum of twenty (20) months based on an OWNER estimated 18-month construction period.

APPENDIX 1 TO EXHIBIT A

The following tasks are excluded from the basic engineering services, but may be provided as additional services if requested by the City:

- A. Tree survey or landscape design.
- B. Traffic study.
- C. Signal design.
- D. Offsite road or offsite infrastructure improvements.
- E. Utility relocation, extensions or evaluations.
- F. Flood study or drainage study.
- G. Electrical or lighting design (except for coordination as outlined above)
- H. Environmental permitting, environmental assessments, or mitigation.
- I. Public meetings or hearings. No public meetings or hearings are expected. Project meetings with City staff are included.
- J. Construction layout/staking.
- K. Construction administration/inspection

EXHIBIT B BETWEEN OWNER AND ENGINEER

Duties, Responsibilities, and Limitations of Authority of Project Manager

Paragraphs 1.2.2.1 and 1.2.2.2 and Exhibit A Paragraph 7 of the Agreement are amended and supplemented to include the following agreement of the parties:

B6.01 *Project Manager*

- A. ENGINEER shall furnish a Project Manager (“PM”) to assist ENGINEER in coordinating and reporting on the progress and quality of the Work to the Owner. The PM shall be the OWNER’s advisor inasmuch as the PM shall be the primary point of contact between OWNER and CONTRACTOR for the entire duration of the referenced construction operations. The PM is intended to supplement and support the OWNER’s existing staff. The PM as defined in this Exhibit B.
- B. Through such additional specialized services during the construction period, the PM shall endeavor to provide the following:
 - Coordinate the programming, planning, design, and construction operations of the CONTRACTOR with the project schedule created by the contractor which is in accordance with the project milestones developed by the ENGINEER.
 - Maximize continued pro-active planning during construction to reduce problems during execution.
 - Provide coordination between the OWNER, ENGINEER, CONTRACTOR and third party utilities to ensure that facilities of these utility owners are managed per the project schedule.
 - Maintain cost and time parameters with regards to budgeted construction activities as defined within the Plans, Contract Documents, and project schedule.
 - Facilitate discussion between OWNER, ENGINEER and CONTRACTOR with regards to possible savings observed during construction activities as well as pro-actively initiate discussion between the referenced parties with regards to changes in scope during construction that may warrant adjustment of the Contract Price.
 - Continue to act as liaison between all permitting agencies and the OWNER, ENGINEER and CONTRACTOR, including but not limited to TN Department of Transportation, TN Department of Environment and Conservation and the U.S. Army Corps of Engineers.
 - Provide periodic reporting and progress meetings as needed to ensure that OWNER is aware of all progress associated with the construction activities.
 - Coordinate completion of warranty reviews, release of liens, and post construction evaluations with the OWNER and CONTRACTOR.

Project Manager, shall not supervise, direct, or have control over the Contractor’s Work nor shall Project Manager have authority over or responsibility for the means, methods, techniques,

sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

C. The duties and responsibilities of the Project Manager are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1. *General:* Project Manager ("PM") is OWNER's advisor at the Site, will act as directed by the OWNER, and will confer with OWNER regarding PM's actions. PM's dealings in matters pertaining to the Contractor's work in progress shall in general be with OWNER and Contractor. PM's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist in obtaining from OWNER additional details or information, when required proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to OWNER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which PM believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Reports:*
 - a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 9. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 10. *Completion:*
 - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
 - c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
 - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Project Manager shall not:

- 1. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- 2. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- 4. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
- 5. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 6. Authorize OWNER to occupy the Project in whole or in part.

EXHIBIT C
DISPUTE RESOLUTION
DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 ENGINEER and the OWNER will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the GMP or Project Schedule, ENGINEER must first follow the provisions of any Claim procedure established by the ENGINEER Agreement before seeking relief under these Procedures.

2. Arbitration

- 2.1 Except as provided in Section 5 hereof, any Dispute that has not been resolved by negotiation will be decided by binding arbitration conducted in accordance with the Construction Industry Rules of the AAA; provided however, the matter will not be submitted to the AAA for administration.
 - a. The matter will be heard by an arbitrator who has 10 or more years of experience handling construction litigation matters in Rutherford, Davidson, or Williamson counties (the "Arbitrator").
 - b. The parties will agree upon the Arbitrator within five days of the Notice.
 - c. If the parties are unable to agree, each party will exchange within 10 days of the Notice a list of five attorneys qualified as set forth in Section 2.1(a). The OWNER will compare lists and a name that first appears on the OWNER's list that also appears on the ENGINEER's list will serve as the Arbitrator. If no name appears on both lists, the two attorneys first appearing on each list will select a third qualified attorney to serve as the Arbitrator.

- 2.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 2.3 In connection with such arbitration, each Party is entitled to conduct not more than five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 2.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 2.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
 - a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.

3. **Continuing Work** Unless otherwise agreed to in writing, ENGINEER must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the OWNER will continue to make payment to ENGINEER in accordance with the ENGINEER Agreement.

4. **Exceptions**

- 4.1 Neither the OWNER nor ENGINEER are required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the OWNER and ENGINEER.
- 4.2 The OWNER or ENGINEER may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only

to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

- 4.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the OWNER for permitting, the excise of governmental police powers for the benefit of public health, safety, and welfare, or other actions taken in the OWNER's regulatory capacity.
- 4.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Rutherford Blvd Extension – Professional Services Agreement

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

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

Summary

Professional services contract for the extension of West Rutherford Boulevard.

Staff Recommendation

Approval of the professional services contract with TTL Inc.

Background Information

In March of 2022, Council approved the design contract for the Rutherford Blvd Extension project. This project includes extending Rutherford Boulevard approximately 0.77 miles with a bridge over I-24 and making a connection with Warrior Dr as outlined in the 2040 Major Transportation Plan. Staff requested a proposal from TTL, Inc. for the geotechnical exploration services associated with the Rutherford Blvd Extension project. These services include soil test borings, rock corings and laboratory testing which will help determine subsurface conditions in the area. These findings will help develop geotechnical recommendations that will support the design and construction associated with the alignment of this project.

Council Priorities Served

Expand Infrastructure

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

Fiscal Impact

The cost of these services, \$121,500 are funded in the FY21 and FY22 CIP Budget.

Attachments

Professional Services Contract from TTL, Inc.

December 21, 2022

Mr. Joe Ehleben, Project Coordinator
City of Murfreesboro | Public Infrastructure Division
111 West Vine Street
Post Office Box 1139
Murfreesboro, Tennessee 37133-1139

TTL
624 Grassmere Park, Ste. 14
Nashville, TN 37211
615.331.7770
www.TTLUSA.com

RE: **REVISED PROPOSAL FOR GEOTECHNICAL EXPLORATION SERVICES**
West Rutherford Boulevard Extension Project
Murfreesboro, Tennessee
TTL Project No: 000220803709.00, Revision 2

Dear Mr. Ehleben:

Thank you for the opportunity to provide geotechnical exploration services for the City of Murfreesboro's West Rutherford Boulevard Extension project. We revised this proposal from our previous submittals to adjust the work scope in response to additional information provided by Mr. Brad Bivens (Neel-Schaffer) on November 11, 2022. This revised proposal contains our understanding of the project, describes our scope of services, the associated fee, our expected schedule, and it provides a means to authorize our services. This revised proposal replaces and supersedes our prior proposal.

PROJECT INFORMATION

Project information was provided by Mr. Joe Ehleber (City of Murfreesboro) and Mr. Brad Bivens (Neel-Schaffer) in several e-mail transmissions. We were provided with the following files:

- an undated aerial photograph showing the general layout of the planned alignment and project extents;
- "RutherfordBlvdExt_InitialGradeApproval 9.12.22.pdf," prepared by Neel-Schaffer and dated September 9, 2022. This file contains a set of preliminary plans consisting of 113 sheets showing the existing and planned alignment with representative cross sections; and
- "Preliminary Bridge Plans - 2022-09-01.pdf," prepared by Neel-Schaffer and dated September 1, 2022. This file contains a preliminary layout plan (2 sheets) showing the layout of the proposed bridge in elevation, plan, and profile views.

The City of Murfreesboro is planning to extend Rutherford Boulevard beginning at Warrior Drive, near its intersection with Riverwatch Court, and extending about 4,000 linear feet (lf) east to Southpointe Way and includes a new bridge over Interstate 24. The project will also include extending Rutland Way about 1,500 lf south to West Rutherford Boulevard. The new roadway curb and gutter alignment will generally be two traffic lanes, a turn lane, and multi-use paths.

The provided drawings suggest maximum cut depths will be less than 5 feet and maximum fill thicknesses will approach 30 feet near the planned bridge.

PROJECT ASSUMPTIONS

TTL has been asked to provide geotechnical exploration services for the proposed project. In response to your request, we have developed a scope of work based on the following assumptions:

- Project length: about 5,500 linear feet
- Grading: As noted above, cut depths no more than 5 feet and fill thicknesses no more than 30 feet
- Surveying: TTL will provide planned boring locations to Neel Shaffer, who can mark the planned locations in the field prior to drilling. We will estimate the boring locations relative to the survey stakes. Otherwise, we will locate the borings by pacing distances from known landmarks or with a hand-held GPS unit. Surveying of the actual boring locations is not included.
- Side Roads: Rutland Way (near Station 130+68)
- Bridges: New bridge over the Interstate 24 near Station 124+82. The bridge will be about 452 feet long beginning near Station 122+56 (Abutment 1), include bents near Stations 123+88 (Bent 1) and 125+76 (Bent 2), and terminate near Station 127+08 (Abutment 2).
- Box Culverts: Currently, none planned
- Retaining Walls: Currently, none planned
- Access/Permits: If property owner contact information is provided, we will request permission from the individual property owner(s) to enter their property and perform the work. We have assumed the borings will be performed with all-terrain vehicle drilling equipment. We will attempt to offset borings to readily accessible areas of the alignment, where feasible. However, clearing will be required along a part of the new alignment; therefore, we have included a contingency for up to two days of clearing activities with oversight. We have assumed that permits for clearing are not required, and removal of felled trees or reclaiming these areas is not included. In addition, the plans suggest a part of the alignment extends over an existing pond. Exploration with the existing pond is **NOT** planned.
- In addition, we will work with City personnel to coordinate with TDOT for access to their right-of-way for borings planned for the bridge bents.

- Utilities:** Following the borehole staking, we will contact Tennessee 811 to request marking of underground utilities by member utility companies. We will also contact non-member utilities listed in the project plans, if provided. TTL is responsible for repair of utility lines or loss of utility service for lines that have not been marked or are not properly marked by others.
- Site Restoration:** We have included a budget for minor site restoration, such as smoothing, seeding, and strawing of ruts left by our equipment. Replacement of sod or other landscaping or removal of felled trees is not included. Boreholes will be backfilled with drill cuttings. Return trips to "top off" borehole backfill that may subside over time are not included.
- Traffic Control/Permits:** Permits will NOT be required. We have assumed traffic control will not be required for the roadway improvements. However, our budget includes a provision for notification signs and traffic cones during field activities when working near existing rights-of-way, particularly for work performed within the TDOT right-of-way. Experience suggest lane closures, attenuators, or extensive traffic reduction equipment other than notification signage would not be required for work performed at least 25 feet off traffic lanes within the TDOT right-of-way.
- Work Schedule:** The borings can be accomplished during normal working hours (7am to 5pm, Monday through Friday) and it will take no more than 12 working days to complete the borings.

SCOPE OF SERVICES

The purposes of the exploration will be to explore site and subsurface conditions and to develop geotechnical recommendations in support of the design and construction associated with the alignment in general accordance with Tennessee Department of Transportation (TDOT) Specifications. Our work will begin with a site reconnaissance and boring stakeout, followed by soil borings performed by an all-terrain-vehicle-mounted auger drill rig, laboratory testing, and engineering analysis. The assessment of environmental concerns is not included in the scope of the geotechnical exploration.

We will begin the exploration by conducting a site reconnaissance to:

- observe and document the surface conditions and topographic features on the site;
- mark planned boring locations by pacing distances and estimating right angles from existing site landmarks, by using a hand-held Global Positioning System (GPS) unit, or station stakes provided by others;

- clearing to access planned boring locations within existing wooded areas; and
- adjust the boring locations as needed to avoid overhead or identified underground utilities or other surface obstructions.

Surveying the borings for horizontal control or elevation is not included in our scope, but can be performed as an additional service, upon request.

We propose to explore subsurface conditions at the site by advancing up to 32 test borings. Twenty of the test borings will be advanced on approximately 300-foot centers along the planned alignment and extended to depths ranging between 10 and 30 feet below existing grade or auger refusal, whichever is less. The remaining 12 borings will be advanced in the vicinity of new bridge (three borings at each abutment and bent). These borings will be extended to auger refusal. We plan to explore between 10 feet and 20 feet of refusal materials from up to eight of the bridge borings using rock coring techniques. Experience suggests the average depth to refusal could approach 12 feet below existing grade. Our budget includes not more than 400 linear feet of soil drilling and 140 linear feet of rock coring.

Field exploration will include:

- soil test borings by conventional auger drilling;
- split-barrel testing and sampling of soil in general accordance with ASTM D1586 (SPT sampling) while drilling above auger refusal, with at least 4 samples in the top 10 feet, and then every 5 feet thereafter until boring termination;
- collect up to 2 bulk samples of representative materials from expected cut areas;
- attempt up to 4 relatively undisturbed (Shelby tube) samples (ASTM D1587);
- rock coring in general accordance with ASTM D2113 to explore 10 feet to 20 feet below auger refusal depths at up to eight bridge borings;
- checking borings for the presence of groundwater upon completion of auger drilling and after rock coring (next-day or long-term observations for groundwater are not included); and
- backfilling the boreholes with auger cuttings.

If we encounter conditions that are unusual or possibly problematic for the project, we will contact you to discuss modifications to the scope to address specific needs dictated by the conditions encountered.

We will visually classify soil samples using the Unified Soil Classification System (ASTM D2487 and D2488) as a guide. The actual laboratory testing program will be determined based on the subsurface conditions encountered. We anticipate the laboratory program to include:

- test as many as 100 soil samples for moisture content (ASTM D2216);
- test as many as 10 soil samples for Atterberg Limits (ASTM D4318) or grain size (ASTM D1140 or D6319);

- test as many as 2 soil samples for Proctor compaction testing (ASTM D698);
- test as many as 2 soil samples for 1-point California Bearing Ratio (CBR) testing (ASTM D1883);
- test a selected soil sample for one dimensional consolidation (ASTM D2435), if appropriate;
- test as many as 6 rock core specimens for unconfined compressive strength (ASTM D7012); but
- we do not propose to test every soil or rock sample.

TTL will retain the soil samples for 60 calendar days following the submittal of the geotechnical engineering reports. After this time, the soil and rock samples may be discarded unless directed otherwise. Recovered rock core samples not consumed in laboratory testing will be delivered to the TDOT geotechnical Engineering Section office in Nashville.

Following completion of the field and laboratory work, we will complete engineering analysis and prepare two geotechnical reports, one for the roadway and one for the bridge. The reports will present the results of our exploration and provide geotechnical recommendations pertinent to the design and construction of the roadway improvements and bridge foundations. The reports will include boring logs, results of the laboratory testing, and a boring location plan including TDOT required geotechnical sheets. Either Neel-Schaffer or City personnel will provide TTL electronic drawing files (roadway and bridge plans, profiles, and cross-sections, as appropriate) which TTL may use to develop the subsurface exploration program, geotechnical recommendations, and drawings. All work will be performed in accordance with the TDOT Geotechnical Engineering Report Manual and the FHWA Subsurface Investigations-Geotechnical Site Characterization (FHWA NHI-01-031). As required by TDOT, we will submit a DRAFT electronic (PDF) copy of the report and drawings upon completion for review and comment. Once comments from TDOT are received, we will complete and submit an electronic (PDF) of the final report and drawings. Follow-up comments or modifications to the reports or drawings are **NOT** included.

SCHEDULE

We will begin work on the project after receipt of a signed agreement. We expect the field work will begin within one week after authorization and property owner access approval. Property owner access could take up to two weeks to complete. Field work should take up to three weeks to complete. Laboratory testing will take about two weeks to three weeks to complete. The report and drawings will take up to six weeks to complete after completion of the field and laboratory work. This schedule generally anticipates submittal of the report within about fourteen weeks after authorization. We will provide preliminary results and recommendations by phone or email prior to submittal of the final report.

COMPENSATION

We will perform our services on a time and materials basis in accordance with the attached Schedule of Fees. We recommend a budget of \$121,500 be established for our services. Our budget is comprised of the following general categories of fees, which is provided for convenience and not as individual task budgets or a Schedule of Values:

Field Exploration Services.....\$68,000

Includes site reconnaissance, field coordination, oversight of drilling and clearing services, clearing services, traffic control, all-terrain mounted drill rig mobilization, a maximum of 400 linear feet of soil drilling and 140 feet of rock coring, and borehole clean-up.

Soil Laboratory Services\$4,000

Includes up to 100 moisture contents, 10 Atterberg Limits or grain size, 2 Proctor compaction, 2 CBR tests, 6 unconfined compressive strength tests (rock core), and 1 one-dimensional consolidation tests.

Engineering Analysis and Reporting\$53,500

Includes field and laboratory data review, data analysis, drawing preparation and report(s) preparation in accordance with TDOT standards (includes providing boring locations, profiles and typical sections on provided drawings). Reports will be submitted in draft format for review by TDOT's GES division prior to being finalized.

AUTHORIZATION

To formally authorize us, we request that you sign where indicated below and return a copy of this proposal to us. Our services will be performed in accordance with the attached Terms and Conditions, which were previously approved by the City Attorney for the City of Murfreesboro. All information (written or electronic) from TTL concerning TTL's work is for the sole use and reliance of TTL's Client. TTL intends no other beneficiaries (expressed or implied), and copies of our instruments of service received by any other parties are NOT for reliance unless TTL receives a signed Secondary Client Agreement from each other party.

CLOSING

We appreciate this opportunity to be of service to you. Please contact us if you have questions or require additional information.

Sincerely,
TTL, Inc.

 *by: kj* 

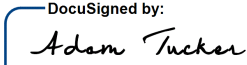
Leanna S. Whitwell, P.E.
Regional Manager – Geotechnical Services

Mark A. Herrmann P.E.
Principal Engineer

Attachments: Schedule of Fees
Client Project Services Agreement

Authorized By:

Client (Signature and Date)

DocuSigned by:


43A2035E51F9401...
Approved to as form
City Attorney



624 Grassmere Park, Ste. 14
Nashville, TN 37211
615.331.7770
www.TTLUSA.com

SCHEDULE OF FEES

Personnel*

Principal I	\$ 275.00/hour
Senior Project Professional III	\$ 225.00/hour
Senior Project Professional II	\$ 217.00/hour
Senior Project Professional I	\$ 207.00/hour
Project Manager IV	\$ 170.00/hour
Project Professional V	\$ 178.00/hour
Project Professional III	\$ 155.00/hour
Project Professional II	\$ 144.00/hour
Project Professional I	\$ 132.00/hour
Senior Project Technician III	\$ 98.00/hour
Senior Project Technician II	\$ 92.00/hour
Senior Project Technician I	\$ 87.00/hour
Project Technician V	\$ 72.00/hour
Project Administrator II	\$ 72.00/hour
Project Administrator I	\$ 65.00/hour
Project Technician III	\$ 61.00/hour

* Rates will be multiplied by 1.3 for services required between 6:00 pm and 6:00 am, for time in excess of 8 hours per day and for any time on Saturday, Sunday, or Holidays.

Direct Expenses

Portal-to-Portal Vehicle Travel	\$ 0.70/mile
Subcontracted Equipment or Services	Cost + 15%
Other Direct Expenses	Cost + 15%

Soil Laboratory Services

Natural Moisture Content for SPT samples (ASTM D2216)	\$6.00 / test
Atterberg Limits (ASTM D4318)	\$95.00 / test
Shrinkage Limit & Shrinkage Ratio (ASTM D427).....	\$190.00 / test
Material in Soils Finer than the No. 200 Sieve by Washing (ASTM D1140)	\$65.00 / test
Grain Size, Sieve Analysis, with hydrometer (ASTM D6913 and D7928).....	\$215.00 / test
Grain Size, Sieve Analysis, without hydrometer (ASTM D6913)	\$90.00 / test
Unit Weight of Undisturbed Soil Specimen (ASTM D2937).....	\$27.50 / test
Moisture-Density Curve (Requires Atterberg Limits Not Included in test fee)	
a. Standard Proctor (ASTM D698).....	\$140.00 / test
b. Modified Proctor (ASTM D1557)	\$165.00 / test
California Bearing Ratio (ASTM D1883) (Requires Moisture-Density Curve Not Included in test fee)	
a. Remolded, 3-point.....	\$375.00 / test
b. Remolded, 1-point.....	\$160.00 / test
Unconfined Compression Test	
a. Soil Specimen (2-½-inch or 3-inch) (ASTM D2166).....	\$150.00 / test
b. Rock Core Specimen (BX or NX), Cupped (ASTM D7012)	\$185.00 / test
One-Dimensional Consolidation Test (1/4- to 16-ton loading) (ASTM D2435)	
(Add \$50.00 for each unload-reload cycle)	
a. Undisturbed Sample	\$425.00 / test
b. Remolded Sample (Proctor Not Included).....	\$475.00 / test
One-Dimensional Swell Test, undisturbed soil specimen (ASTM D4546)	
(Add \$50.00 for each unload-reload cycle)	
a. Free Swell (no load)	\$100.00 / test
b. Single Press (one load)	\$130.00 / test
Shear Strength Test of Soil (2-½-inch or 3-inch Specimen)	
(Add \$50 for remolded sample, Proctor not included)	
a. Unconsolidated-Undrained Shear Strength (ASTM D2850).....	\$325.00 / test
b. Consolidated-Undrained Shear Strength (ASTM D4767)	\$725.00 / test
c. Direct Shear Strength (ASTM D6228).....	\$325.00 / test
pH of soil (ASTM G51)	\$40.00 / test
Soil Electrical Resistivity (ASTM G67)	\$100.00 / test
Organic Content (ASTM D2974).....	\$70.00 / test

Other Laboratory services are available upon request. Based on our experience and network of contacts we can provide or develop most specialty tests on an individual basis as requested.

CLIENT PROJECT SERVICES AGREEMENT

Project: West Rutherford Boulevard Extension

TTL Proposal Number: 000220803709.00

Page 1 of 2

This AGREEMENT is between City of Murfreesboro ("Client") and TTL, Inc. ("Consultant") for Services to be provided by Consultant for Client on the project ("Project"), as described in the Project Information section of Consultant's Proposal dated date ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or exhibit is incorporated into this Agreement).

1. Scope of Services. The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Upon approval of Client, portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence, unless specifically addressed in Consultant's proposal or Exhibit B. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.

2. Acceptance/Termination. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

3. Change Orders. Client may request changes to the Scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. All change orders must be in writing and signed by an authorized city official.

4. Compensation and Terms of Payment. Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or exhibit is incorporated into this Agreement). Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address on Page 2, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of .5% per month, but not exceeding the maximum rate allowed by law, for all unpaid and undisputed amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney's fees. Consultant may suspend or terminate Services for lack of timely payment without liability to Client in connection with such suspension or termination.

5. Third Party Reliance. This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries made or intended. Reliance upon the Services and any work product is limited to Client, and is not permitted as to third parties. For a limited time period, not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client; however, Client understands that such reports will be strictly for informational purposes only and not for reliance and that reliance by any third party will not be granted until those third parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee. Client also acknowledges that such third party disclosures for reliance could create an issue of conflict of interest for Consultant and Client hereby waives any and all claims of conflict of interest as Consultant, Consultant's employees or sub-consultants or subcontractors as to any disclosure to a third party for informational or reliance purposes.

6. Intentionally left blank.

7. Indemnity/Statute of Limitations. To the extent allowable by law, Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for third party claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project. The indemnification of Consultant by Client is subject to the provisions of the Tennessee Governmental Tort Liability Act. Client reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Client's sovereign immunity in whole or in part.

8. Warranty. Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT EXPRESSLY AND FULLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Insurance. Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occurrence / \$2,000,000 aggregate); (iii) automobile liability insurance (\$1,000,000 Bodily Injury and Property Damage combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / aggregate). Certificates of insurance and policy endorsements naming Client as an additional insured will be provided upon request.

10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

11. Choice of Law, Venue. This Agreement shall be governed by and construed according to Tennessee law and venue for any resolution of any dispute shall be in Rutherford County, Tennessee.

12. Subsurface Explorations. Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services and Client assumes responsibility for site restoration.

13. Testing and Observations. Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or Client's contractor's adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from Client's contractor's responsibility for defects discovered in Client's contractor's work, or create a warranty or guarantee from Consultant of any nature. Consultant will not supervise or direct the work performed by Client's contractor or Client's contractor's subcontractors at any tier and is not responsible for their means and methods.

CLIENT PROJECT SERVICES AGREEMENT

Project: West Rutherford Boulevard Extension

TTL Proposal Number: 000220803709.00

Page 2 of 2

14. Sample Disposition, Affected Materials, and Indemnity. Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, biohazard, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Scope of Services submitted by Consultant, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and all reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. When Consultant neither creates nor contributes to the creation or existence of any Affected Materials conditions at the site, Client waives any claim against Consultant and agrees, to the extent allowable by law, to indemnify and save Consultant, Consultant's related companies, Consultant's subconsultants or subcontractors, and the agents, representatives, officers, directors, members, managers and shareholders of all of the foregoing harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any person or entity from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.

15. Documents. Work product, such as reports, logs, data, notes, photographs, or calculations, prepared by Consultant shall be Client's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the property of Consultant and a permanent license for use with respect to Consultant work product is hereby provided. Files shall be maintained in general accordance with Consultant's document retention policies and practices. Upon Client's request, Consultant's work product may be provided via electronic media. By such request, Client agrees that the written copy retained by Consultant in its files shall be the official base document. Consultant makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to Consultant's attention by Client. Any modifications of such electronic copy by Client or others shall be at Client's risk and without liability to Consultant. Such magnetic copy is subject to all other conditions of this Agreement. Documents, reports, tests, information and communications from Consultant to Client or Client's designees are to be used only relating to the specific project/site to which they relate and may not be re-used for other projects or sites without express written consent from Consultant; any unauthorized re-use is at Client's or the recipient's sole and exclusive risk and is without liability as to Consultant, its related companies, its subconsultants or subcontractors, or the officers, directors, employees, agents, representatives, members, managers or shareholders of all of the foregoing. Consultant may rely upon information provided to Consultant by or on behalf of Client without any duty to independently verify the accuracy or completeness or currency of same, and Consultant shall have no liability to Client arising from any deficiency of such information.

16. Utilities. Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to (or claims arising out of damage to) subterranean structures or utilities that are not called to Consultant's attention or are not correctly marked, including being marked by a utility location service, or are incorrectly shown on the plans furnished to Consultant by Client.

17. Site Access and Safety. Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, subconsultants, and subcontractors, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors and subcontractors, or other parties present at the site not invited by Consultant.

18. Unforeseen Circumstances. It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing Consultant's services. If this occurs, Consultant will promptly notify and consult with Client, but will act responsibly based on Consultant's sole judgment where risk to Consultant's personnel, the public, or where professional duties to disclose hazards or conditions are involved. Possible actions could include: (A.) Complete the original Scope of Services in accordance with the procedures originally intended in Consultant's Proposal, if practicable in Consultant's judgment; (B.) Agree with Client to modify the Scope of Services and the estimate of charges to include assessment of the unforeseen conditions or occurrences, with such revision agreed to in writing; (C.) Terminate the services effective on the date specified by Consultant in writing; (D.) Disclose information to regulators or government authorities when required by statute or professional canons of ethics.

19. Survival. All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and Consultant shall survive the completion of the services and the termination of this Agreement.

20. Severability. In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect to the extent that the intent of the parties in forming this Agreement are fulfilled such that the parties receive the full benefit of the bargain.

CLIENT

Firm name: _____

Authorized by: _____ Date: _____

Print name: _____ Title: _____

Address: _____ Telephone no.: _____

City and state: _____ Zip: _____ Fax no.: _____

E-mail address: _____ Cell no.: _____

CONSULTANT

Firm name: TTL, Inc.

Firm address for notifications: 624 Grassmere Park, Ste. 14, Nashville, TN 37211

TTL approval by: _____ Date: _____

Print name: Mark Herrmann Title: Principal Engineer

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Cost Sharing Agreement with Consolidated Utility District - Berkshire Subdivision Repaving

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

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

Summary

Cost Sharing Agreement with Consolidated Utility District (CUD).

Staff Recommendation

Approval Cost Sharing Agreement with CUD for the repaving in Berkshire Subdivision.

Background Information

Earlier this year, CUD informed the City of a capital improvement project they had in the Berkshire subdivision. This project includes replacing 275 residential water service lines from the water main to the meter and adds 45 check valves to existing fire hydrants. Also associated with this project is the restoration and of existing street pavement where it is disturbed or damaged during this work.

The City and CUD have formed an agreement for the final resurfacing of these impacted areas. Due to the age of the existing asphalt, the City has agreed to resurface the entirety of the areas within CUD's project limits. Per the attached agreement CUD will pay 50% of the resurfacing costs up to \$400,000. The cost sharing agreement is attached for your review.

Council Priorities Served

Responsible Budgeting

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

Fiscal Impact

The cost of the project, \$400,000 maximum, is funded by State Street Aid.

Attachments

Cost Sharing Agreement between the City of Murfreesboro and CUD.

**STREET REPAVING IN BERKSHIRE SUBDIVISION
COST SHARING AGREEMENT
CONSOLIDATED UTILITY DISTRICT AND CITY OF MURFREESBORO**

This Cost Sharing Agreement (“Agreement”) is between the Consolidated Utility District of Rutherford County, a body politic (“CUD”), and the City of Murfreesboro, a municipality in Rutherford County, Tennessee (“City”).

WHEREAS the following facts exist:

A. CUD has a capital improvement project known as Contract 222 in the Berkshire Subdivision to replace approximately 275 residential water service lines from water main to meter and to add check valves to 45 existing fire hydrants. This project includes the restoration of the existing street pavement where it is disturbed or damaged during the course of completing this work. The general location of this project is illustrated in the attached Exhibit A. Contract 222 had a bid opening on August 11, 2022. Once a contract is signed by CUD for Contract 222 and a Notice to Proceed is issued, the contractor will have 330 calendar days to complete the work subject to any change orders that modify the contract time.

B. The extent of the pavement restoration work included in Contract 222 has been coordinated with the City, and the City has agreed to be responsible for pavement milling, overlaying the top coat of asphalt, casting adjustments, and asphalt repairs on the sections of streets where the water utility work included in Contract 222 is performed after the water utility work is complete (collectively “City Repaving Work”). The centerline length of the sections of streets involved in Contract 222 is approximately four (4) miles. The City may choose to do additional repaving work in the Berkshire subdivision as the City so chooses.

NOW, THEREFORE, for good and valuable mutual considerations, including but not limited to, the benefits to flow to both parties and to the citizens of Murfreesboro and Rutherford County, the receipt and sufficiency of which is hereby acknowledged and confirmed, CUD and the City agree as follows:

1. Subject to the terms of this Agreement, the City agrees to be responsible for the City Repaving Work. CUD agrees to contribute to the cost of the City Repaving Work on the sections of streets involved in Contract 222 by paying 50% of said cost subject to a maximum contribution from CUD of \$400,000 (“CUD’s Contribution”).

CUD's Contribution will be paid to the City quarterly within 30 days of the date the City invoices CUD as the work is completed. The City shall invoice CUD at the end of each calendar quarter for the work completed in said calendar quarter.

2. For pavement patches to public streets made by CUD within the limits of Contract 222, CUD will be responsible to maintain the pavement patches for up to one calendar year from the date of completion of the work under Contract 222. Thereafter, the City is responsible for all street pavement maintenance and repair.

3. The City shall be solely responsible for costs of the repaving work that includes the sections of streets included in CUD's Contract 222 in excess of CUD's Contribution. CUD shall not be a party to the City Repaving Work contract nor bear any responsibilities thereunder except for payment of CUD's Contribution.

4. This Agreement is not assignable by any party without the written agreement of both parties.

5. This Agreement represents the entire agreement of the parties with respect to the subject matter and may not be modified or amended except by an agreement in writing signed by both parties. This Agreement shall be effective upon execution by the last party to sign.

6. The obligation of CUD hereunder is contingent upon CUD entering a contract with a contractor for the completion of Contract 222 prior to the August 11, 2022 bids for expiring. If CUD does not enter into a contract with a contractor for Contract 222 prior to the August 11, 2022 bids expiring and City has not yet entered into a contract with a contractor for the City Repaving Work, CUD may terminate this Agreement by written notice to the City in which case neither the City nor CUD will have any obligations hereunder except that the City shall refund CUD's Contribution to CUD if CUD has remitted the same to the City.

7. Any notices required by or relating to any part of this Agreement will be deemed delivered and the service thereof completed when the notice is posted by registered mail or when delivered in person to the party or its authorized representative indicated below:

To the City:

City of Murfreesboro
Attn: City Manager
111 West Vine Street

Murfreesboro, TN 37133-1139

To CUD:

Consolidated Utility District of Rutherford County
ATTN: General Manager
709 New Salem Rd.
Murfreesboro, TN 37129

8. This Agreement is by and between two independent governmental agencies and is not intended to and may not be construed to create a relationship of agent, servant, employee, or association.

9. The employees of the City and CUD are solely the officers, agents, or employees of the entity that hired them. Each party assumes any and all liability for the payment of salaries, wages, or other compensation due or claimed due, including workers' compensation claims of each party's employees. Neither the City nor the CUD is liable for compensation or indemnity to the other party's employee for injury or sickness arising out of the employee's employment.

10. Neither party may assign any rights or duties under this Agreement to a third party without the written consent of the other party.

11. Both parties acknowledge that each party is a government entity within the meaning of the Tennessee Governmental Tort Liability Act (GTLA), T.C.A. §§ 29-20-101 et seq. As to any injury suffered by the other party, each party accepts responsibility for the acts or omissions of its own employees, officials, and agents, whether those acts or omissions are the result of intentional, knowing, reckless, or negligent conduct, to the extent that any act or omission injured the other party and to the full extent of the limits of liability set forth in the GTLA for governmental entities. To the extent permitted by Tennessee law, each party agrees to indemnify and hold harmless the other party for the acts and omissions of its own employees. Neither party nor their employees are agents of the other party. Notwithstanding the foregoing, nothing herein waives or limits the sovereign immunity of either party under Tennessee law, including, but not limited to, the GTLA.

12. Either party has the right to terminate this Agreement in the event of a material breach by the other party. In the event of any actual or suspected material breach, the non-breaching party will provide written notice of the breach, and the breaching party has 30 days from the date of the notice to cure the breach. Should the

breach not be cured within that period, the non-breaching party exercise its right of termination by providing the required notice of termination.

13. Both parties agree to comply with any applicable federal, state, and local laws and regulations.

14. No waiver of any provision of this Agreement affects the right of any party thereafter to enforce any provision or to exercise any right or remedy available to it in the event of any other default.

15. Nothing in this Agreement, whether express or implied, is intended to confer upon any person or entity not a party to this Agreement, any rights, or remedies by reason of this Agreement.

16. The Agreement may be modified only by a written amendment executed and approved by the Parties.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

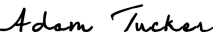
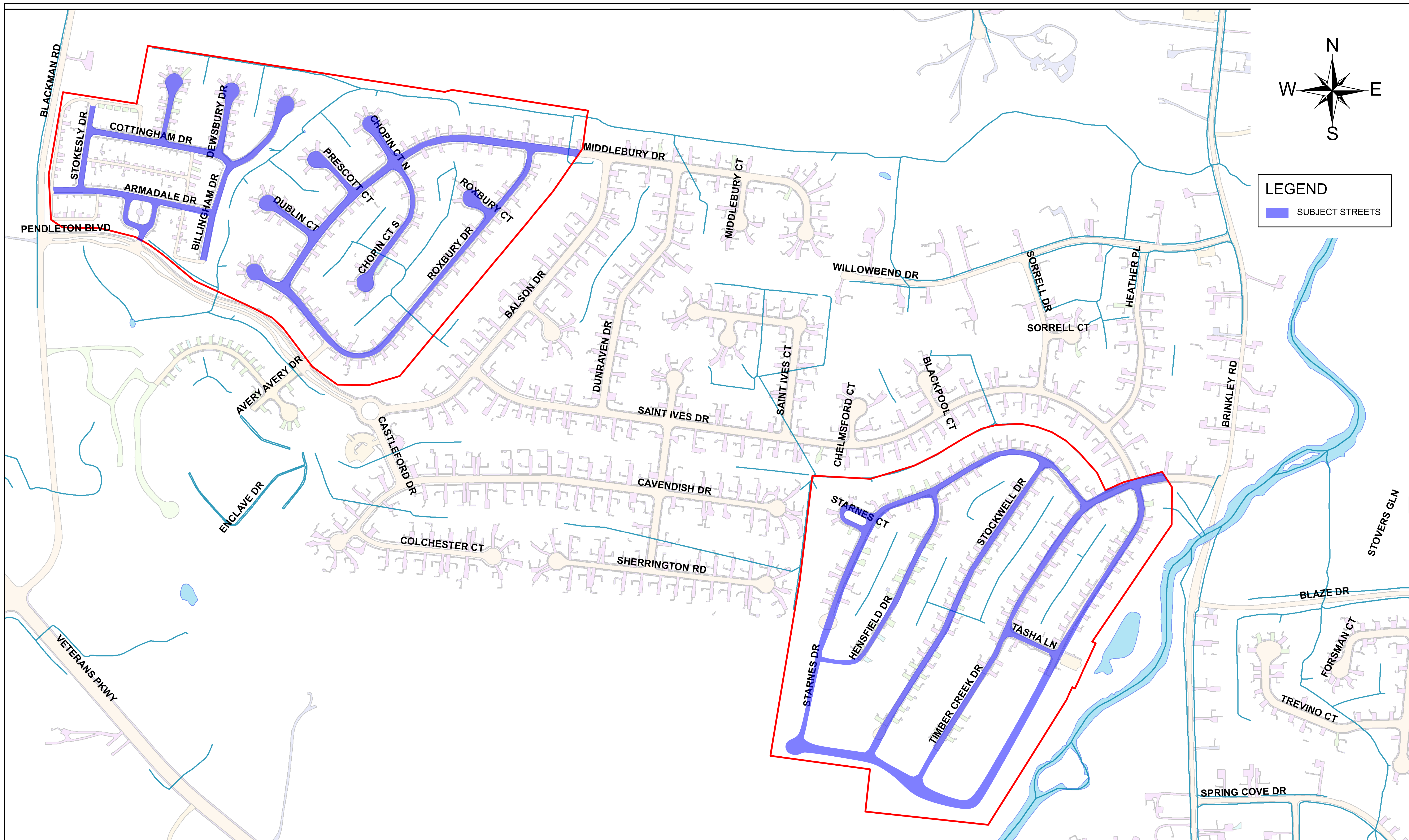
<p>CITY OF MURFREESBORO, TENNESSEE</p> <p>_____ Shane McFarland, Mayor</p> <p>Date:_____</p>	<p>CONSOLIDATED UTILITY DISTRICT OF RUTHERFORD COUNTY</p> <p>_____ Carter Woodruff, Chairman</p> <p>Date:_____</p>
<p>Attest:</p> <p>_____ Jennifer Brown, City Recorder</p>	<p>Attest:</p> <p>_____</p>
<p>Approved as to form:</p> <p><small>DocuSigned by:</small>  <small>43A2035E51F9401...</small> Adam F. Tucker, City Attorney</p>	<p>Approved as to form:</p> <p>_____ , Attorney</p>

EXHIBIT A

DRAWING SHOWING THE GENERAL LOCATION
OF THE WORK INCLUDED IN CONTRACT 222



COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Final Change Order for Martin Luther King Jr. Blvd Sidewalks Phase 1 Project

Department: Engineering

Presented by: Chris Griffith - Executive Director

Requested Council Action:

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

Summary

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

Staff Recommendation

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

Background Information

The Martin Luther King Jr. Blvd Sidewalk Phase 1 project consisted of installing sidewalks along Martin Luther King Jr. Blvd from SE Broad Street to Middle Tennessee Blvd. This also included drainage improvements, ADA compliant pedestrian crosswalks, and signal upgrades on each end of the project. Charles Deweese Construction submitted the low bid in the amount of \$1,100,292 and was awarded the contract in April 2021. During construction, it was determined that the project required less quantities of several items than originally specified. A detailed list of the decreased amounts is included in the Final Change Order.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

This change decreases the project costs by \$215,696.

Attachments

Martin Luther King Jr. Blvd Sidewalks Phase 1 Final Summary Change Order.

Supplemental Agreement and/or Request for Construction Change Change Order Request #Summary Change Order

Project Title/Termini:	<u>Mercury Blvd Sidewalks from SE Broad to Middle Tennessee Blvd</u>		
Owner:	<u>City of Murfreesboro</u>	PIN:	<u>125173.00</u>
Address:	<u>111 West Vine St.</u>	State Project No.:	<u>75LPLM-F3-067</u>
	<u>Murfreesboro, TN 37310</u>	Federal Project No.:	<u>TAP-1 (377)</u>
		Contract No.:	<u></u>
County:	<u>Rutherford</u>		

Whereas, we Charles DeWeese Construction with United States Fire Insurance Company, as a Surety, entered into a contract with The City of Murfreesboro, on 2/23/2021, for the construction by said Contractor of the above designated contract; and Whereas, certain items of construction encountered, are not covered by the original contract, we desire to submit the following additional items of construction to be performed by the Contractor and paid by the Owner at the price(s) scheduled therefore below:

The purpose of this Change Order is to:

Modify contract to reflect liquidated damages, final line item quantities and construction costs.

As a result of this Change Order, contract time shall:

☒ Not Change, ☐ Increase by _____ days, ☐ Decrease by _____ days

Original Construction Completion Time: 365days (Date: May 17, 2022)

Original Contract Amount: \$1,100,291.88

Approved Change Orders: \$0

Current Change Order: \$215,696.56

Pending Change Orders: \$0

Total Change Orders: \$215,696.56

Contract Completion Time with Change Orders: 365 days (Date: May 17, 2022)

Supplemental Agreement and/or Request for Construction Change
Change Order Request # Summary Change Order

Unit prices listed below include labor, materials, profit, overhead, and incidentals necessary to complete this work. A separate attached spreadsheet with the same information may be used in lieu of the table below.

[illegible]

Now, Therefore, We, Charles DeWeese Construction Contractors, and United States Fire Insurance Company, Surety, hereby agree to the Supplemental Agreement consisting of the above mentioned items and prices, and agree that this Supplemental Agreement is hereby made a part of the original contract and will be performed by this Contractor in accordance with specifications thereof, and that the original contract remain in full force and effect, except insofar as specifically modified by this Supplemental Agreement.

Recommended for
Approval

Engineer/CEI (Signature)

12.19.22

Approved

By:

Contractor (Signature)

Date _____

2/12/2022

By:

Melissa Rice

Date _____

12/12/2022

By:

Surety (Signature)

Date _____

Owner (Signature)

Date _____

Approved for
Eligibility

By:

Local Programs (Signature)

Date _____

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF

1 PAGES

Gen. Contr: City of Mufreesboro - TAP Grant
111 West Vine Street
Mufreesboro, TN 37130

PROJECT: Mercury Blvd Improvements APPLICATION NO 9
FENAL

Distribution to:

☐ OWNER

☐ ARCHITECT

☒ CONTRACTOR

☐ ENGINEER

FROM: Charles Deweese Construction, Inc.
765 Industrial Bypass N, PO Box 504
Franklin, KY 42135

PERIOD TO: 05/30/22

PROJECT NOS: 21-116

CONTRACT FOR:

CONTRACT DATE 04 27 2021

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$	1,100,291.88
2. Net change by Change Orders	\$	- 215,696.56
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	884,595.32
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	884,595.32
5. RETAINAGE:		
a. 0 % of Completed Work (Column D + E on G703)	\$	
b. 0 % of Stored Material (Column F on G703)	\$	
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	884,595.32
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	749,715.26
8. CURRENT PAYMENT DUE	\$	134,880.06
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	
Total approved this Month	\$0.00	\$215,696.56
TOTALS	\$0.00	\$215,696.56
NET CHANGES by Change Order	(\$215,696.56)	

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

CONTRACTOR: Charles Deweese Construction, Inc.

By: Joe DiGiuseppe, HVP
State of: Kentucky
Subscribed and sworn to before me this 27th day of July, 2022
Notary Public: [Signature]
My Commission expires: 11/13/25

Date: 07/27/2022



ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$ 134,880.06

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

By: [Signature] Date: 12-20-2022

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

CONTINUATION SHEET

DOCUMENT G703

Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed certification is attached.

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

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

APPLICATION NO: 9

APPLICATION DATE: 7/15/2022

PERIOD TO: 5/30/2022

CDCI's Job #: 21-116

Mercury Blvd. Improvements

A ITEM NO.	B DESCRIPTION OF WORK	C CONTRACT QTY	D INSTALLED QTY THIS PERIOD	E PREVIOUS QTY	F INSTALLED QTY TO DATE	G UNIT	H RATE	I SCHEDULED VALUE	J WORK COMPLETED FROM PREVIOUS APPLICATION	K THIS PERIOD	L MATERIALS	M LABOR EQUIPMENT OTHER	N STORED MATERIALS (Not In D or E)	O TOTAL COMPLETED AND STORED TO DATE (D+E+N)	P % (G + C)	Q BALANCE TO FINISH (C - E)
105-01	Construction Stakes, Lines and Grades	1.00	0.3	0.7	1.00	LS	11500	\$ 11,500.00	\$ 8,050.00	\$ 3,450.00				\$ 11,500.00	100%	\$ -
201-01	Clearing and Grubbing	1.00	0.5	0.5	1.00	LS	3500	\$ 3,500.00	\$ 1,750.00	\$ 1,750.00				\$ 3,500.00	100%	\$ -
202-01	Removal of Structures and Obstructions	1.00	0.1	0.9	1.00	LS	18500	\$ 18,500.00	\$ 16,650.00	\$ 1,850.00				\$ 18,500.00	100%	\$ -
203-01	Road and Drainage Excavation	2,531.00	94.07	1187.68	1,281.75	CY	15.5	\$ 39,230.50	\$ 18,409.04	\$ 1,458.09				\$ 19,867.13	51%	\$ 19,363.37
203-03	Borrow Excavation (Unclassified)	1,411.00		492.04	492.04	CY	15.5	\$ 21,870.50	\$ 7,626.62					\$ 7,626.62	35%	\$ 14,243.88
203-07	Furnishing and Spreading Topsoil	1,530.00	53.91	633.82	687.73	CY	35.85	\$ 54,850.50	\$ 22,722.45	\$ 1,932.67				\$ 24,655.12	45%	\$ 30,195.38
203-06	Water	60.00		0.9	0.90	MG	12.2	\$ 732.00	\$ 10.98					\$ 10.98	2%	\$ 721.02
204-06.01	Flowable Fill (General)	75.00		38	38.00	CY	250	\$ 18,750.00	\$ 9,500.00					\$ 9,500.00	51%	\$ 9,250.00
209-03.21	Filter Sock (12 Inch)	4,953.00		4028	4,028.00	LF	4.15	\$ 20,554.95	\$ 16,716.20					\$ 16,716.20	81%	\$ 3,838.75
209-05	Sediment Removal	43.00		0	-	CY	14.95	\$ 642.85	\$ -					\$ -	0%	\$ 642.85
209-08.02	Temporary Silt Fence (With Backing)	76.00		76	76.00	LF	4.89	\$ 371.64	\$ 371.64					\$ 371.64	100%	\$ -
209-08.03	Temporary Silt Fence (Without Backing)	4,340.00		2037	2,037.00	LF	2.41	\$ 10,459.40	\$ 4,909.17					\$ 4,909.17	47%	\$ 5,550.23
209-09.43	Curb Inlet Protection (Type 4)	20.00		4	4.00	EA	175	\$ 3,500.00	\$ 700.00					\$ 700.00	20%	\$ 2,800.00
209-40.33	Catch Basin Protection (Type D)	10.00		5	5.00	EA	375	\$ 3,750.00	\$ 1,875.00					\$ 1,875.00	50%	\$ 1,875.00
209-40.42	Catch Basin Filter Assembly (Type 2)	4.00		0	-	EA	685	\$ 2,740.00	\$ -					\$ -	0%	\$ 2,740.00
209-40.46	Catch Basin Filter Assembly (Type 6)	1.00		0	-	EA	550	\$ 550.00	\$ -					\$ -	0%	\$ 550.00
209-40.47	Catch Basin Filter Assembly (Type 7)	1.00		0	-	EA	900	\$ 900.00	\$ -					\$ -	0%	\$ 900.00
303-01	Mineral Aggregate Type A Base Grading D	640.00		66.27	66.27	TON	27.5	\$ 17,600.00	\$ 1,822.43					\$ 1,822.43	10%	\$ 15,777.57
307-01.08	Asphalt Concrete Mix (PG64-22) Grading B-M2	107.00	23.88	0	23.88	TON	185	\$ 19,795.00	\$ -	\$ 4,417.80				\$ 4,417.80	22%	\$ 15,377.20
402-01	Bituminous Material for Prime Coat	1.00		0	-	TON	1000	\$ 1,000.00	\$ -					\$ -	0%	\$ 1,000.00
402-02	Aggregate for Cover Material	5.00		0	-	TON	125	\$ 625.00	\$ -					\$ -	0%	\$ 625.00
403-01	Bituminous Material for Tack Coat	0.50		0	-	TON	1250	\$ 625.00	\$ -					\$ -	0%	\$ 625.00
407-20.05	Sawcutting Asphalt Pavement	5,100.00	63	4424	4,487.00	LF	4.17	\$ 21,267.00	\$ 18,448.08	\$ 262.71				\$ 18,710.79	88%	\$ 2,556.21
411-01.10	ACS Mix Grading D	111.00	143.68	0	143.68	TON	195	\$ 21,645.00	\$ -	\$ 28,017.60				\$ 28,017.60	129%	\$ (6,372.60)
604-01.01	Class A Concrete (Roadway)	3.00		5.81	5.81	CY	1000	\$ 3,000.00	\$ 5,810.00					\$ 5,810.00	194%	\$ (2,810.00)
604-01.02	Steel Bar Reinforcement (Roadway)	230.00		260.69	260.69	LB	4.5	\$ 1,035.00	\$ 1,173.11					\$ 1,173.11	113%	\$ (138.11)
604-01.04	1-1/2" Steel Pipe Handrail	36.00		0	-	LF	150	\$ 5,400.00	\$ -					\$ -	0%	\$ 5,400.00
607-03.02	18" Concrete Pipe Culvert (Class III)	264.00		264	264.00	LF	88.93	\$ 23,477.52	\$ 23,477.52					\$ 23,477.52	100%	\$ -
607-37.01	15" Corrugated Metal Pipe	20.00		16	16.00	LF	125	\$ 2,000.00	\$ 2,000.00					\$ 2,000.00	80%	\$ 500.00
611-07.51	15" Endwall (Cross Drain) 3:1	4.00		4	4.00	EA	2000	\$ 8,000.00	\$ 8,000.00					\$ 8,000.00	100%	\$ -
611-07.54	18" Endwall (Cross Drain) 3:1	1.00		0	-	EA	1925	\$ 1,925.00	\$ -					\$ -	0%	\$ 1,925.00
611-07.55	18" Endwall (Cross Drain) 4:1	1.00		1	1.00	EA	2250	\$ 2,250.00	\$ 2,250.00					\$ 2,250.00	100%	\$ -
611-09.01	Adjustment of Existing Catch Basin	2.00		1	1.00	EA	1150	\$ 2,300.00	\$ 1,150.00					\$ 1,150.00	50%	\$ 1,150.00
611-09.03	Capping Existing Catch Basin	1.00		1	1.00	EA	1135	\$ 1,135.00	\$ 1,135.00					\$ 1,135.00	100%	\$ -
611-14.01	Catch Basins, Type 14, > 0'-4' Depth	2.00		2	2.00	EA	7500	\$ 15,000.00	\$ 15,000.00				\$ 0.00	\$ 15,000.00	100%	\$ -
611-42.01	Catch Basins, Type 42, > 0'-4' Depth	2.00		2	2.00	EA	2700	\$ 5,400.00	\$ 5,400.00					\$ 5,400.00	100%	\$ -
611-42.02	Catch Basins, Type 42, > 4'-8' Depth	4.00		4	4.00	EA	5300	\$ 21,200.00	\$ 21,200.00				\$ 0.00	\$ 21,200.00	100%	\$ -
701-01.01	Concrete Sidewalk 4"	26,122.00		25000	25,000.00	SF	5.85	\$ 152,813.70	\$ 146,250.00					\$ 146,250.00	96%	\$ 6,563.70
701-02	Concrete Driveway	534.00		462	462.00	SF	12.5	\$ 6,675.00	\$ 5,775.00					\$ 5,775.00	87%	\$ 900.00
701-02.01	Concrete Curb Ramp (Retrofit)	404.00		626	626.00	SF	32.5	\$ 13,130.00	\$ 20,345.00					\$ 20,345.00	155%	\$ (7,215.00)
701-02.03	Concrete Curb Ramp	2,093.00		2363	2,363.00	SF	23	\$ 48,139.00	\$ 54,349.00					\$ 54,349.00	113%	\$ (6,210.00)
701-02.06	Detectable Warning Surface (Existing Ramps)	80.00	14	76.5	90.50	SF	40	\$ 3,200.00	\$ 3,060.00	\$ 560.00				\$ 3,620.00	113%	\$ (420.00)
701-03	Concrete Median Pavement	8.00		7.3	7.30	CY	650	\$ 5,200.00	\$ 4,745.00					\$ 4,745.00	91%	\$ 455.00
702-01	Concrete Curb	11.00		14.97	14.97	CY	450	\$ 4,950.00	\$ 6,736.50					\$ 6,736.50	136%	\$ (1,786.50)
702-03	Concrete Combined Curb and Gutter	48.00		41.87	41.87	CY	375	\$ 18,000.00	\$ 15,701.25					\$ 15,701.25	87%	\$ 2,298.75
710-02	Aggregate Underdrains With Pipe	4,225.00	217	3405	3,622.00	LF	6	\$ 25,350.00	\$ 20,430.00	\$ 1,302.00				\$ 21,732.00	86%	\$ 3,618.00
710-05	Lateral Underdrains	186.00		201	201.00	LF	5	\$ 930.00	\$ 1,005.00					\$ 1,005.00	108%	\$ (75.00)
710-06.12	Lateral Underdrain Endwall (3:1)	11.00		11	11.00	EA	750	\$ 8,250.00	\$ 8,250.00					\$ 8,250.00	100%	\$ -
712-01	Traffic Control	1.00	0.5	0.5	1.00	LS	25000	\$ 25,000.00	\$ 12,500.00	\$ 12,500.00				\$ 25,000.00	100%	\$ -
712-04.01	Flexible Drums (Channelizing)	126.00		125	125.00	EA	36.56	\$ 4,606.56	\$ 4,570.00					\$ 4,570.00	99%	\$ 36.56
712-05.03	Warning Lights (Type C)	60.00		60	60.00	EA	26.11	\$ 1,566.60	\$ 1,566.60					\$ 1,566.60	100%	\$ -
712-06	Signs (Construction)	310.00		251	251.00	SF	9.4	\$ 2,914.00	\$ 2,359.40					\$ 2,359.40	81%	\$ 554.60
712-07.03	Temporary Barricades (Type III)	24.00		24	24.00	LF	18.8	\$ 451.20	\$ 451.20					\$ 451.20	100%	\$ -
712-08.03	Arrow Board (Type C)	2.00		2	2.00	EA	750	\$ 1,500.00	\$ 1,500.00					\$ 1,500.00	100%	\$ -
712-09.08	Removable Pavement Marking (6" Line)	11,029.00		0	-	LF	4.18	\$ 46,101.22	\$ -	\$ 1,421.75				\$ -	0%	\$ 46,101.22
713-11.01	U Section Steel Posts	517.00	517	0	517.00	LB	2.75	\$ 1,421.75	\$ -	\$ 1,421.75				\$ 1,421.75	100%	\$ -
713-11.02	Perforated/Knockout Square Tube Post	114.00	114	0	114.00	LB	7.5	\$ 855.00	\$ -	\$ 855.00				\$ 855.00	100%	\$ -
713-13.02	Flat Sheet Aluminum Signs (0.080" Thick)	136.60	137.3	0	137.30	SF	15	\$ 2,049.00	\$ -	\$ 2,059.50				\$ 2,059.50	101%	\$ (10.50)
713-13.03	Flat Sheet Aluminum Signs (0.100" Thick)	7.50	15	0	15.00	SF	15	\$ 112.50	\$ -	\$ 225.00				\$ 225.00	200%	\$ (112.50)
713-16.01	Changeable Message Sign Unit	2.00		2	2.00	EA	7833.39	\$ 15,666.78	\$ 15,666.78					\$ 15,666.78	100%	\$ -
716-02.04	Plastic Pavement Marking (Channelization Striping)	145.00	11.889	10.610	22.499	SY	31.33	\$ 4,542.85	\$ 332.41	\$ 372.48				\$ 704.89	16%	\$ 3,837.96
716-02.05	Plastic Pavement Marking (Stop Line)	342.00	280	64	344.00	LF	20.89	\$ 7,144.38	\$ 1,336.96	\$ 5,849.20				\$ 7,186.16	101%	\$ (41.78)
716-02.06	Plastic Pavement Marking (Turn Lane Arrow)	7.00	8	0	8.00	EA	261.11	\$ 1,827.77	\$ -	\$ 2,088.88				\$ 2,088.88	114%	\$ (261.11)
716-02.09	Plastic Pavement Marking (Longitudinal Cross-Walk)	1,206.00	1060	156	1,216.00	LF	29.24	\$ 35,263.44	\$ 4,561.44	\$ 30,994.40				\$ 35,555.84	101%	\$ (292.40)
716-02.12	Plastic Pavement Marking (8IN Line)	0.05	0.05	0	0.05	LM	22058.8	\$ 1,102.94	\$ -	\$ 1,102.94				\$ 1,102.94	100%	\$ -
716-04.05	Plastic Pavement Marking (Straight Arrow)	5.00	5	0	5.00	EA	261.11	\$ 1,305.55	\$ -	\$ 1,305.55				\$ 1,305.55	100%	\$ -
716-08.30	Hydroblast Removal of Pavement Marking	0.15	0.045	0.145	0.19	EA	26470.53	\$ 3,970.58	\$ 3,838.23	\$ 1,191.17				\$ 5,029.40	127%	\$ (1,058.82)

716-12.01	Enhanced Flatline Thermo Pavement Marking (4")	1.45	1,599	0	1.60	LM	5222.26	\$7,572.28	\$ -	\$ 8,350.40			\$ 8,350.40	110%	\$ (778.12)	
717-01	Mobilization	1.00		1	1.00	LS	22500	\$22,500.00	\$ 22,500.00				\$ 22,500.00	100%	\$ -	
730-03.21	Install Pull Box (Type B)	9.00		9	9.00	EA	417.78	\$3,760.02	\$ 3,760.02				\$ 3,760.02	100%	\$ -	
730-08.02	Signal Cable - 5 Conductor	2,815.00		3707	3,707.00	LF	1.57	\$4,419.55	\$ 5,819.99				\$ 5,819.99	132%	\$ (1,400.44)	
730-08.10	Signal Cable (APS Cable)	2,795.00		2732	2,732.00	LF	1.57	\$4,388.15	\$ 4,289.24				\$ 4,289.24	98%	\$ 98.91	
730-12.02	Conduit 2" Diameter (PVC)	335.00		595	595.00	LF	12.53	\$4,197.55	\$ 7,455.35				\$ 7,455.35	178%	\$ (3,257.80)	
730-12.13	Conduit 2" Diameter (Jack and Bore)	1,360.00		900	900.00	LF	20.89	\$28,410.40	\$ 18,801.00				\$ 18,801.00	66%	\$ 9,609.40	
730-12.30	Trenching	185.00		213	213.00	LF	6.27	\$1,159.95	\$ 1,335.51				\$ 1,335.51	115%	\$ (175.56)	
730-13.08	Vehicle Detector Stop Bar Radar	1.00		1	1.00	EA	31761.77	\$31,761.77	\$ 31,761.77				\$ 31,761.77	100%	\$ -	
730-14.01	Shielded Detector Cable	210.00	525	180	705.00	LF	1.57	\$329.70	\$ 282.60	\$ 824.25			\$ 1,106.85	336%	\$ (777.15)	
730-14.02	Saw Slot	675.00		629	629.00	LF	3.92	\$2,646.00	\$ 2,465.68				\$ 2,465.68	93%	\$ 180.32	
730-14.03	Loop Wire	1,870.00		1464	1,464.00	LF	0.63	\$1,178.10	\$ 922.32				\$ 922.32	78%	\$ 255.78	
730-15.11	Modify Cabinet (Integrate Pedestrian Signals)	2.00		2	2.00	EA	1316.01	\$2,632.02	\$ 2,632.02				\$ 2,632.02	100%	\$ -	
730-15.12	Modify Cabinet (Controller Programming)	2.00		2	2.00	EA	898.23	\$1,796.46	\$ 1,796.46				\$ 1,796.46	100%	\$ -	
730-16.14	Controller (Eight Phase Actuated)	1.00	1	0	1.00	EA	5076.03	\$5,076.03	\$ -	\$ 5,076.03			\$ 5,076.03	100%	\$ -	
730-23.30	Pedestal Pole (10' Pedestrian Pole)	6.00		10	10.00	EA	2360.46	\$14,162.76	\$ 23,604.60				\$ 23,604.60	167%	\$ (9,441.84)	
730-26.04	Audible Pedestrian Signal	14.00		14	14.00	EA	1211.56	\$16,961.84	\$ 16,961.84				\$ 16,961.84	100%	\$ -	
730-26.05	Countdown Pedestrian Signal	14.00		14	14.00	EA	793.78	\$11,112.92	\$ 11,112.92				\$ 11,112.92	100%	\$ -	
730-26.06	Pedestrian Push Button Post	3.00		0	-	EA	2088.9	\$6,266.70	\$ -				\$ -	0%	\$ 6,266.70	
740-10.02	Geotextile (Type II) Sediment Control	5,940.00	301.39	4444.6	4,745.99	SY	2.25	\$13,365.00	\$ 10,000.35	\$ 678.13			\$ 10,678.48	80%	\$ 2,686.52	
740-11.02	Temporary Sediment Tube 12"	688.00		560	560.00	LF	3.5	\$2,408.00	\$ 1,960.00				\$ 1,960.00	81%	\$ 448.00	
770-98.99	4" Diameter PVC Pipe Sch 80	152.00		170	170.00	LF	15	\$2,280.00	\$ 2,550.00				\$ 2,550.00	112%	\$ (270.00)	
801-01.07	Temporary Seeding with Mulch	92.00	0.14	34,206	34,346	UNIT	46.500	4278.000	1590.580	6,510			\$ 1,597.09	37%	\$ 2,680.91	
801-03	Water (Seeding & Sodding)	122.00	12	4	16.00	MG	26.5	\$3,233.00	\$ 106.00	\$ 318.00			\$ 424.00	13%	\$ 2,809.00	
803-01	Sodding (New Sod)	11,196.00	3240	4080	7,320.00	SY	6.5	\$72,774.00	\$ 26,520.00	\$ 21,060.00			\$ 47,580.00	65%	\$ 25,194.00	
108-07	Liquidated Damages			8		Dav	-800			\$ (6,400.00)			\$ (6,400.00)			
	GRAND TOTALS							\$ 1,100,291.88	\$ 749,715.26	\$ 134,880.06		\$ -	\$ -	\$ 884,595.32	80.40%	\$ 215,696.56
	Validation Line															

SEE SUMMARY CHANGE ORDER ATTACHED.

EXPLANATION OF OVERRUNS AND UNDERRUNS

	STATE PROJECT NO	TAP-1 (377)	PIN	COUNTY	Rutherford
	FEDERAL PROJECT NO.	75LPLM-F3-067	125,173.00		
Original Contract Amount		\$1,100,291.88			
15%		\$165,043.78			
40%		\$440,116.75			

MAJOR ITEMS						EXPLANATION
Item No.	Description	Original Quantity	Original Price	Original Monies	Accumulated Monies	
N/A	N/A	N/A	N/A	N/A	N/A	No single item equalled 15% of the contract amount

40% OF ORIGINAL CONTRACT AMOUNT						EXPLANATION
Item No.	Description	Original Quantity	Original Price	Original Monies	Accumulated Monies	
701-01.01	CONCRETE SIDEWALK (4 ")	26,122	5.85	\$152,813.70	\$146,250.00	Within 10% of planned quantity
803-01	SODDING (NEW SOD)	11,196	6.50	\$72,774.00	\$47,580.00	Planned quantity over estimated
203-07	FURNISHING & SPREADING TOPSOIL	1,530	35.85	\$54,850.50	\$22,722.45	Planned quantity over estimated
701-02.03	CONCRETE CURB RAMP	2,093	23.00	\$48,139.00	\$54,349.00	Planned quantity under estimated
203-01	ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED)	2,531	15.50	\$39,230.50	\$19,867.13	Planned quantity over estimated
716-02.09	PLASTIC PAVEMENT MARKING (LONGITUDINAL CROSS-WALK)	1,206	29.24	\$35,263.44	\$35,555.84	Within 10% of planned quantity
730-13.08	VEHICLE DETECTOR (STOP BAR RADAR)	1	31,761.77	\$31,761.77	\$31,761.77	Planned Quantity
730-12.13	CONDUIT 2" DIAMETER (JACK AND BORE)	1,360	20.89	\$28,410.00	\$18,801.00	Re-routed to minimize utility locates (Dig Ups) in existing intersection roadway
Total				\$463,242.91	\$376,887.19	

ITEMS NOT USED ON PROJECT						EXPLANATION
Item No.	Description	Original Quantity	Original Price	Original Monies	Accumulated Monies	
712-09.08	REMOVABLE PAVEMENT MARKING (6" LINE)	11,029	4.18	\$46,101.22	\$0.00	omitted to maximize traffic control flexibility. Mutual agreement with City and Contractor
209-05	SEDIMENT REMOVAL	43	14.95	\$642.85	\$0.00	Not Required
209-40.42	CATCH BASIN FILTER ASSEMBLY (TYPE 2)	4	685.00	\$2,740.00	\$0.00	Line Item not incorporated into EPSC Plans. Line Item 209-40.33 Catch Basin (Type D) used.
209-40.46	CATCH BASIN FILTER ASSEMBLY (TYPE 6)	1	550.00	\$550.00	\$0.00	Line Item not incorporated into EPSC Plans. Line Item 209-40.33 Catch Basin (Type D) used.
209-40.47	CATCH BASIN FILTER ASSEMBLY (TYPE 7)	1	900.00	\$900.00	\$0.00	Line Item not incorporated into EPSC Plans. Line Item 209-40.33 Catch Basin (Type D) used.
402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	1	1,000.00	\$1,000.00	\$0.00	Line item not used
402-02	AGGREGATE FOR COVER MATERIAL (PC)	5	125.00	\$625.00	\$0.00	Line item not used
403-01	BITUMINOUS MATERIAL FOR TACK COAT (PC)	5	125.00	\$625.00	\$0.00	Line item used. No certs received for payment
611-07.54	18 IN ENDWALL (CROSS DRAIN) 3:1	1	1,925.00	\$1,925.00	\$0.00	Condition of existing endwall did not warrant replacement. Mutual agreement with City and contractor at contractor's initial request
730-26.06	PEDESTRIAN PUSHBUTTON POST	3	2,088.90	\$6,266.70	\$0.00	10' pedestrian pole, Item 730-23.30 used in lieu of this 6' post to allow both audible and countdown signals to be installed on the same pedestrian pole correcting line of sight issues.
604-01.04	1-1/2" STEEL PIPE HANDRAIL	36	150.00	\$5,400.00	\$0.00	Item installed. No certs received for payment
Total				66,775.77		

COUNCIL COMMUNICATION

Meeting Date: January 5, 2023

Item Title: Purchase of 2023 Ford E-450 Commercial Cutaway Truck

Department: City Schools

Presented by: Trey Duke, 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 the purchase of a 2023 Ford E-450 Commercial Cutaway Truck.

Staff Recommendation

Approve the purchase contract with Ford of Murfreesboro.

Background Information

Ford of Murfreesboro quoted a price of \$56,085 for one new 2023 Ford E-450 Commercial Cutaway 176" WB truck with Options as Listed ("Contractor's Quote") from the Contractor's State of Tennessee Contract No. 209/75348 with TT of Ford of Murfreesboro. The new commercial truck will replace an older high-mileage Maintenance van. The price of the truck will be charged to the county shared bond fund as approved by the Council in October 2021.

Council Priorities Served

Responsible Budgeting

Regular replacement of heavily equipment is operationally and financial prudent.

Fiscal Impact

Total cost of the expenditure, \$56,085, is funded by shared proceeds as required by statute from bond for school expenses issued by the County.

Attachments

TT of Ford of Murfreesboro INC contract

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
TT OF F MURFREESBORO, INC.
FOR PURCHASE OF VEHICLE**

This Contract is entered into and effective as of _____ ("Effective Date"), by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **TT OF F MURFREESBORO, LLC (d/b/a Ford of Murfreesboro)**, a limited liability company of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***Contractor's State of Tennessee Contract No. 209/75348 with TT of F Murfreesboro ("State Contract")***
- ***Sales Quotation MUR035 dated November 11, 2022, from Ford of Murfreesboro for One (1) 2023 Ford E-450 Commercial Cutaway 176" WB Truck with Options as Listed ("Contractor's Quote")***
- ***Any properly executed amendments to this Agreement***

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

- ***First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)***
- ***Second, this Contract***
- ***Third, the State Contract***
- ***Finally, the Contractor's Quote***

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the vehicle and optional equipment as set forth in the State Contract, and Contractor's Quote, for the purchase of One (1) 2023 Ford E-450 Commercial Cutaway 176" WB Truck with Options as Listed.
2. **Term.** The term of this Contract shall be from the Effective Date to the expiration of the State Contract on December 31, 2023, or as amended by the State of Tennessee. Contractor's performance may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve

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

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

3. Price; Compensation; Method of Payment.

- a. The goods and other items to be provided under this Contract is set forth in the Contractor's Quote, for One (1) 2023 Ford E-450 Commercial Cutaway 176" WB Truck with Options as Listed for a **Total Purchase Price of \$56,085.00** as set forth in the above referenced Contractor's Quote. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Deliveries of all items for Murfreesboro City Schools shall be made within 180 days of issuance of Purchase Order to Attn: Larry Willeford – Murfreesboro City Schools– 710 Salem Highway, Murfreesboro, TN 37129. Contact person Larry Willeford (tel. 615-482-3957; email: larry.willeford@cityschools.net) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- d. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

- 4. **Warranty.** Unless otherwise specified, every item bid shall meet the warranty requirements set forth in the specifications and the manufacturer's standard warranty.

5. Indemnification.

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

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

If to the City of Murfreesboro: City of Murfreesboro Attn: City Manager Post Office Box 1139 111 West Vine Street Murfreesboro, TN 37133-1139	If to the Contractor: TT of F Murfreesboro Jason McCullough, Fleet Manager 1550 NW Broad Street Murfreesboro, TN 37130 jmccullough@fordofmurfreesboro.com
--	--
7. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on

Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
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 Contract, Sales Quotations, and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
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, epidemic, pandemic 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 contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
22. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

TT of F MURFREESBORO INC

DocuSigned by:

By: *Jason McCullough*
Jason McCullough, Fleet Manager

SALES QUOTE**FORD OF MURFREESBORO**

SWC 209 NO. 75348

TO:

City of Murfreesboro - City Schools

DATE:

11/11/2022

QUOTE ID:

MUR035

QUANTITY	CODE	DESCRIPTION	UNIT PRICE	TOTAL
1	E4F	E-450 Commercial Cutaway 176" WB	\$35,815.00	\$35,815.00
1	OPT	Optional Equipment	\$20,270.00	\$20,270.00
		Please sign and return this quote and attached vehicle information with a signed PO to place your order.		
Total Price			\$56,085.00	\$56,085.00



Prepared by: Jason McCullough

11/11/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2023 E-450 Cutaway Chassis 176" WB DRW Base (E4F)

Price Level: 330

As Configured Vehicle

Code	Description	MSRP
Base Vehicle		
E4F	Base Vehicle Price (E4F)	\$38,565.00
Packages		
782A	Order Code 782A <i>Includes:</i> - Engine: 7.3L V8 Premium-Rated - Transmission: 6-Speed O/D w/Tow Haul Includes auxiliary cooler. - GVWR: 14,500 lb Payload Package - Tires: LT225/75R16E BSW A/S Hankook DynaPro HT. - Wheels: 16" x 6" White Painted Steel - Dual High Back Buckets - Radio: AM/FM Stereo w/Clock Display & 2 Speakers Includes Bluetooth capability and USB input. - Auxiliary Fuel Port Located on the fuel tank, offers entry point access to fuel tank for specialized gas powered equipment such as a power generator, powered wheelchair lift, etc.	N/C
Powertrain		
99N	Engine: 7.3L V8 Premium-Rated	Included
44P	Transmission: 6-Speed O/D w/Tow Haul <i>Includes auxiliary cooler.</i>	Included
XF3	4.56 Axle Ratio w/Limited-Slip	\$270.00
20F	GVWR: 14,500 lb Payload Package	Included
Wheels & Tires		
T68	Tires: LT225/75R16E BSW A/S Hankook DynaPro HT.	Included
646	Wheels: 16" x 6" White Painted Steel	Included
Seats & Seat Trim		
211	Dual High Back Buckets	Included
C	Cloth Bucket Seats	N/C
Other Options		

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.



Prepared by: Jason McCullough
11/11/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2023 E-450 Cutaway Chassis 176" WB DRW Base (E4F)

Price Level: 330

As Configured Vehicle (cont'd)

Code	Description	MSRP
L23	Raw Material Surcharge	\$0.00
PAINT	Monotone Paint Application	STD
176WB	176" Wheelbase	STD
54E	Manual Telescoping Trailer Tow Mirrors (54E) <i>Includes power-adjust flat lens.</i>	\$230.00
92B	B-Pillar Trim Kit <i>Includes unique, full LH/RH B-pillar trim shipped in dunnage box. May require trimming depending upon back-panel or upfit installed.</i>	\$75.00
525	Cruise Control	\$240.00
903	Power Windows & Locks Group <i>Includes 1-touch down power driver window.</i>	\$465.00
948	Remote Keyless Entry	\$250.00
587	Radio: AM/FM Stereo w/Clock Display & 2 Speakers <i>Includes Bluetooth capability and USB input.</i>	Included
52S	User-Defined Switches <i>Includes 4 upfitter switches on the instrument panel.</i>	\$85.00
43E	Rear View Camera Kit <i>This kit is installed by final stage manufacturer (upfitter). Includes camera and large rear view video display that utilizes most of the mirror area.</i>	\$495.00
47Z	Ambulance Prep Package Not Required <i>Required on orders not destined for ambulance use.</i>	N/C
18A	High Series Exterior Upgrade Package <i>Includes: - Front Chrome Bumper - Chrome Grille</i>	\$100.00
534	Trailer Towing Package (Class I)	\$135.00
942	Non-Configurable Daytime Running Lamps	\$25.00

Fleet Options



Prepared by: Jason McCullough

11/11/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2023 E-450 Cutaway Chassis 176" WB DRW Base (E4F)

Price Level: 330

As Configured Vehicle (cont'd)

Code	Description	MSRP
	Requires valid FIN code.	
WARANT	Fleet Customer Powertrain Limited Warranty	N/C
	Requires valid FIN code. <i>Ford is increasing the 5-year 60,000-mile limited powertrain warranty to 5-years, 100,000 miles. Only Fleet purchasers with a valid Fleet Identification Number (FIN code) will receive the extended warranty. When the sale is entered into the sales reporting system with a sales type fleet along with a valid FIN code, the warranty extension will automatically be added to the vehicle. The extension will stay with the vehicle even if it is subsequently sold to a non-fleet customer before the expiration. This extension applies to both gas and diesel powertrains. Dealers can check for the warranty extension on eligible fleet vehicles in OASIS. Please refer to the Warranty and Policy Manual section 3.13.00 Gas Engine Commercial Warranty. This change will also be reflected in the printed Warranty Guided distributed with the purchase of every new vehicle.</i>	

Emissions

425	50 State Emission System	STD
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Exterior Color

YZ_01	Oxford White	N/C
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Interior Color

CE_01	Medium Flint w/Cloth Bucket Seats	N/C
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Upfit Options

VAN BODY	16' Box Truck	\$17,900.00
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SUBTOTAL	\$58,835.00
Destination Charge	\$1,295.00
TOTAL	\$60,130.00



Prepared by: Jason McCullough

11/11/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2023 E-450 Cutaway Chassis 176" WB DRW Base (E4F)

Price Level: 330

Major Equipment

(Based on selected options, shown at right)

TorqShift 6-speed automatic

Exterior: Oxford White

Interior: Medium Flint w/Cloth Bucket Seats

* 16 x 6-inch front and dual rear painted steel wheels

* Front tires LT load rating: E

* Overdrive transmission

* Transmission electronic control

* Stainless steel single exhaust

* Battery rating: 750CCA

* Injection Type: sequential MPI

* Bluetooth wireless audio streaming

* Seek scan

* Vehicle body length: 261"

* Cab to axle: 118"

* Axle capacity rear: 9,600 lbs.

* Axle capacity front: 5,000 lbs.

* Standard ride suspension

* Manual folding door mirrors

* Light tinted windows

* Sun visor strip

* Driver front impact airbag

* 2 airbags

* Bucket front seats

* Class I tow rating

* LT225/75RS16 AS BSW front and rear tires

* Lock-up transmission

* Alternator Amps: 210A

* All-speed ABS and driveline traction control

* HD lead acid battery

* Fuel tank capacity: 55.00 gal.

* AM/FM stereo radio

* External memory control

* Wheelbase: 176"

* Axle to end of frame: 69"

* Tire/wheel capacity rear: 9,880 lbs.

* Spring rating front: 5,000 lbs.

* Power door mirrors

* Daytime running lights

* Variable intermittent front windshield wipers

* Electronic stability control system

* Passenger front impact airbag

* Manual climate control

* Driver seat with 4-way directional controls

As Configured Vehicle

STANDARD VEHICLE PRICE

\$38,565.00

Order Code 782A

N/C

Engine: 7.3L V8 Premium-Rated

Included

Transmission: 6-Speed O/D w/Tow Haul

Included

GVWR: 14,500 lb Payload Package

Included

Tires: LT225/75R16E BSW A/S

Included

Wheels: 16" x 6" White Painted Steel

Included

Dual High Back Buckets

Included

Raw Material Surcharge

\$0.00

Monotone Paint Application

STD

176" Wheelbase

STD

Radio: AM/FM Stereo w/Clock Display & 2 Speakers

Included

Ambulance Prep Package Not Required

N/C

Fleet Customer Powertrain Limited Warranty

N/C

50 State Emission System

STD

Auxiliary Fuel Port

Included

Manual Telescoping Trailer Tow Mirrors (54E)

\$230.00

Oxford White

N/C

Medium Flint w/Cloth Bucket Seats

N/C

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Prepared by: Jason McCullough
11/11/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2023 E-450 Cutaway Chassis 176" WB DRW Base (E4F)

Price Level: 330

Major Equipment

- * Front passenger seat with 4-way directional controls
- * Driver seat armrest
- * Manual reclining driver seat
- * Manual reclining passenger seat
- * Cloth front seat upholstery
- * 4-wheel disc brakes
- * Fixed front seat head restraints
- * Front passenger seat armrest
- * Manual driver seat fore/aft control
- * Manual passenger seat fore/aft control
- * Cloth front seatback upholstery
- * 4-wheel antilock (ABS) brakes

As Configured Vehicle

- Cloth Bucket Seats
- 4.56 Axle Ratio w/Limited-Slip
- High Series Exterior Upgrade Package
- Front Chrome Bumper
- Chrome Grille
- Power Windows & Locks Group
- Rear View Camera Kit
- User-Defined Switches
- Cruise Control
- Trailer Towing Package (Class I)
- B-Pillar Trim Kit
- Non-Configurable Daytime Running Lamps
- Remote Keyless Entry

MSRP

- N/C
- \$270.00
- \$100.00
- Included
- Included
- \$465.00
- \$495.00
- \$85.00
- \$240.00
- \$135.00
- \$75.00
- \$25.00
- \$250.00

Fuel Economy

City
N/A



Hwy
N/A

- SUBTOTAL
- Destination Charge
- TOTAL

- \$40,935.00
- \$1,295.00
- \$42,230.00

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COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Engineering Design Services for Qualified Biogas Property
(WastAway Solid Waste Management Project)

Department: Solid Waste

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 a design contract for a New Qualified Biogas Property in conjunction with the project Agreement with WastAway, LLC for solid waste management.

Staff Recommendation

Approve the design contract with Griggs and Maloney consistent with the attached proposal and subject to Legal approval.

Background Information

The Council approved a Project Agreement with WastAway at their December 1, 2022, meeting that committed to a \$2,500,000 design fee for four distinct components of a future solid waste management solution. The Project Agreement with WastAway, LLC, committing to the planning and design of a qualified biogas property (QBP) to be built at 2120 Butler Drive. Components of that facility are:

- Material Management Station (MMS)
- WastAway SE3 Manufacturing (SE3M) section,
- Anaerobic Reactor Biogas Generation (ARBG) section
- Renewable Natural Gas Purification (RNGP) section.

Several of these components require construction drawings and bid specification preparation. The attached contract with Griggs and Maloney is for a scope of work that includes engineering design and bidding of the MMS and SE3 pre-engineered steel shell buildings. It also includes site grading, site improvements for utilities, grading, drainage, access road, as well as site planning submittals, permit preparation and footing design for the anaerobic digesters.

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.

Expand Infrastructure

Providing an alternate solution to solid waste management that is sustainable and generates a beneficial fuel such as renewable natural gas allows the City to continue to expand its solid waste services at the lowest cost for future growth.

Fiscal Impact

Design and engineering portion of the total project cost, \$870,000, will be funded by FY22 CIP bond proceeds. It is anticipated that the project once under construction may qualify for federal funds, which may provide a future partial reimbursement of this expense.

Attachments

Agreement between Owner and Engineer for Professional Services with Griggs and Maloney, Inc.



P.O. Box 2968
Murfreesboro, TN 37133-2968
(615) 895-8221
Fax: (615) 895-0632

December 22, 2022

Mr. Darren Gore, P.E.
Assistant City Manager
City of Murfreesboro
111 W. Vine Street
Murfreesboro, Tennessee 37130

**RE: PROPOSAL FOR ENGINEERING SERVICES –SITE PLAN, PERMITTING, DESIGN AND BIDDING
NEW SOLID WASTE PROCESSING FACILITY [New Qualified Biogas Property](#)
BUTLER DRIVE, MURFREESBORO, TENNESSEE**

Dear Mr. Gore:

Griggs and Maloney, Inc. (G&M) appreciates the opportunity to propose our engineering services to the City of Murfreesboro (City) for a new solid waste processing facility. Griggs & Maloney understands the City has preselected WasteAway to advance its solid waste planning initiatives and seeks to design and construct a facility that utilizes WasteAway's equipment to process solid waste into its proprietary SE3 fuel. The equipment and layout are specific to WasteAway's process. G&M will subcontract with WasteAway to develop the processing plant layout. This proposal will develop the scope and costs for master planning, permitting, design, and bidding for the processing facility.

BACKGROUND

Uncertainty in the continued operation of Republic Services' Middle Point Landfill has created a need to develop alternative solid waste solutions. In 2020, the City purchased a ±20-acre parcel on Butler Drive for a Public Works South facility that could also accommodate a transfer station. The City of Murfreesboro contracted with G&M to work with WasteAway to source end users for its SE3 fuel to determine the viability of its process. WasteAway produced a Phase I Project Development Report summarizing its efforts. As a result, the City has selected the WasteAway process, adding solid waste processing and anaerobic digesters to the transfer station.

[Material Management Station](#)

Griggs & Maloney assisted the City with due diligence activities at the proposed Butler Drive site, which included a Phase 1 All Appropriate Inquiry, ALTA survey, and limited geotechnical analysis. Further, G&M was on the team with KDGI to masterplan the site for a new public works facility, salt barn, and transfer station. Much of the masterplan work is assumed to be carried forward. However, since the master planning was performed for a transfer station, the portion of the site planned for the transfer station will require revision to accommodate a WasteAway facility. The master planning was approved by the City under the Project Agreement with WasteAway dated December 7, 2022. The scope of work authorized by the Project Agreement (12/7/22) is as follows:

WasteAway's continued work with the City during the development phase has accomplished a defined project scope, preliminary proforma, and identified potential buyers for SE3 fuel produced by the project from the City's solid waste collection program. As a result of the prior work, it has been determined that the project could be located at the Public Works property located off Butler Drive and have a projected nominal annual capacity of 140,000 tons of incoming waste. The SE3 fuel output will be 98,000 tons per year. Output from the facility could

be sold as low carbon fuel to Argos cement in Calera, AL, BuzziUnicem in Chattanooga or a planned facility by Smyrna Ready Mix located in Cowan, TN. Work continues to identify other interested fuel buyers including local industrial cogeneration opportunities, additional cement kiln operators, and possible use by TVA. Additional work performed in the ongoing Phase I efforts have also determined the likely opportunity to produce renewable compressed natural gas via anaerobic digestion. Anaerobic reactor capacity shall be 98,000 tons SE3 feedstock producing annual RNG equaling ~~\$~~320,000 MMBTU.

Completed work on anaerobic digestion includes a draft report from First Environment of Butler, NJ providing information on how this proposed project would qualify under the EPA's Renewable Fuel Standard (RFS) and California Low Carbon Fuel Standard (LCFS) Programs. The report will also present information about the Environmental Attributes or Credits associated with these programs along with new climate change incentives under the recently passed Inflation Reduction Act. The University of Wisconsin has completed three trials of SE3 detailing the efficacy of the material as a feedstock for anaerobic digestion. These tests known as BioMethane Production (BMP) tests have been used to quantify both gas and credit revenues available to the project. Ongoing tests by the university are focused on beneficial reuse of the digestate and its reformation into salable SE3.

Griggs & Maloney understands the City desires to advance its solid waste planning initiatives at the Butler drive location and seeks to design and construct a facility that will encompass WastAway's equipment to process solid waste into its proprietary, SE3 fuel. In discussions with the City, we have also expressed the importance of flexible function for the new solid waste facility. The receiving floor for the WastAway process should also be able to function as a transfer station tipping floor. Further, the processing facility should also be convertible to a materials recycling facility. With maximum flexibility, the facility and the City will be better positioned for future solid waste market changes. G&M will work with the provider of the City's preselected process equipment, WastAway, to understand the process flow, obtain technical data, equipment specifications, and other information to support the site and building shell design.

The following items outline G&M Task 1 scope of work.

SCOPE OF WORK

New Qualified Biogas Property

Task 1 - Engineering Design: G&M's design of the new solid waste processing facility built around WastAway's process will include civil, architectural, structural, electrical, mechanical, and plumbing design. G&M will produce design deliverables of 30% (preliminary), 60%, and 90% prior to finalizing the contract documents. G&M will provide plans and specifications and coordinate with the City's Legal Department and Purchasing Department for contract review prior to the project being released for bid. The following components will be included in G&M's design scope of work:

- New estimated 400-500 ton per day tipping/receiving floor including new office, and access routes;
- 400 foot by 100 foot pre-engineered metal solid waste processing building (including tipping floor);
- WastAway equipment layout and detailed drawings (Note: Anaerobic Digester is not included);
- Utility extensions and connections;
- New inbound scale and outbound scales;
- Site grading, drainage, and access roads; and
- Striping, signage, and gates.

Preliminary Design (30%): G&M, along with the preselected process provider WastAway, will work with the City to develop an initial civil site design based on a revised master plan and the design basis memorandum. G&M and WastAway will develop process design based on the size, scope and strategy developed in WastAway's initial phase of work. Preliminary Process design will include the following:

- Equipment lists
- Process Flow Diagram
- Mass Balance Information
- Preliminary Equipment Budget

Task 2 - Site Planning: A site plan will be required to be submitted to the City of Murfreesboro Planning Department. Site planning will incorporate the elements determined through master planning and will also include traffic patterns, site access, and facility support spaces serving the new solid waste facility. G&M will coordinate with the utility providers and the City during this phase to submit a site plan for City of Murfreesboro approval. It is assumed that the property is zoned appropriately for the use as a transfer station and that the existing, on-site septic system may be utilized until sewer service is available.

Task 3 - Permitting: Griggs & Maloney's scope of work will include permitting and design for the new processing facility. Anticipated permits include a new solid waste processing permit. G&M will develop the information required to demonstrate meeting TDEC's requirements for the permit by rule facility. The applicant must submit the following items to the Division of Solid and Hazardous Waste Management staff at the Nashville Environmental Field Office:

- A topographic map and scaled drawing of the operation
- A work sheet regarding storage capacity
- A completed application (Form CN-1035) which requires standard information such as the facility location, name and address, the type and description of activity at the facility and the characteristics of the waste being handled
- A narrative explaining how the facility will comply with applicable criteria given Permit-by Rule activity

G&M will also develop a Stormwater Pollution Prevention Plan (SWPPP) and Notice of Intent for the disturbance related to the new construction. Additional permitting efforts are not included in this scope of work.

Task 4 - Bidding: G&M will provide preparation of contract documents, bidding phase assistance including advertising the bids, distribution of plans, bid tabulation and reviewing bids to make a recommendation for award.

Task 5 - Anaerobic Digester(s) Footer Design: Renewable gas generation and credit revenues generated by the anaerobic digester project will be primary drivers on the execution of this project task. Digester size and number are currently unknown for Task 5. A budget of \$100,000 is estimated for this task.

Construction Phase: No construction phase assistance is included with the initial scope of work. G&M will provide engineering services for the administration during construction of the successfully bid construction contract under a future Task Order. Estimated period of construction is 24 months.

Resident Project Representation: No resident project representation is included with this initial scope of work. G&M will provide onsite resident representation to assist Engineer and provide extensive observation of Contractors work under a future Task Order. Estimated period of Resident Project Representative (RP) Services is 24 months.

Operational Manuals and Operator Training: G&M will provide document coordination and compilation services to prepare a project specific Operations Manual, and coordinate and document City employee training as contracted from equipment suppliers for this project under a future Task Order. These services will span the anticipated construction phase, with expected service to extend an estimated 2 months after facility start-up.

COST

The scope of services presented above is proposed to be conducted on a lump sum basis in accordance with Griggs & Maloney's Agreement Between Owner and Engineer for Professionals Services – Task Order Edition (Agreement). The Main Agreement is a master agreement valid for a period of 5 years and is attached for your review. It will govern the scope of work defined in the task orders that are issued. Your signature below is notice of acceptance to begin the services as outlined as Tasks 1 through 4, and authorization for signature of the Master Agreement upon review and acceptance by the City. The estimated cost for the work for each task is included in Exhibit B to Project Agreement. The cost does not include permitting fees, advertising fees, or other fees. These fees will be billed as direct expenses and are in addition to the cost presented in this proposal.

Thank you again for the opportunity to work with you. Should you have any questions or comments regarding this proposal please contact me at (615) 895-8221.

Sincerely,
GRIGGS & MALONEY, INC.



Ryan Maloney, P.E.
Principal

COUNCIL COMMUNICATION

Meeting Date: 01/05/2023

Item Title: Pension Committee

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

Appointment to the Pension Committee.

Background Information

The Committee interprets and carries out the provision of the Pension Plan of the City of Murfreesboro, settling any disputes which may arise regarding the rights of participants in the Pension Plan. As established by City Code, § 10.01, there are seven appointed members with at least three of whom are participants in the Pension Plan, and members serve 3-year terms.

Attachments

Memo from Mayor McFarland



. . . creating a better quality of life.

January 5, 2023

Members of City Council

RE: Employee Participant Term – Pension Committee

To reflect the City Council decision to extend the term to three years, Cathy Smith's current term for Employee Participant will expire June 1, 2025.

Sincerely,

Shane McFarland
Mayor

No items.

