

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
February 16, 2023

PRAYER

Mayor Shane McFarland

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEMS

STARS Award: Firefighter Josh Walker and Firefighter Daniel Carter

Recognition: Alex Belew

Consent Agenda

1. Homeowner Rehabilitation - 416 South Highland Avenue (Community Development)
2. Mandatory Referral for Abandonment of Drainage and Sanitary Sewer and Waterline Easements along Stonecenter Lane (Planning)
3. Mandatory Referral for Abandonment of Sanitary Sewer Easement along Franklin Road (Planning)
4. RFCSP Approval for Downtown Parking Wayfinding Program Design Services (Purchasing)
5. Asphalt and Concrete Purchase Report (Street)
6. MWRD Operations & Maintenance Vehicle Purchase (Water Resources)

New Business

Land Use Matters

7. Planning Commission Recommendations (Planning)

On Motion

8. Presentation of Annual Audit Report (Finance)
9. Brinkley Road Change Order #2 (Engineering)
10. Butler Drive ROW Acquisition (Engineering)
11. Agreement between TDOT and the City for the South Church Street (SR 10) Bridge over CSX Railroad (Transportation)
12. Cherry Lane Phase 3 Supplement Request for Right-of-Way Acquisition (Transportation)
13. Bradyville Pike Reconstruction Supplement Request for Right-of- Way Acquisition (Transportation)

Board & Commission Appointments

Licensing

Payment of Statements

Other Business

14. Master Services Agreement for Low-Voltage Cabling Services (Information Technology)

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Housing Rehabilitation – 416 South Highland Avenue

Department: Community Development

Presented by: Robert Holtz, Director of Community Development

Requested Council Action:

Ordinance
Resolution
Motion
Direction
Information

Summary

Complete housing rehabilitation through the Community Development Housing Rehabilitation program.

Staff Recommendation

Award the contract to Rice Construction and approve the expenditure of \$20,700.00 for the rehabilitation activity.

Background Information

Invitations to bid were posted for contractors on 01/11/2023. Three bids were received and opened on 01/19/2023.

Rice Construction Co, LLC	\$20,700
New Creations Construction, LLC	\$53,200
GTZ Construction, LLC	\$29,033

Council Priorities Served

Safe and Livable Neighborhoods.

This activity will correct exterior and interior deficiencies.

Fiscal Impact

The contract value of \$20,700 will be from Community Development Block Grant funds.

Attachments:

1. Construction Contract

MURFREESBORO COMMUNITY DEVELOPMENT DEPARTMENT

CONTRACT FOR REHABILITATION

CDBG

GRANTEE: City of Murfreesboro, Tennessee, acting through its Community Development Department, hereinafter referred to as "CITY."

THIS CONTRACT FOR REHABILITATION, hereinafter referred to as "CONTRACT," made this day of by and between MR. RICHARD BATEY, hereinafter referred to as "OWNER," whether one or more, and RICE CONSTRUCTION LLC, hereinafter referred to as "CONTRACTOR."

The OWNER hereby employs the CONTRACTOR to do all the work and provide all materials, tools and machinery, supervision, etc., necessary for the rehabilitation of the property known as, 416 S. Highland Avenue, Murfreesboro, TN, for the total sum of --- TWENTY THOUSAND, SEVEN HUNDRED DOLLARS --- ---(\$20,700.00) all in accordance with this CONTRACT.

This CONTRACT consists of all terms, provisions and conditions stated herein, all terms, provisions and conditions contained in the listed Exhibits, together with all terms, provisions and conditions contained in those documents which are specifically incorporated herein by reference.

<u>Exhibit</u>	<u>Title</u>
A	EEO Standards
B	Change Orders
C	Warranty and Warranty Procedure
D	Grievance Procedure
E	CITY's RFQ-23-2023 and CONTRACTOR'S Bid

SECTION I General Conditions

1. After execution by the OWNER and CONTRACTOR, this CONTRACT will become effective only after approval by CITY as indicated by the signature of its authorized representative below.
2. The OWNER shall issue a written Proceed Order within ten (10 days) from the date of approval of this CONTRACT by CITY.
3. The CONTRACTOR must commence work within fifteen (15) days after issuance of the Proceed Order. At the option of the OWNER, this contract may be canceled by failure of the CONTRACTOR to begin work on the date specified.
4. The CONTRACTOR must complete the work within sixty (60) days after issuance of the Proceed Order in accordance with this CONTRACT, and in good and workmanlike manner. Failure to so complete the work may result in liquidated damages being assessed by the CITY at a rate of one per cent (1%) per day for each day over the time provided for such completion of the work. The assessed damages will be calculated and deducted from the final payment made to the CONTRACTOR and will be credited to the loan balance of the OWNER.

5. In the event the CONTRACTOR fails to properly construct the improvements required by the plan incorporated herein and approved by the CITY, CONTRACTOR shall continue to be responsible to properly construct those improvements, notwithstanding the CITY and / or OWNER over-looked such failures or defects prior to acceptance of the work.

SECTION II General Requirements

1. The work to be performed under this CONTRACT is on a project assisted under the Community Development Block Grant program, which provides Federal financial assistance from the Department of Housing and Urban Development and subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
2. The parties to this CONTRACT will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 75, and all applicable rules and orders of the Department issued thereunder prior to the execution of this CONTRACT. The parties to this CONTRACT certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The CONTRACTOR will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contact or understanding, if any, a notice advising said labor organization or workers' representative of CONTRACTOR'S commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 75. The CONTRACTOR will not let any subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 75 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 75, and all applicable rules and orders of the Department issued hereunder prior to the execution of this CONTRACT, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 75.
6. The CONTRACTOR shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C.A. § 874, 40 U.S.C.A. § 3145), which prohibits the taking of kickbacks from employees on public works,

and the Anti-Kickback Act of 1986 (41 U.S.C.A. §§ 8701 to 8707), which prohibits subcontractor kickbacks, and any amendments or modifications of these Acts, shall cause appropriate provisions to be inserted in subcontracts to insure compliance with these acts by all subcontractors subject to the Acts, and shall be responsible for the submission of statements required by subcontractors under the Acts, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements of the Acts.

7. The CONTRACTOR will not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin or disability. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their age, race, color, religion, sex, national origin or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this non-discrimination clause.

SECTION III General Statement of Work

A. In addition to all requirements contained in CONTRACTOR'S Bid, in performing work pursuant to this CONTRACT, the CONTRACTOR shall:

1. Be responsible for adjacent property which is or may be affected or endangered by any work done under this contract, taking whatever steps are necessary for the protection of the adjacent property and for notifying the OWNER thereof of such hazard.
2. Not assign or sublet this contract without the written consent of the OWNER. Any request for consent to an assignment shall be addressed to the OWNER, c/o the CITY.
3. Indemnify and hold harmless and defend the OWNER, the CITY, and State of Tennessee, their agents, servants or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this CONTRACT or the work to be performed hereunder. The CONTRACTOR hereby assumes all liability and responsibility for injuries, claims or suits for damages, to persons or property of whatsoever kind of character, whether real or asserted, occurring during the time the work is being performed and arising out of the performance of same.
4. Not commence work under this CONTRACT until all insurance required under this program has been secured and such insurance has been approved by the CITY.
5. All materials and equipment that have been removed and replaced as part of the work hereunder shall belong and be removed by CONTRACTOR.
6. Maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the CONTRACT and such other records as may be deemed necessary by the CITY to assure proper accounting for all funds. These records will be available for audit purposes to the CITY or the State of Tennessee or any authorized representative and will be retained for three years after CONTRACT completion unless permission to destroy them is granted by the CITY. The CITY, State of Tennessee, and any authorized representative

shall have access to any other books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this CONTRACT for the purpose of making audit, examination, excerpts, and transcriptions.

B. During the course of performance of work pursuant to this CONTRACT, the OWNER shall:

1. Not permit any changes or additions to the CONTRACT, work write-up, or plans without approval of the CITY. If any changes or additions are approved, a Change Order must be signed by the OWNER and the CONTRACTOR and approved by the CITY as provided in **Exhibit B**, and no work on such changes or additions shall be initiated until such Change Order is signed.
2. Cooperate with the CONTRACTOR to facilitate the performance of the work, including the removal and replacement of rugs, coverings, and furniture as necessary.
3. Allow inspection by the CITY (and/or HUD) of the property whenever the CITY and/or HUD determines that such inspection is necessary.
4. Permit the CONTRACTOR to use, at no cost, existing utilities such as light, heat, power, and water necessary to carry out and complete the work.
5. Have the option, in the event of any breach of this CONTRACT and with the CITY approval, to engage the services of another contractor to complete the work and to deduct the cost of such completion from any amount due the CONTRACTOR hereunder.
6. Allow payment in full to the CONTRACTOR, from the Community Development Department funds, subject to the CITY'S acceptance of the work as satisfactorily completed in accordance with this CONTRACT.
7. During the course of performance of work pursuant to the CONTRACT and for the duration of OWNER'S compliance period, maintain homeowner's insurance in an amount equal to the value of the residence following completion of the rehabilitation work pursuant to this CONTRACT. Such insurance shall name the CITY as an additional insured. Proof of such insurance shall be provided to the CITY by a certificate of insurance or endorsement as necessary. OWNER must notify CITY if the insurance policy is renewed, canceled or altered in any manner and provide written documentation of such alteration.

SECTION IV Warranty and Warranty Procedure

CONTRACTOR warrants all work performed pursuant to this CONTRACT for a period of one year from the date the homeowner signs the *Certificate of Completion and Final Inspection*. Warranty work shall be requested and performed in accord with the Warranty Procedure contained in **Exhibit C** hereto.

SECTION V Grievance Procedure

Any dispute between or among the CONTRACTOR, OWNER and / or CITY shall be resolved in accord with the Grievance Procedure contained in **Exhibit D** hereto.

SECTION VI Payment

Progress Payment - No more than one progress payment will be made on a rehabilitation project, and that only after at least 60 percent of the project is deemed complete. The payment will be no more than 50 percent of the CONTRACT amount, as modified by Change Orders, if any. Progress payment will be made only after the City's representative has completed an inspection and all work performed to date has been accepted by the OWNER.

Final Payment -

- A. FINAL INSPECTION - Upon completion of the rehabilitation work, a final inspection is held by the CITY. Any uncompleted work or work that is unsatisfactory is noted on a final "punch list" and sent to the CONTRACTOR in writing. When these items are completed to the satisfaction of the OWNER and the CITY'S inspector, the contract is complete.
- B. CERTIFICATION - After the CITY determines that the rehabilitation work has been fully and satisfactorily completed, it will prepare a *Certificate of Completion and Final Inspection*.
- B. OWNER STATEMENT OF ACCEPTANCE - The OWNER'S signature of the *Certificate of Completion and Final Inspection* indicates acceptance the rehabilitation work as meeting the terms and conditions of the contract. If the OWNER refuses to sign the final acceptance, the CITY may authorize full payment for those items which are undisputed and acceptable to all parties.

SECTION VII Conflict of Interest, Kickback

No elected or appointed Federal, State and local official, member of the Murfreesboro City Council, nor any other public official or employee who exercises any functions or responsibilities in conjunction with the administration of Murfreesboro Housing Rehabilitation Program shall have any interest, direct or indirect, in the proceeds or benefits of the rehabilitation grant program.

No member of the Murfreesboro City Council or any City of Murfreesboro employee shall receive kickbacks or discounts from either CONTRACTORS or OWNERS in return for special favors in regard to housing rehabilitation.

SECTION VIII Entire Agreement; Change Orders

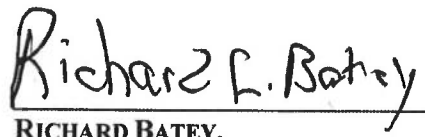
This instrument constitutes the entire agreement between the parties and no written or oral agreement of any kind exists to change these provisions. Specifically, no "side" or "additional" contracts are to exist between the OWNER and CONTRACTOR until this contract is completed unless it is a written Change Order, signed by both parties and approved by the Grantee, in accord with **Exhibit B**.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set out their signatures.

Date

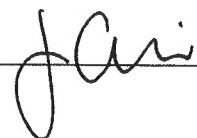


TIM RICE, RICE CONSTRUCTION LLC
CONTRACTOR



RICHARD BATEY,
OWNER

Date: 2/7/23

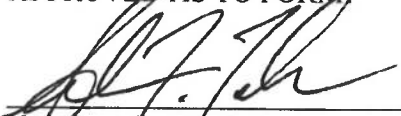
Witnessed by: 

APPROVED BY CITY:

Name: Shane McFarland
Title: Mayor

Date

APPROVED AS TO FORM:



Name: Adam Tucker
Title: City Attorney

2/9/2022
Date

EXHIBIT A

EEO STANDARDS

1. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

(1) As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" includes the federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (i) Black persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Island (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the CONTRACTOR, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the CONTRACTOR is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. CONTRACTORS must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each CONTRACTOR or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other CONTRACTORS or subcontractors toward a goal in an approved Plan does not excuse any covered CONTRACTOR's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- (4) The CONTRACTOR shall implement the specific affirmative action standards provided in paragraphs (7a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training or minority and female utilization the CONTRACTOR should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction CONTRACTORS performing contract in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed.

Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The CONTRACTOR is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- (5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the CONTRACTOR has a collective bargaining agreement, to refer either minorities or women shall excuse the CONTRACTOR'S obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.
- (6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the CONTRACTOR during the training period, and the CONTRACTOR must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The CONTRACTOR shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the CONTRACTOR'S compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The CONTRACTOR shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the CONTRACTOR'S employees are assigned to work. The CONTRACTOR, where possible, will assign two or more women to each Construction project. The CONTRACTOR shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the CONTRACTOR'S obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the CONTRACTOR or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the CONTRACTOR by the union or, if referred, not employed by the

CONTRACTOR, this shall be documented in the file with the reason therefore, along with whatever additional actions the CONTRACTOR may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the CONTRACTOR has a collective bargaining agreement has not referred to the CONTRACTOR a minority person or woman sent by the CONTRACTOR, or when the CONTRACTOR has other information that the union referral process has impeded the CONTRACTOR'S efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the CONTRACTOR'S employment needs, especially those programs funded or approved by the Department of Labor. The CONTRACTOR shall provide notice of these programs to the sources compiled under (7b) above.
- f. Disseminate the CONTRACTOR'S EEO policy notice of the policy to unions and training programs and request their cooperation in assisting the CONTRACTOR in meeting its EEO obligations: by including it in any policy manual and collective bargaining agreement publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year: and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the CONTRACTOR'S EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the CONTRACTOR'S EEO policy with other CONTRACTORS and subcontractors with whom the CONTRACTOR does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the CONTRACTOR'S recruitment area and employment needs. Not later than one month prior to the date of the acceptance of applications or apprenticeship or other training by any recruitment source, the CONTRACTOR shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of CONTRACTOR'S work force.

- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the CONTRACTOR'S obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction CONTRACTORS and suppliers, including circulation of solicitations to minority and female CONTRACTOR associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to an performance under the CONTRACTOR'S EEO policies and affirmative action obligations.
- (8) CONTRACTORS are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligation (7)a through p. The efforts of a CONTRACTOR association, joint CONTRACTOR-union, CONTRACTOR-community, or other similar group of which the CONTRACTOR is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)a through p of these Specifications provided that the CONTRACTOR actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the CONTRACTOR'S minority and female work force participation, makes good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the CONTRACTOR. The obligation shall not be a defense for the CONTRACTOR'S non-compliance.
- (9) A single goal for minorities and a separate single goal for women have been established. The CONTRACTOR, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the CONTRACTOR may be in violation of the Executive Order if a particular group is employed in a substantial disparate manner (for example, even though the CONTRACTOR has achieved its goals for women generally the CONTRACTOR may be in violation of the Executive Order if a specific minority group of women is underutilized).
- (10) The CONTRACTOR shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (11) The CONTRACTOR shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

- (12) The CONTRACTOR shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended.
- (13) The CONTRACTOR, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the CONTRACTOR fails to comply with the requirements of the Executive Order, the implementing regulation, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (14) The CONTRACTOR shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, CONTRACTOR shall not be required to maintain separate records.
- (15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EXHIBIT B

CHANGE ORDERS

Situations which did not show up during the work write-up are not uncommon in the housing rehabilitation process, and they can change the scope of work, especially if the new problem must be resolved to correct the underlying code deficiency. In such a case, a change order may be initiated.

- A. Conditions necessitating a change order must meet the guidelines in Section 3 and Section 6 of the Housing Rehabilitation Program Policies and Procedures, all of which are incorporated herein by reference.
- B. Change orders must be submitted in writing to the Community Development Department. The City inspector assigned to the project, the homeowner, the contractor and the Community Development Director must sign off on the change order.
- C. Because a change order may alter the City's financial commitment to the project, all change orders should be approved by the Murfreesboro Mayor and Council. Change orders shall be submitted to the Mayor and Council for approval in a timely manner. If waiting until the next scheduled meeting of the Council will unreasonably delay the rehabilitation project, the Community Development Director may recommend to the City Manager approval of the change order. If the City Manager approves the change order, which must be less than \$10,000 in amount, it will take effect immediately and will be reported to the Mayor and Council at its next meeting.
- D. A change order that would cause the cost of the project to exceed the \$25,000 cap must be approved by the Mayor and Council before work on the change order may proceed.

EXHIBIT C

WARRANTY WORK

All rehabilitation work done by the Contractor shall be warranted for one year from the date the homeowner signs the *Certificate of Completion and Final Inspection* indicating acceptance of the rehabilitation work as meeting the terms and conditions of the contract.

Should the homeowner notify the Community Development Department of a warranty claim, the department will:

1. Review rehabilitation project documents to determine if the complaint might be related to the work done;
2. Conduct an on-site inspection accompanied by the contractor or a designee to investigate the request for warranty work;
3. If an on-site inspection determines the requested repair is under warranty, the contractor will have 10 working days to resolve the warranty issue. Another inspection by the City will determine if the terms of the warranty have been satisfied.
4. If the complaint is not resolved within 10 days, a second notice will be issued to the contractor giving an additional five working days to resolve the warranty issue. If the complaint remains unaddressed or resolved unsatisfactorily, the contractor may be ruled ineligible for further participation in the Murfreesboro Housing Rehabilitation Program;
5. A contractor ruled ineligible will be notified by certified mail. The contractor may appeal the ruling within 15 working days of receiving notification. The appeal must be in writing, addressed to the Community Development Director, City of Murfreesboro, P.O. Box 1139, Murfreesboro, TN 37133;
6. When an appeal is received, the Community Development Director will investigate and either restore the contractor's eligibility for program participation or sustain the earlier decision. The director reserves the right to report a contractor who fails to honor his contractual obligations to THDA and the U.S. Department of Housing and Urban Development with a recommendation for disbarment;
7. Before the Community Development Department will consider restoring eligibility, a contractor will be required to reimburse the City for any expense incurred to have another contractor satisfy the ineligible contractor's warranty work.

EXHIBIT D

GRIEVANCE PROCEDURE

Disputes between the homeowner, the City of Murfreesboro and contractor may arise from time to time during the rehabilitation project. In those instances where a mutually satisfactory agreement cannot be reached between the parties, the Grievance Procedure will be followed. The Grievance Procedure will be made a part of the contract between the homeowner and the contractor.

If there is a dispute:

- A. The grievance by the homeowner or contractor is to be filed with the Community Development Director in writing.
- B. The Community Development Director will meet with the homeowner and contractor and attempt to negotiate a solution.

If these steps are unsuccessful, all claims or disputes between the owners and contractor arising out of or related to the work shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise.

If the arbitrator's award is in a sum which is less than that which was offered in settlement by the contractor, the arbitrator may award costs and attorney's fees in favor of the contractor. If the award of the arbitrator is in a sum greater than that which was offered in settlement by the owners, the arbitrator may award costs and attorney's fees in favor of the owner.

The contract and the rehabilitation specifications, along with the housing code compliance inspection, provide the basic documentation by which the relative merits of any dispute will be judged.

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Mandatory Referral for Abandonment of Drainage and Sanitary Sewer and Waterline Easements along Stonecenter Lane

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider request to allow abandonment of sanitary sewer and waterline easements on property along Stonecenter Lane and Bridgeway Street.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission voted to recommend approval on February 1, 2023.

The Water Resources Board voted to recommend approval on January 24, 2023.

Background Information

In this mandatory referral [2023-701], Council is being asked to consider abandoning sanitary sewer and waterline easements located on property along Stonecenter Lane and Bridgeway Street in the Stonebridge at Three Rivers development, which is a single-family residential attached development west of Cason Lane. The abandonment request is in conjunction with the phase of this development that is currently under construction. The easements in question, which were recorded by plat on August 17, 2007, were labeled on the recorded plat as water line easements; however, the wider of the two contains sanitary sewer lines. It is staff's belief that the wider easement was intended to be labeled as a sanitary sewer and water line easement on the plat but was mislabeled as only a water line easement. Regardless, it appears that there is a prescriptive sanitary sewer easement because of the existence of the sanitary sewer lines there.

The easements in question consist of Murfreesboro Water Resources sanitary sewer easements and Consolidated Utility District (CUD) water line easements. At the time the easements were recorded, the sanitary sewer lines had not been designed or installed. New easements based on the correct locations of the utilities will be recorded upon abandonment of these easements. Therefore, these easements are no longer necessary. On a side note, while the City can abandon any interest it has in these easements, they will not be fully abandoned until such time as CUD abandons its interest in them as well. Water Resources does not object to this request. A memo from Water Resources is included. The Murfreesboro Water Resources Board met on

January 24, 2022 and recommended approval of the abandonment of the sanitary sewer easements. Planning Staff and the Planning Commission recommend that the City Council approve this request subject to the following conditions:

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

Council Priorities Served

Establish Strong City Brand

The abandonment of this easement is consistent with the City’s goals to be customer service-oriented, relinquishing its rights to a surplus easement or modifying the location of existing easements, so that property owners can more fully enjoy and utilize their property. In addition, this abandonment will remove a regulatory roadblock for the development of this phase of Stonebridge, as it will eliminate a conflict between the proposed homes in this development and location of the existing easement.

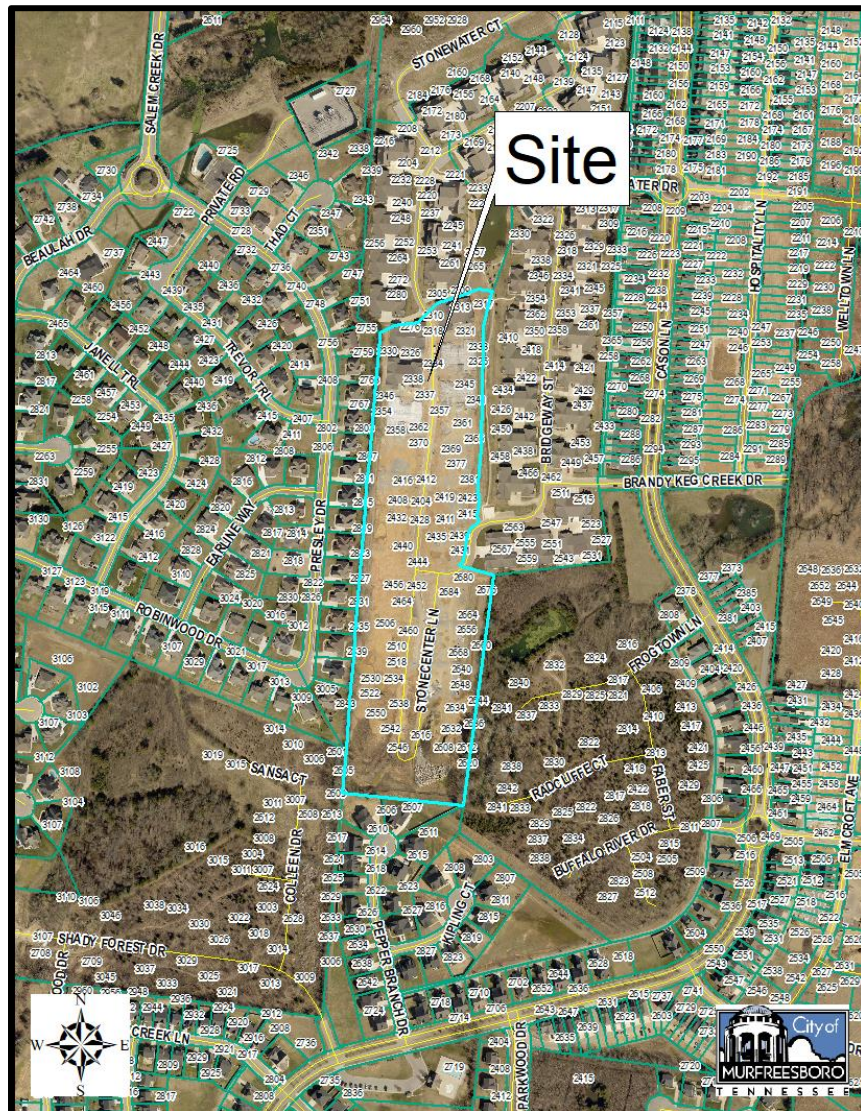
Attachments:

1. Staff comments from February 1, 2023 Planning Commission meeting
2. Letter and exhibits from applicant
3. Memo from MWRD

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
FEBRUARY 1, 2023
PROJECT PLANNER: AMELIA KERR**

- 5.a. Mandatory Referral [2023-701] to consider the abandonment of a sanitary sewer easement located along Stonecenter Lane in the Stonebridge at Three Rivers development, John Miner of SEC, Inc. applicant.**

This easement abandonment request is from John Miner with SEC, Inc on behalf of Terranova Development Corporation. The easement in question is located on property along Stonecenter Lane in the Stonebridge at Three Rivers Townhome development.



In this mandatory referral, the Planning Commission is being asked to consider abandoning existing sanitary sewer and water line easements on property located west of Cason Lane (Map 114 Parcel 17.03) currently being developed with townhomes. The request is to abandon two (2) water line easements shown in red outline on the attached exhibits. These easements were labeled on the recorded plat as water line easements; however, the wider of the two contains sanitary sewer lines. It is staff's belief that the wider easement was intended to be labeled as a sanitary sewer and water line easement on the plat but was mislabeled as only a water line easement. Regardless, it appears that there is a prescriptive sanitary sewer easement because of the existence of the sanitary sewer lines there.

As such, the easements in question consist of Murfreesboro Water Resources sanitary sewer easements and Consolidated Utility District (CUD) water line easements and the developer is requesting that the City abandon its interest in these easements. These easements were dedicated by plat August 17, 2007. At the time these original easements were recorded, the sanitary sewer lines had not been installed. Since then, the sewer was re-designed and new easements will be recorded upon abandonment of these easements. Therefore, the sanitary sewer easements are no longer necessary. On a side note, while the City can abandon any interest it has in these easements, they will not be fully abandoned until such time as CUD abandons its interest in them as well.

Murfreesboro Water Resources Staff concurs with the abandonment request. The Murfreesboro Water Resources Board met on January 24, 2023 and voted to recommend approval of this abandonment. MWRD's memo to the MWR Board has been included in the agenda packet for reference. Staff recommends that the Planning Commission recommend approval to the City Council subject to the following conditions:

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

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



City of Murfreesboro Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

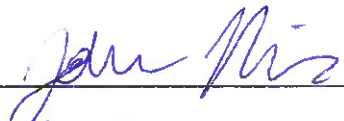
Tax Map/Group/Parcel: 114,017.09 | Address (if applicable): _____
Street Name (if abandonment of ROW): _____
Type of Mandatory Referral: Abandonment of Sanitary Sewer Easement

Applicant Information:

Name of Applicant: John Miner
Company Name (if applicable): SEC Inc.
Street Address or PO Box: 850 Middle Tennessee Blvd.
City: Murfreesboro
State: Tennessee | Zip Code: 37129
Email Address: jminer@sec-civil.com
Phone Number: 615-890-7901

Required Attachments:

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



Applicant Signature

1-12-23

Date

January 18, 2023

Mrs. Amelia Kerr
City of Murfreesboro Planning Dept.
111 West Vine Street
Murfreesboro, TN 37133-1139

RE: Stonebridge at Three Rivers
Abandonment of Sanitary Sewer Easement Mandatory Referral
SEC Project No. 18192

Dear Amelia,

Please find the attached supplemental documents to support the mandatory referral request for the abandonment of 42,787sf and 10,943sf of sanitary sewer easement.

The existing sanitary sewer easements are not being utilized and are not centered on the sewer line. Due to this, several existing homes fall within the easement. Removing the easement will correct the homes from falling within the easement.

Should you need any clarification concerning the request, please feel free to contact me at 615-890-7901 or jminer@sec-civil.com.

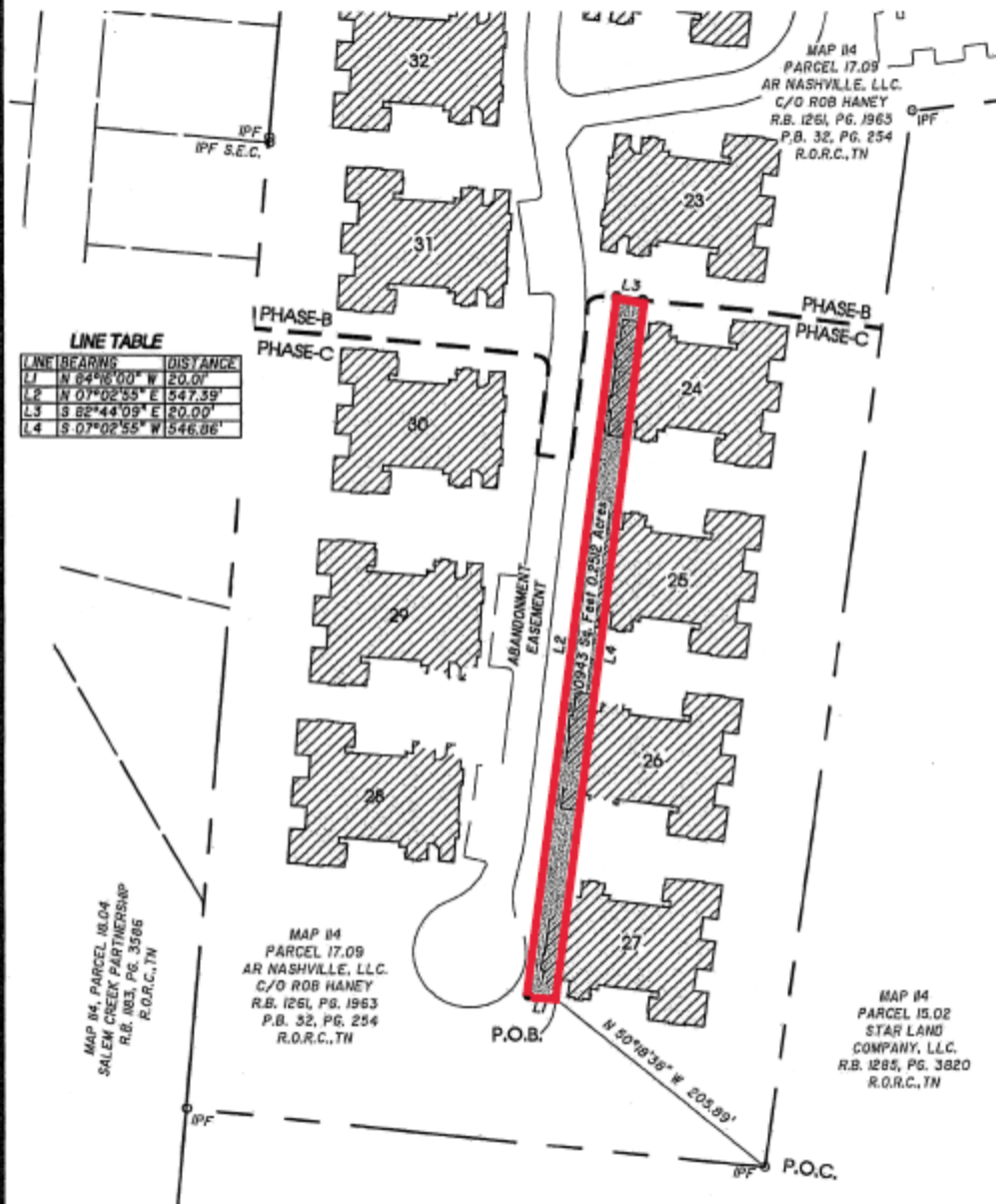
Sincerely,



John Miner, P.E.
SEC, Inc.

S.E.C. Inc. SITE ENGINEERING CONSULTANTS
ENGINEERING SURVEYING LAND PLANNING

833 MIDDLE TENNESSEE BLVD • MEMPHIS, TENNESSEE 37128
PHONE: (915) 890-7961 • E-MAIL: SPARKER@SEC-CIVIL.COM • FAX: (915) 895-2587



LINE TABLE

LINE	BEARINGS	DISTANCE
L1	N 84°16'00" W	20.01'
L2	N 07°02'55" E	547.39'
L3	S 82°44'09" E	20.00'
L4	S 07°02'55" W	546.86'

MAP 04
PARCEL 17.09
AR NASHVILLE, LLC.
C/O ROB HANEY
R.B. 1261, PG. 1963
P.B. 32, PG. 254
R.O.R.C., TN

MAP 04, PARCEL 10.04
SALEM CREEK PARTNERSHIP
R.B. 1067, PG. 3586
R.O.R.C., TN

MAP 04
PARCEL 17.09
AR NASHVILLE, LLC.
C/O ROB HANEY
R.B. 1261, PG. 1963
P.B. 32, PG. 254
R.O.R.C., TN

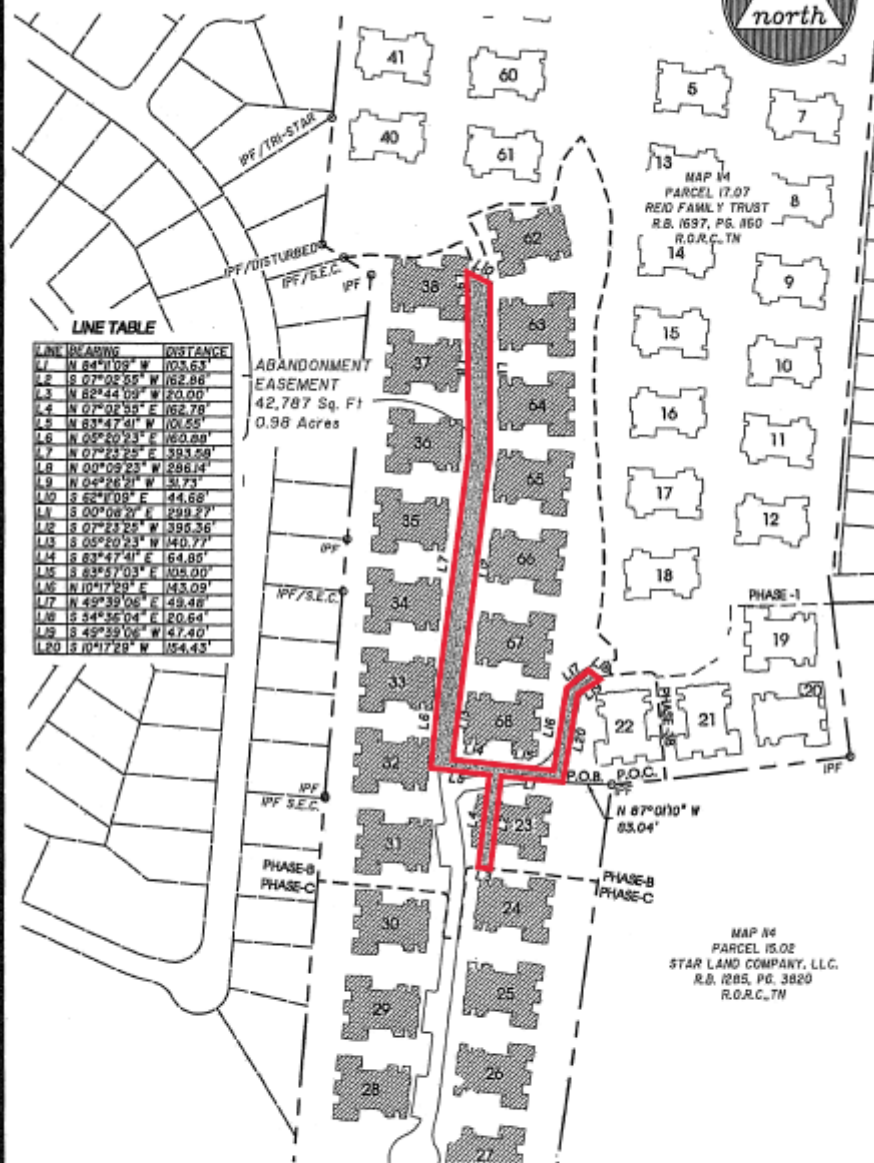
MAP 04
PARCEL 15.02
STAR LAND
COMPANY, LLC.
R.B. 1285, PG. 3820
R.O.R.C., TN

MAP 114 PARCEL 17.09
TERRANOVA DEVELOPMENT CORP.
STONEBRIDGE TOWNHOUSES OWNERS ASSOCIATION INC.
R.B. 2130, PG. 2705
P.B. 32, PG. 254
R.O.R.C., TN

DATE: 07-20-2020 SCALE 1"=100'

REV DATE:

18192



LINE TABLE

LINK	BEARING	DISTANCE
L1	N 64°11'09" W	123.63'
L2	S 07°02'55" W	162.86'
L3	N 82°44'09" W	20.00'
L4	N 07°02'55" E	162.78'
L5	N 83°47'41" W	101.55'
L6	N 05°20'23" E	160.88'
L7	N 07°24'25" E	393.59'
L8	N 00°09'23" W	286.14'
L9	N 04°26'21" W	31.73'
L10	S 62°10'08" E	44.88'
L11	S 00°06'27" E	289.27'
L12	S 07°23'25" W	395.36'
L13	S 05°20'23" W	140.77'
L14	S 83°47'41" E	64.85'
L15	S 83°47'03" E	105.00'
L16	N 10°17'28" E	45.09'
L17	N 49°39'06" E	49.48'
L18	S 34°35'04" E	20.64'
L19	S 49°39'06" W	47.40'
L20	S 10°17'28" W	124.43'

ABANDONMENT
 EASEMENT
 42,787 Sq. Ft.
 0.98 Acres

MAP 114
 PARCEL 17.07
 RED FAMILY TRUST
 R.B. 1637, PG. 160
 R.O.R.C., TN

MAP 114
 PARCEL 15.02
 STAR LAND COMPANY, LLC.
 R.B. 1285, PG. 3820
 R.O.R.C., TN

MAP 114 PARCEL 17.09
 TERRANOVA DEVELOPMENT CORP.
 STONEBRIDGE TOWNHOUSES OWNERS ASSOCIATION INC.
 R.B. 2130, PG. 2705
 P.B. 32, PG. 254
 R.O.R.C., TN

DATE: 07-20-2020 SCALE 1"=200'

REV DATE:

18192
 1 OF 1



... creating a better quality of life

MEMORANDUM

DATE: January 18, 2023
TO: Water Resources Board
FROM: Valerie H. Smith
SUBJECT: Sewer Easement Abandonment
Stonebridge Development

BACKGROUND

This easement abandonment request is from SEC on behalf of Terranova Development Corp. They are requesting the abandonment of existing sanitary sewer easements that are no longer necessary. At the time these original easements were recorded, the sanitary sewer had not been installed. Since then, the sewer was re-designed and installed a little to the west and new easements have been recorded.

This request will also go before the Planning Commission as a mandatory referral for approval.

RECOMMENDATION

Staff recommends approval of abandoning these Sanitary Sewer Easements.

FISCAL IMPACT

These easements were dedicated by plat.

ATTACHMENTS

Easement Abandonment Request & Exhibits

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Mandatory Referral for Abandonment of Sanitary Sewer Easement along Franklin Road

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider request to allow abandonment of sanitary sewer easement on property along Franklin Road and Veterans Parkway.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission voted to recommend approval on February 1, 2023.

The Water Resources Board voted to recommend approval on January 24, 2023.

Background Information

In this mandatory referral [2023-702], Council is being asked to consider abandoning a sanitary sewer easement located on property at the southeast corner of Franklin Road and Veterans Parkway. A site plan for a proposed Circle K convenience market has been approved for this site, and the applicant seeks to abandon this easement in conjunction with the development of the property. The easement in question was dedicated by plat on December 2, 2021. The existing easement conflicts with elements of the site plan, which has been included in the agenda materials for reference. The existing sanitary sewer infrastructure within the easement is not necessary for the development of the site as proposed, and abandonment of the easement will not have any negative impact on the City or any adjacent properties. In addition, Water Resources does not object to this request. A memo from Water Resources is included. The Murfreesboro Water Resources Board met on January 24, 2022 and recommended approval of the abandonment of the sanitary sewer easement.

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

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

- 2) The applicant will be responsible for recording the legal instrument, including paying any recording fees.

Council Priorities Served

Establish Strong City Brand

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

Improve Economic Development

The abandonment of this easement will help to enable the development of a convenience market with gas pumps, creating jobs and generating tax revenue.

Attachments:

1. Staff comments from February 1, 2023 Planning Commission meeting
2. Letter and exhibits from applicant
3. Memo from MWRD

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
FEBRUARY 1, 2023
PROJECT PLANNER: AMELIA KERR**

5.b. Mandatory Referral [2023-702] to consider the abandonment of a sanitary sewer easement located on property at the southeast corner of Franklin Road and Veterans Parkway, Richard Blasey of Bergman Associates applicant.

This easement abandonment request is from Richard Blasey with Bergman Associates on behalf of Circle K Stores, Inc. which is located on property at the southeast corner of Franklin Road and Veterans Parkway.



In this mandatory referral, the Planning Commission is being asked to consider abandoning an existing sanitary sewer easement on property to be developed with a Circle K gas station. The request is to abandon an existing sewer easement as shown in the hatched area on the attached exhibit. This easement was dedicated by plat on December 2, 2021. The existing easement conflicts with the location of the proposed convenience store and adjacent formal open space as further described in the plans as submitted for Site Plan Review dated January 4, 2023, included in the agenda. The existing sewer infrastructure within said easement is not pertinent to the development of the site for its intended use, and abandonment of the easement does not impact the City or Murfreesboro or any adjacent properties.

The Murfreesboro Water Resources Board met on January 24, 2023, and MWRD Staff recommended that the Board recommend to Planning Commission and City Council approval of the abandonment of this existing sewer easement.

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

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

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



City of Murfreesboro
Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: **093/070.01**

Address (if applicable): **Veteran's Parkway**

Street Name (if abandonment of ROW):

Type of Mandatory Referral: **Easement Abandonment**

Applicant Information:

Name of Applicant: **Richard Blasey**

Company Name (if applicable): **Circle K**

Street Address or PO Box: **935 East Tallmadge Avenue**

City: **Akron**

State:

Zip Code: **44310**

Email Address: **rblasey@bergmannpc.com**

Phone Number: **517.827.8670**

Required Attachments:

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

Richard Blasey

January 13, 2023

Applicant Signature

Date



January 13, 2023

Ms. Anita Heck, EI
Murfreesboro Water Resources Department – Engineering
220 NW Broad Street
Murfreesboro, TN 37130

Dear Ms. Heck,

On behalf of our client, Circle K Stores Inc., we would like to formally request that an existing sanitary sewer easement be abandoned as depicted on the attached exhibit drawing, said easement being recorded in Plat Book 47, Page 136 and in Book 2172, Page 3099, Register's Office for Rutherford County, Tennessee. The easement is located on property owned by Circle K Stores, Inc., described as Lot 1, Section 1 – Lots 1, 2, and 3 of Kingdom Crest Subdivision as recorded in Plat Cabinet 45, Page 136, Register's Office for Rutherford County, Tennessee, Tax Map 093, Parcel 070.01.

The existing easement conflicts with the location of a proposed convenience store and adjacent formal open space as further described in the plans as submitted for Site Plan Review dated January 4, 2023. The existing sewer infrastructure within said easement is not pertinent to the development of the site for its intended use, and abandonment of the easement does not impact the City or Murfreesboro or any adjacent properties.

Please note that the existing 30" sanitary sewer infrastructure within said easement will be removed as described on the above referenced plans.

Respectfully,

Sincerely,

Richard Blasey

Richard Blasey, PE
BERGMANN

Enclosure

PROJECT DATA

1. APPLICANT:
CIRCLE K
935 E. TALLMADGE AVE.
AKRON, OH 44310
ERIC SEEBACH
2. PROJECT ADDRESS:
SEC FRANKLIN RD & VETERANS PARKWAY
MURFREESBORO, TN
3. PROJECT PARCEL NUMBERS:
093-070-01-000
4. GROUP: RvwZONE3
5. MAP: 075102 00701
6. PROJECT DESCRIPTION: PROPOSAL FOR A NEW
CONVENIENCE STORE WITH ASSOCIATED FUEL
SALES CONSISTING OF A 5,200 SF. CONVENIENCE
STORE AND 4,608 SF FUEL CANOPY WITH (7) FUEL
PUMPS. THE CONVENIENCE STORE WILL SELL BEER
AND WINE FOR OFFSITE CONSUMPTION. THE
FACILITY WILL OPERATE 24 HOURS.
7. THE PROPOSED SITE IS LOCATED IN FLOOD ZONE X.
AREAS DETERMINED TO BE OUTSIDE 0.2% ANNUAL
CHANCE FLOODPLAIN, FLOOD INSURANCE RATE
MAP NUMBER 47149C0255H DATED JANUARY 5,
2007.
8. ROAD CLASSIFICATIONS:
-FRANKLIN ROAD: PRINCIPAL ARTERIAL, NATIONAL
HWY (100' ROW)
-VETERANS PARKWAY: MINOR ARTERIAL (110' ROW)
9. SITE AREAS:
- IMPERVIOUS AREA: 49,229 SF
- PERVIOUS AREA: 19,596 SF

PARKING REQUIRED: (9'-19' PER CODE)
CONVENIENCE STORE - ONE (1) SPACE PER 300
SQUARE FEET OF FLOOR AREA PLUS 3
QUEUING SPACES FOR EACH DRIVEUP
WINDOW - 5,200/300 = 17.3 SPACES REQUIRED
GASOLINE SALES - 1.5 SPACES FOR EVERY 2
EMPLOYEES EMPLOYED ON THE LARGEST SHIFT -
6 EMPLOYEES = 4.5 SPACES REQUIRED
TOTAL = 22 SPACES REQUIRED

PARKING PROVIDED:
22 SPACES + 2 ADA = 24 PARKING
+ 14 PUMP SPACES
PARKING SPACES DIMENSION = 9.5'x19'

KEY NOTES:

- A. 5200 SQ. FT. CIRCLE K CONVENIENCE STORE, REFER TO ARCH PLANS
- B. ASPHALT PAVING, LIGHT DUTY
- C. 3' LANDSCAPE AREA AT BUILDING, SEE LANDSCAPE PLANS
- D. PYLON SIGN, SEE ELECTRICAL PLANS FOR POWER REQUIREMENTS
- E. CONCRETE SIDEWALK, SEE DETAIL SHEET C500
- F. ELECTRICAL TRANSFORMER PROPOSED LOCATION, CONTRACTOR TO
COORDINATE WITH POWER COMPANY TO DETERMINE FINAL
LOCATION.
- G. TRASH ENCLOSURE PER CIRCLE K STORES, SEE DETAIL SHEET C505
- H. CONCRETE CURB AND GUTTER, SEE DETAIL SHEET C500
- I. CONCRETE PAVING, SEE DETAIL SHEET C500
- J. PARKING LIGHT POLE FIXTURE, SEE LIGHTING PLAN C140
- K. ACCESSIBLE PARKING SPACE AND SIGNAGE, SEE DETAIL SHEET C504
- L. VENT PIPES LOCATION, SEE FUEL SHEETS FOR MORE INFORMATION
- M. FUEL CANOPY AREA, SEE FUEL SHEETS FOR MORE INFORMATION
- N. CO2 WITH STORAGE CABINET
- O. FUEL STORAGE TANKS PER FUEL/GAS PLANS
- P. AIR & WATER MACHINE, PROVIDED BY CIRCLE K STORES VENDOR
- Q. EMERGENCY SHUT-OFF SWITCH, SEE FUEL PLAN
- R. FUEL ISLAND BOLLARD, SEE FUEL CANOPY PLANS
- S. 5' x 5' TREE GRATE OVER 24" PLANTING SOIL, WITH 18" DIA. OPENING
- T. PAVEMENT DIRECTIONAL MARKING
- U. CONCRETE PAVING, REFER TO FUEL CANOPY PLANS
- V. CONCRETE PAVING, REFER TO FUEL/GAS PLANS
- W. FORMAL OPEN SPACE - STAMPED CONCRETE - FRACTURED EARTH
TEXTURE AND TOUCH-UP SKINS
- X. TAPER CURB FROM 6" TO 0" REVEAL IN 5 FEET.

SITE LEGEND:

- KEY NOTE
- NUMBER OF PARKING SPACES
- CONCRETE LIGHT-DUTY
- CONCRETE HEAVY-DUTY
- PAVEMENT SECTION LIGHT-DUTY
- PROPERTY SETBACK LINE
- PROPERTY LINE

GENERAL NOTES:

1. THE UNDERGROUND STRUCTURES AND UTILITIES SHOWN ON THESE PLANS HAVE BEEN PLOTTED FROM AVAILABLE SURVEYS AND RECORD
MAPS. THEY ARE NOT CERTIFIED TO THE ACCURACY OF THEIR LOCATION AND/OR COMPLETENESS. IT IS THE CONTRACTORS
RESPONSIBILITY TO VERIFY THE LOCATION AND EXTENT OF ALL UNDERGROUND STRUCTURES AND UTILITIES PRIOR TO ANY DIGGING OR
CONSTRUCTION ACTIVITIES IN THEIR VICINITY.
2. THE CONTRACTOR SHALL PERFORM ALL WORK IN COMPLIANCE WITH TITLE 29 OF FEDERAL REGULATIONS, PART 1926, SAFETY AND HEALTH
REGULATIONS FOR CONSTRUCTION (OSHA).
3. ALL ROADS AND PRIVATE DRIVES SHALL BE KEPT CLEAN OF MUD, DEBRIS ETC. AT ALL TIMES.
4. REFER TO ARCHITECTURAL DRAWINGS FOR PRECISE BUILDING DIMENSIONS.
5. THE CONTRACTOR SHALL CONSULT THE CONSTRUCTION MANAGER BEFORE DEVIATING FROM THESE PLANS.
6. IN ALL TRENCH EXCAVATIONS, CONTRACTOR MUST LAY THE TRENCH SIDE SLOPES BACK TO A SAFE SLOPE, USE A TRENCH SHIELD OR
PROVIDE SHEETING AND BRACING.
7. ALL EXISTING SURFACE APPURTENANCES (I.E. WATER VALVES, CATCH BASIN FRAMES AND GRATES, MANHOLE COVERS) WITHIN THE
PROJECT LIMITS SHALL BE ADJUSTED TO FINISHED GRADE.
8. AREAS DISTURBED OR DAMAGED AS PART OF THIS PROJECT'S CONSTRUCTION THAT ARE OUTSIDE OF THE PRIMARY WORK AREA SHALL BE
RESTORED, AT THE CONTRACTORS EXPENSE, TO THE SATISFACTION OF THE OWNERS REPRESENTATIVE.
9. THE CONTRACTOR SHALL CALL "MISS DIG" AT LEAST 3 WORKING DAYS (EXCLUDING WEEKENDS AND HOLIDAYS) PRIOR TO CONSTRUCTION.
10. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE APPLICABLE CODES, ORDINANCES, DESIGN STANDARDS AND STANDARD
SPECIFICATIONS WHICH HAVE THE RESPONSIBILITY OF REVIEWING PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF
ALL ITEMS INCLUDED IN THESE PLANS.
11. UNLESS SPECIFICALLY STATED, THE CONTRACTOR SHALL APPLY FOR AND OBTAIN ALL NECESSARY PERMITS AS REQUIRED FOR
CONSTRUCTION OF THIS PROJECT PRIOR TO THE BEGINNING OF WORK FROM THE PREVIOUSLY MENTIONED AGENCIES.
12. THE CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF
CONSTRUCTION OF THE PROJECT, INCLUDING THE SAFETY OF ALL PERSONS AND PROPERTY. THIS REQUIREMENT SHALL BE MADE TO
APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.
13. WHEN ANY EXISTING UTILITY REQUIRES ADJUSTMENT OR RELOCATION, THE CONTRACTOR SHALL NOTIFY THE PROPER UTILITY COMPANY
AND COORDINATE THE WORK ACCORDINGLY. THERE SHALL BE NO CLAIM MADE BY THE CONTRACTOR FOR ANY COSTS CAUSED BY DELAYS IN
CONSTRUCTION DUE TO THE ADJUSTMENT OR RELOCATION OF UTILITIES.
14. THE CONTRACTOR IS TO VERIFY THAT THE PLANS AND SPECIFICATIONS THAT HE/SHE IS BUILDING FROM ARE THE VERY LATEST PLANS AND
SPECIFICATIONS THAT HAVE BEEN APPROVED BY ALL APPLICABLE PERMIT-ISSUING AGENCIES AND THE OWNER. ALL ITEMS CONSTRUCTED
BY THE CONTRACTOR PRIOR TO RECEIVING THE FINAL APPROVAL AND PERMITS HAVING TO BE ADJUSTED OR RE-DONE, SHALL BE DONE AT
THE CONTRACTORS EXPENSE.
15. SHOULD THE CONTRACTOR ENCOUNTER CONFLICT BETWEEN THESE PLANS AND SPECIFICATIONS, EITHER AMONG THEMSELVES OR WITH
THE REQUIREMENTS OF ANY AND ALL REVIEWING AND PERMIT-ISSUING AGENCIES, HE/SHE SHALL SEEK CLARIFICATION IN WRITING FROM
THE CONSTRUCTION MANAGER BEFORE COMMENCEMENT OF CONSTRUCTION. FAILURE TO DO SO SHALL BE AT THE SOLE EXPENSE OF THE
CONTRACTOR.
16. THE CONTRACTOR SHALL FURNISH AS-BUILT DRAWINGS INDICATING ALL CHANGES AND DEVIATIONS FROM APPROVED DRAWINGS.
17. ALL WORK WITHIN THE PUBLIC RIGHT OF WAY SHALL CONFORM TO THE STANDARDS OF THE TENNESSEE DEPARTMENT OF
TRANSPORTATION.
18. SOLID WASTE WILL BE COLLECTED BY A PRIVATE HAULER.
19. CONTRACTOR TO COORDINATE WITH THE CITY OF MURFREESBORO TRANSPORTATION DEPARTMENT PRIOR TO THE COMMENCEMENT OF
ANY WORK IN THE PUBLIC RIGHT OF WAY IN THIS AREA TO AVOID DAMAGE TO THE TRAFFIC SIGNAL DEVICES. CONTACT RAM
BALACHANDRAN, CITY TRAFFIC ENGINEER, AT (615) 893-6441
20. SEASONAL OUTDOOR SALES WILL BE PROVIDED IN AREAS TO NOT TO IMPEDER ON VEHICULAR OR PEDESTRIAN TRAFFIC OR CIRCULATION,
LANDSCAPE AREAS, SIDEWALKS AND PARKING STALL MUST REMAIN FULLY OPERATIONAL AT ALL TIMES.
21. ANY UTILITY STRUCTURE, LIGHT POLES, SIGN, OR OTHER FEATURE MAY NOT BE ADDED TO ANY REQUIRED LANDSCAPE ISLAND IN SUCH A
MANNER THAT WOULD DISPLACE THE REQUIRED LANDSCAPE ELEMENT(S) (TREES, SHRUBS, ETC.).
22. CONTRACTOR TO COORDINATE WITH THE TRAFFIC ENGINEER IN THE CITY TRANSPORTATION DEPARTMENT PRIOR TO COMMENCEMENT OF
WORK IN THIS AREA TO AVOID DAMAGE TO TRAFFIC SIGNAL DEVICES
23. AN ENGINEERS CERTIFICATION OF THE CONSTRUCTION OF THE STORMWATER MANAGEMENT FACILITIES MUST BE PROVIDED TO THE CITY
ENGINEER PRIOR TO ISSUANCE CERTIFICATE OF OCCUPANCY
24. A STORMWATER FEE CREDIT APPLICATION MUST BE SUBMITTED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT
25. A STORMWATER FACILITIES OPERATION AND MAINTENANCE PLAN AND A STORMWATER FACILITIES MAINTENANCE AGREEMENT MUST BE
SUBMITTED PRIOR TO ISSUANCE OF A BUILDING PERMIT
26. THE STORMWATER FACILITIES MAINTENANCE AGREEMENT MUST BE RECORDED PRIOR TO CERTIFICATE OF OCCUPANCY

PROFESSIONAL SEAL

PROFESSIONAL IN CHARGE

PROJECT MANAGER

QUALITY CONTROL

DRAWN BY

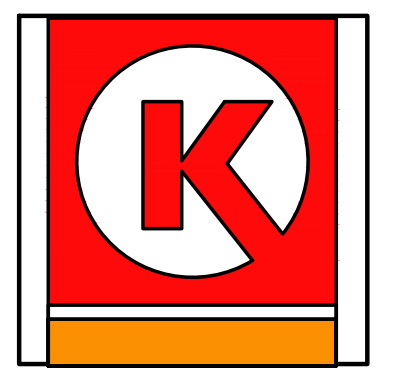
DATE
NOV 04, 2022

PROJECT NAME

CIRCLE K STORES INC.
NTI
SEC OF FRANKLIN RD AND
VETERAN'S PKWY
MIDWEST BU

SEC FRANKLIN RD & VETERAN'S PKWY

MURFREESBORO, TN



CIRCLE K STORES INC.

PROJECT NUMBER

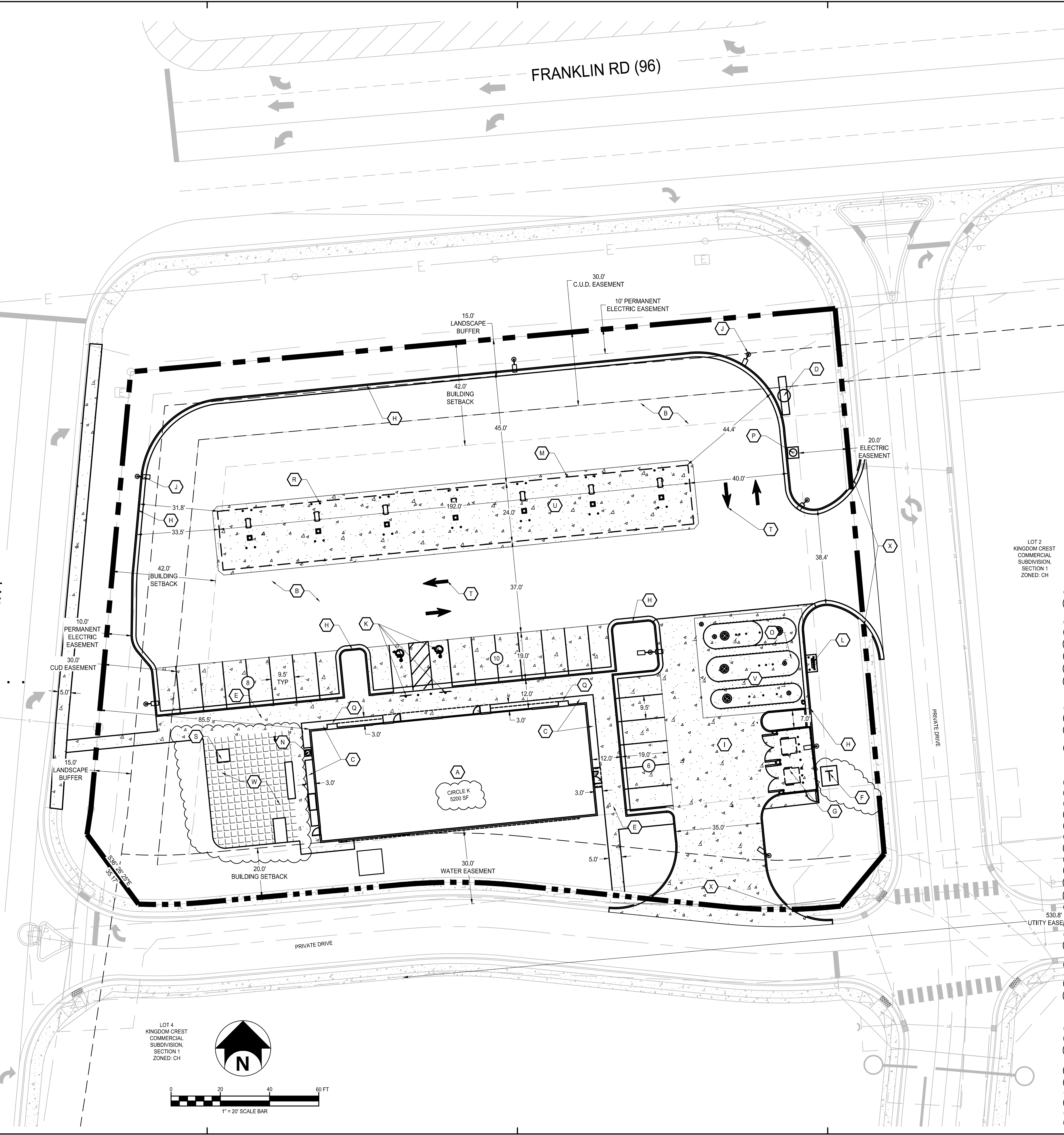
015031.00

SHEET TITLE

SITE PLAN

SHEET NUMBER

C100



Drawing Name: I:\Client\151031.00 - Circle K\Bldg\TN-SEC-Franklin Rd & Veterans Pkwy\DWG\Site Plan.dwg
 Date: 11/04/2022 10:53:00 AM
 User: rjones
 Plot Date: 11/04/2022 10:53:00 AM
 Plot User: rjones
 Plot Scale: 1/20
 Plot Orientation: Landscape
 Plot Size: 11x17
 Plot Color: Black
 Plot Lineweight: 0.20
 Plot Linetype: Solid
 Plot Font: Arial, 10
 Plot Title: SITE PLAN
 Plot Sheet: C100
 Plot Project: 015031.00
 Plot Client: Circle K Stores Inc.
 Plot Address: 935 E Tallmadge Ave, Akron, OH 44310
 Plot Phone: (330) 444-1111
 Plot Fax: (330) 444-1112
 Plot Email: info@circlek.com
 Plot Website: www.circlek.com
 Plot Notes:



... creating a better quality of life

MEMORANDUM

DATE: January 18, 2023
TO: Water Resources Board
FROM: Valerie H. Smith
SUBJECT: Sewer Easement Abandonment
Circle K – Kingdom Crest Commercial

BACKGROUND

This easement abandonment request is from Bergmann on behalf of Circle K Stores, Inc. They are requesting the abandonment of an existing sanitary sewer easement extending from the southern property, north, on the western side of the property. The sewer main and easement are not needed for the property, as the Circle K has opted to connect to sewer at a location to the east.

This request will also go before the Planning Commission as a mandatory referral for approval.

RECOMMENDATION

Staff recommends approval of abandoning this Sanitary Sewer Easement.

FISCAL IMPACT

This easement was dedicated by plat.

ATTACHMENTS

Easement Abandonment Request & Exhibit

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Use of RFCSP Method of Procurement for Downtown Wayfinding Program Consultant

Department: Purchasing

Presented by: Cathy Smith, Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

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

Staff Recommendation

Approve RFCSP process for procurement of consulting services for the design and implementation of the Downtown Wayfinding Program.

Background Information

At the February Council Workshop, Neel-Schaffer presented Council with a Downtown Parking Study. At that time, Council provided direction to pursue changes in downtown parking based on this study. Among the recommendations was implementation of a strong Wayfinding Program. Staff proposes an RFCSP for professional services for the design and implementation of a Wayfinding Program for downtown parking.

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

Council Priorities Served

Responsible budgeting

Use of a proper procurement method assists in securing contacts with the most qualified and cost-effective vendor.

Fiscal Impact

None. Contracts resulting from the process will be submitted for approval at a later date.

COUNCIL COMMUNICATION

Meeting Date: 2/16/2023

Item Title: Asphalt and Concrete Purchase Report
Department: Street
Presented by: Raymond Hillis, Executive Director, Public Works

Requested Council Action:

Ordinance
Resolution
Motion
Direction
Information

Summary

Report of asphalt and concrete purchases.

Background Information

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

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

Council Priorities Served

Responsible budgeting

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

Maintain public safety

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

Fiscal Impacts

Asphalt purchases, \$100,000, and concrete purchases, \$55,000, are funded by the Department's FY23 Budget.

Attachments

Asphalt and Concrete Purchases Report

STREET DEPARTMENT ASPHALT PURCHASES FY 23

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
10/24/2022	Hawkins	411E Mix	\$ 92.91	4.77	\$ 443.18	\$ 443.18

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/5/2022	Blue Water	E Mix 64-22	\$ 64.95	1.04	\$ 67.55	\$ 67.55
7/8/2022	Blue Water	E Mix 64-22 RP	\$ 64.95	2.04	\$ 132.50	\$ 200.05
7/13/2022	Blue Water	E Mix 64-22 RP	\$ 64.95	2.76	\$ 179.26	\$ 379.31
7/13/2022	Blue Water	BM2 64-22 RP	\$ 58.05	4.30	\$ 249.62	\$ 628.93
7/14/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	7.02	\$ 607.51	\$ 1,236.44
7/14/2022	Blue Water	E Mix 64-22	\$ 90.03	3.04	\$ 273.69	\$ 1,510.13
7/20/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	1.13	\$ 97.79	\$ 1,607.92
7/29/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	1.05	\$ 90.87	\$ 1,698.79
8/3/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	8.70	\$ 752.90	\$ 2,451.69
8/4/2022	Blue Water	E Mix 64-22	\$ 90.03	7.35	\$ 661.72	\$ 3,113.41
8/9/2022	Blue Water	E Mix 64-22	\$ 90.03	1.19	\$ 107.14	\$ 3,220.55
8/11/2022	Blue Water	E Mix 64-22	\$ 90.03	2.03	\$ 182.76	\$ 3,403.31
8/12/2022	Blue Water	E Mix 64-22	\$ 90.03	2.25	\$ 202.57	\$ 3,423.12
8/22/2022	Blue Water	E Mix 64-22 RP	\$ 74.01	0.81	\$ 59.95	\$ 3,280.50
8/23/2022	Blue Water	E Mix 64-22	\$ 90.03	7.94	\$ 714.84	\$ 4,137.96
8/25/2022	Blue Water	E Mix 64-22	\$ 90.03	9.09	\$ 818.37	\$ 4,956.33
8/25/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	2.49	\$ 215.48	\$ 5,171.81
8/31/2022	Blue Water	E Mix 64-22	\$ 90.03	2.08	\$ 187.26	\$ 5,359.08
8/31/2022	Blue Water	E Mix 64-22	\$ 90.03	7.30	\$ 657.22	\$ 6,684.32
9/2/2022	Blue Water	E Mix 64-22	\$ 90.03	7.42	\$ 668.02	\$ 6,027.10
9/7/2022	Blue Water	E Mix 64-22	\$ 90.03	8.77	\$ 789.56	\$ 7,473.88
9/8/2022	Blue Water	E Mix 64-22	\$ 90.03	8.61	\$ 775.16	\$ 8,249.04
9/12/2022	Blue Water	E Mix 64-22	\$ 90.03	15.13	\$ 1,362.15	\$ 9,611.19
9/20/2022	Blue Water	E Mix 64-22	\$ 90.03	1.22	\$ 109.84	\$ 9,721.03
9/22/2021	Blue Water	E Mix 64-22	\$ 90.03	2.04	\$ 183.66	\$ 9,904.69
9/30/2022	Blue Water	E Mix 64-22	\$ 90.03	0.73	\$ 65.72	\$ 9,970.41
9/30/2021	Blue Water	E Mix 64-22	\$ 90.03	10.62	\$ 956.12	\$ 10,926.53
10/7/2022	Blue Water	E Mix 64-22	\$ 90.03	7.38	\$ 664.42	\$ 11,590.95
10/14/2022	Blue Water	E Mix 64-22	\$ 90.03	2.12	\$ 190.86	\$ 11,781.81
10/21/2022	Blue Water	E Mix 64-22	\$ 90.03	8.07	\$ 726.54	\$ 12,508.35
10/26/2022	Blue Water	E Mix 64-22 RP	\$ 90.03	1.45	\$ 130.54	\$ 11,912.35
10/28/2022	Blue Water	E Mix 64-22 RP	\$ 86.54	2.10	\$ 181.73	\$ 12,690.08

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/19/2022	Vulcan	411E PG 64-22	\$ 87.00	1.02	\$ 88.74	\$ 88.74
7/19/2022	Vulcan	BITM-AC 5.6	\$ 12.72	1.02	\$ 12.72	\$ 101.46
7/26/2022	Vulcan	411E PG 64-22	\$ 87.00	4.30	\$ 374.10	\$ 475.56
7/26/2022	Vulcan	BITM-AC 5.6	\$ 12.72	4.30	\$ 54.70	\$ 530.26
7/29/2022	Vulcan	411E PG 64-22	\$ 87.00	18.10	\$ 1,574.70	\$ 2,104.96
7/29/2022	Vulcan	BITM-AC 5.6	\$ 12.72	18.10	\$ 230.23	\$ 2,335.19
8/10/2022	Vulcan	411E PG 64-22	\$ 87.00	6.26	\$ 544.62	\$ 2,879.81
8/10/2022	Vulcan	BITM-AC 5.6	\$ 12.76	6.26	\$ 79.88	\$ 2,959.69
8/10/2022	Vulcan	411E PG 64-22	\$ 87.00	8.21	\$ 714.27	\$ 3,673.96
8/10/2022	Vulcan	BITM-AC 5.6	\$ 12.76	8.21	\$ 104.76	\$ 3,778.72
8/16/2022	Vulcan	411E PG 64-22	\$ 87.00	1.57	\$ 136.59	\$ 3,915.31
8/16/2022	Vulcan	BITM-AC 5.6	\$ 12.76	1.57	\$ 20.03	\$ 3,935.34
9/6/2022	Vulcan	411E PG 64-22	\$ 87.00	5.51	\$ 479.37	\$ 4,414.71
9/6/2022	Vulcan	BITM-AC 5.6	\$ 12.23	5.51	\$ 67.39	\$ 4,482.10
9/13/2022	Vulcan	307BM PG 64-22	\$ 75.50	5.19	\$ 391.85	\$ 4,873.95
9/13/2022	Vulcan	BITM-AC 5.6	\$ 9.17	5.19	\$ 47.59	\$ 4,921.54
9/30/2022	Vulcan	307BM PG 64-22	\$ 75.50	2.07	\$ 156.29	\$ 5,077.83
9/30/2022	Vulcan	BITM-AC 5.6	\$ 9.17	2.07	\$ 18.98	\$ 5,096.81

12/13/2022	Vulcan	411E PG 64-22	\$	87.00	2.06	\$	179.22	\$	5,276.03
12/13/2022	Vulcan	BITM-AC 5.6	\$	8.03	2.06	\$	16.54	\$	5,292.57
12/13/2022	Vulcan	411E PG 64-22	\$	87.00	2.14	\$	186.18	\$	5,478.75
12/13/2022	Vulcan	BITM-AC 5.6	\$	8.03	2.14	\$	17.18	\$	5,495.93

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
11/21/2022	Wiregrass Construction	411-E	\$ 86.54	2.51	\$ 217.22	\$217.22
11/22/2022	Wiregrass Construction	411-E	\$ 86.54	2.23	\$ 193.98	\$411.20
11/28/2022	Wiregrass Construction	411-E	\$ 86.54	1.87	\$ 161.83	\$573.03
11/29/2022	Wiregrass Construction	411-E	\$ 86.54	2.08	\$ 180.00	\$753.03
12/13/2022	Wiregrass Construction	411-E	\$ 86.54	10.08	\$ 872.32	\$1,625.35
12/15/2022	Wiregrass Construction	411-E	\$ 86.54	2.98	\$ 257.89	\$1,883.24

STREET DEPARTMENT CONCRETE PURCHASES FY 23

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/1/2022	Nashville Ready Mix	Flowable Fill	\$ 112.00	2		\$ 224.00	\$ 224.00
7/6/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	3		\$ 372.00	\$ 596.00
7/6/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 611.00
7/6/2022	Nashville Ready Mix	Flowable Fill	\$ 112.00	2		\$ 224.00	\$ 835.00
7/7/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 1,083.00
7/7/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 1,093.00
7/8/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	3		\$ 372.00	\$ 1,465.00
7/8/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 1,480.00
7/11/2022	Nashville Ready Mix	Flowable Fill	\$ 112.00	5		\$ 560.00	\$ 2,040.00
7/11/2022	Nashville Ready Mix	Min Load charge	\$ 75.00	1		\$ 75.00	\$ 2,115.00
7/11/2022	Nashville Ready Mix	fuel surcharge	\$ 50.00	1		\$ 50.00	\$ 2,165.00
7/14/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 2,289.00
7/14/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 2,294.00
7/20/20221	Nashville Ready Mix	3413 CF5	\$ 124.00	3		\$ 372.00	\$ 2,666.00
7/20/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 2,681.00
7/21/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 2,929.00
7/21/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 2,939.00
7/25/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 3,187.00
7/25/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 3,197.00
7/27/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 3,445.00
7/27/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 3,455.00
7/28/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	2		\$ 248.00	\$ 3,703.00
7/28/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 3,713.00
8/9/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 3,837.00
8/9/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 3,842.00
8/12/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1.5		\$ 186.00	\$ 4,028.00
8/12/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1.5		\$ 7.50	\$ 4,035.50
8/16/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 4,283.50
8/16/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 4,293.50
8/17/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 4,541.50
8/17/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 4,551.50
8/18/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 4,799.50
8/18/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 4,809.50
8/19/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 4,933.50
8/19/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	1		\$ 3.00	\$ 4,936.50
8/25/2022	Nashville Ready Mix	3413 LF5	\$ 123.00	2		\$ 246.00	\$ 5,182.50
8/25/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 5,197.50
8/25/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 5,321.50
8/26/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 5,569.50
8/26/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 5,579.50
8/29/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 5,827.50
8/29/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 5,837.50
8/31/2022	Nashville Ready Mix	4451 LF5	\$ 125.00	2		\$ 250.00	\$ 6,087.50
8/31/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 6,097.50
9/16/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	2		\$ 248.00	\$ 6,345.50
9/19/2022	Nashville Ready Mix	3413 LF5	\$ 123.00	3		\$ 369.00	\$ 6,714.50
9/19/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 6,729.50
9/22/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2.5		\$ 310.00	\$ 7,039.50
9/22/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2.5		\$ 12.50	\$ 7,052.00
9/23/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	2.5		\$ 310.00	\$ 7,362.00
9/23/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	2.5		\$ 7.50	\$ 7,369.50
9/26/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 7,493.50
9/26/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	1		\$ 3.00	\$ 7,496.50
9/27/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 7,620.50
9/27/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 7,625.50
9/28/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2		\$ 248.00	\$ 7,873.50
9/28/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 7,883.50
10/3/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	2		\$ 248.00	\$ 8,131.50
10/3/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	2		\$ 6.00	\$ 8,137.50
10/4/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	2.5		\$ 310.00	\$ 8,447.50
10/4/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	2.5		\$ 7.50	\$ 8,455.00
10/5/2022	Nashville Ready Mix	3500 CF5	\$ 124.00	1.5		\$ 186.00	\$ 8,641.00
10/5/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	1.5		\$ 4.50	\$ 8,645.50
10/10/2022	Nashville Ready Mix	3413 CF5	\$ 124.00	1		\$ 124.00	\$ 8,769.50
10/10/2022	Nashville Ready Mix	Half Fibers	\$ 3.00	1		\$ 3.00	\$ 8,772.50
10/13/2022	Nashville Ready Mix	3600 CF5	\$ 124.00	1		\$ 124.00	\$ 8,896.50
10/13/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 8,901.50
10/14/2022	Nashville Ready Mix	3500LF5	\$ 123.00	1		\$ 123.00	\$ 9,024.50
10/14/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 9,029.50
10/18/2022	Nashville Ready Mix	4500PSI Chips AE	\$ 128.00	4		\$ 512.00	\$ 9,541.50
10/18/2022	Nashville Ready Mix	Min Load charge	\$ 75.00	1		\$ 75.00	\$ 9,616.50
10/18/2022	Nashville Ready Mix	Fuel surcharge	\$ 50.00	1		\$ 50.00	\$ 9,666.50
10/18/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	4		\$ 20.00	\$ 9,686.50
10/19/2022	Nashville Ready Mix	3500PSI Chips AE	\$ 124.00	2		\$ 248.00	\$ 9,934.50
10/19/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 9,944.50
10/21/2022	Nashville Ready Mix	3500PSI Chips AE	\$ 124.00	2		\$ 248.00	\$ 10,192.50
10/21/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 10,202.50
10/24/2022	Nashville Ready Mix	3500PSI Chips AE	\$ 124.00	2		\$ 248.00	\$ 10,450.50
10/24/2022	Nashville Ready Mix	Full Fibers	\$ 5.00	4		\$ 20.00	\$ 10,470.50

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: MWRD Operations & Maintenance Vehicle Purchase

Department: Water Resources

Presented by: Darren Gore, Assistant City Manager

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Purchase 2022 F-250 4x2 SD Super Cab with utility bed.

Staff Recommendation

Approve the purchase contract with Lonnie Cobb Ford.

Background Information

MWRD proposes to replace a 2007 Ford F-250 that is required for general usage in operating and maintenance activities. The replacement was recommended by Fleet Services due to cost of maintenance and age.

The purchase will be made from Lonnie Cobb Ford in Hendersonville using the State vehicle cooperative purchasing contract, which is permitted under State statute and the City's purchasing Code.

Council Priorities Served

Responsible budgeting

By utilizing the statewide contract, the Department benefits from competitive pricing.

Fiscal Impact

The expenditure, \$51,915, is funded by the MWRD's FY23 Distribution Capital Budget.

Attachments

Contract for Lonnie Cobb Ford

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
LONNIE COBB FORD, LLC.
FOR PURCHASE OF
2022 F-250 4X2 SD SUPER CAB 8' BOX 164" WB SRW XL (X2A)**

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 **LONNIE COBB FORD, LLC**, 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. 209/72318 with Lonnie Cobb Ford, LLC*
- *Sales Quotation dated February 2, 2023, from Lonnie Cobb Ford, LLC for one (1) 2022 Ford F-250 4x2 SuperCab 8’ Box 164” WB SRW XL (X2A)*
- *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, Contractor’s State of Tennessee Contract No. 209/72318 with Lonnie Cobb Ford, LLC*
- *Sales Quotation dated February 2, 2023, from Lonnie Cobb Ford, LLC for one (1) 2022 Ford F-250 4x2 SuperCab 8’ Box 164” WB SRW XL (X2A)*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the following vehicle and optional equipment as set forth in the Contractor’s State of Tennessee Contract No. 209/72318 with Lonnie Cobb Ford, LLC, and Contractor’s Sales Quotation dated February 2, 2023, from Lonnie Cobb Ford, LLC for one (1) 2022 Ford F-250 4x2 SuperCab 8’ Box 164” WB SRW XL (X2A).
2. **Term.** The term of this Contract shall be from the Effective Date to the expiration of the Contractor’s State of Tennessee Contract No. 209/72318 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 thirty (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 Contract. 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 fifteen (15) days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, the City has the right to

immediately terminate this Contract. 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 this Contract immediately upon written notice to Contractor.

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

- a. The price for the goods and other items to be provided under this Contract is set forth in the Sales Quotation dated February 2, 2023, from Lonnie Cobb Ford, LLC, for a 2022 Ford F-250 4x2 SuperCab 8' Box 164" WB SRW XL (X2A) reflecting a **Total Purchase Price of Fifty-One Thousand, Nine Hundred Fifteen Dollars and Zero Cents (\$51,915.00)**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the 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 the Water Resources Department shall be made within 180 days of issuance of Purchase Order to Attn: Adam Todd – Water Resources Department – 1725 S. Church Street, Murfreesboro, TN 37130. Contact Person Adam Todd (tel. 615-642-0373; email: atodd@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. 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 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:

Lonnie Cobb Ford
Stephen Blackstock, Fleet Manager
1618 Highway 45 North
Henderson, TN 38340
Lcag.fleet@gmail.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 Contract 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 Contract, neither this Contract 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 Contract 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 this Contract, 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

Lonnie Cobb Ford, LLC.

By: _____
Shane McFarland, Mayor

By: _____
Steven Blackstock, Fleet Manager

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Planning Commission Recommendations
Department: Planning
Presented by: Matthew Blomeley, AICP, Assistant Planning Director
Requested Council Action:

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

Summary

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

Staff Recommendation

Schedule public hearings for the items below on April 6, 2023.

Background Information

During its regular meeting on February 1, 2023, the Planning Commission conducted public hearings on the items listed below. After the public hearings, the Planning Commission discussed the matters and then voted to recommend their approval.

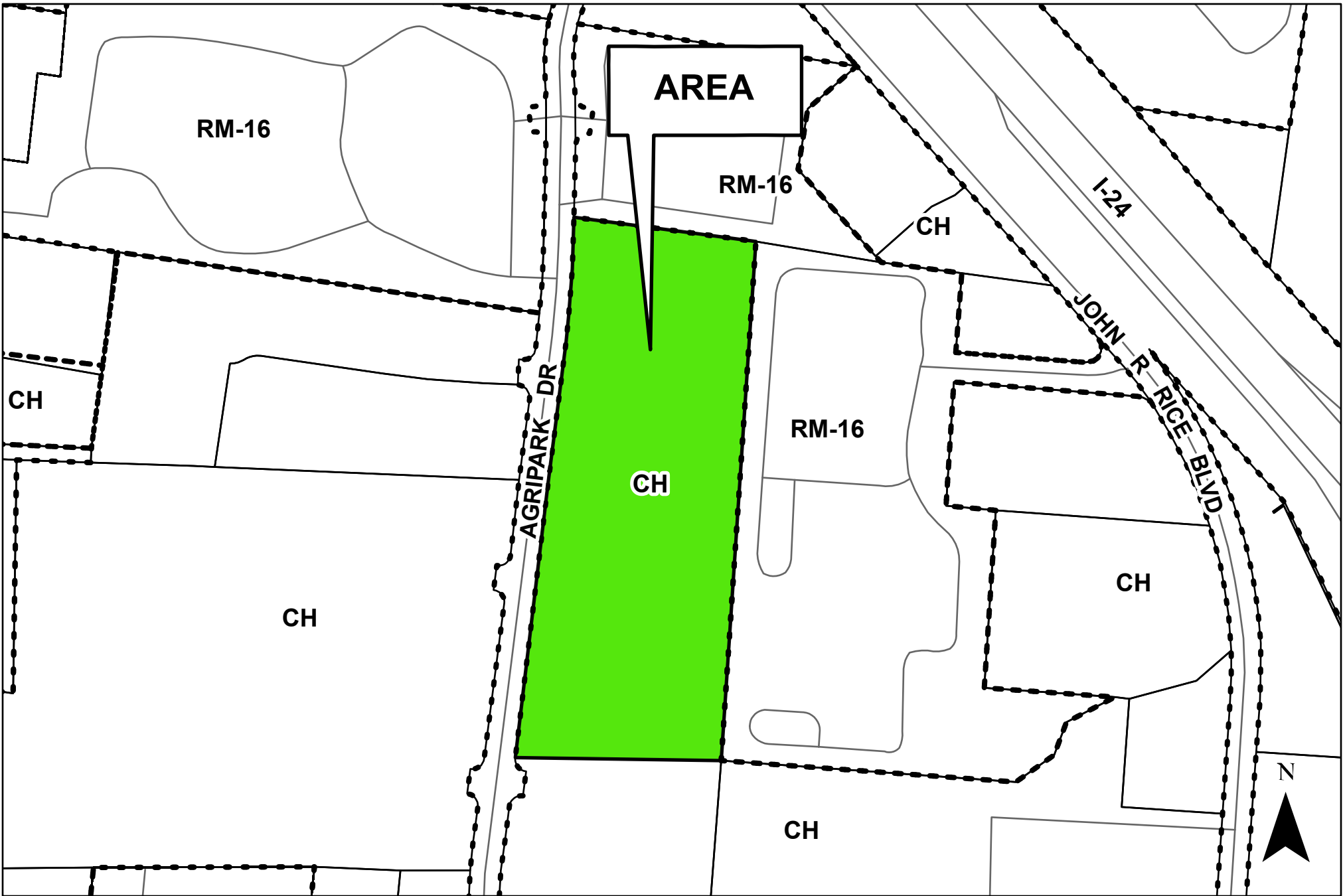
- a. Zoning application [2022-427] for approximately 9.8 acres located along the east side of Agripark Drive to be rezoned from CH to PRD (Arden at Murfreesboro PRD), FC Murfreesboro, LLC applicant.
- b. Zoning Ordinance amendment [2023-801] regarding amendments to Section 34: Floodplain Zoning, City of Murfreesboro Planning Department applicant.
- c. Annexation petition and plan of services [2023-501] for approximately 146 acres located along Highway 99 south of Clearidge Drive, City of Murfreesboro applicant.

Fiscal Impact

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

Attachments:

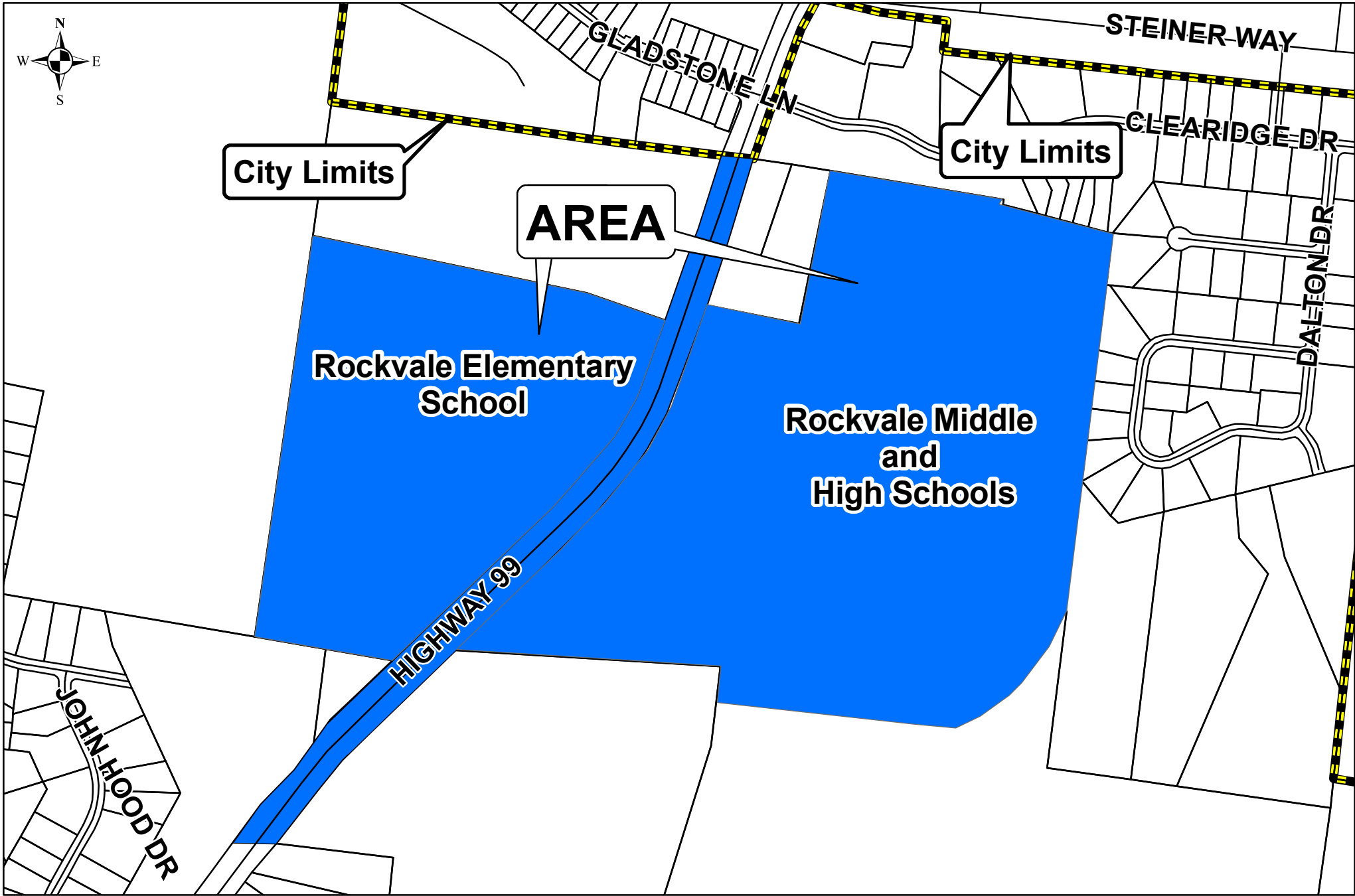
1. Map for zoning application for approx. 9.8 acres located along Agripark Drive
2. Map for annexation petition for approx. 146 acres located along Highway 99



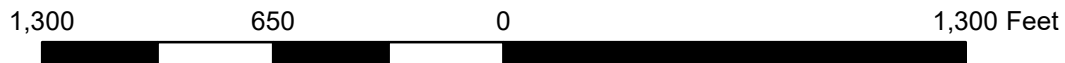
Rezoning request for property along Agripark Drive
CH to PRD (Arden at Murfreesboro PRD)



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



Annexation Request for property along Highway 99



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

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Presentation of Annual Audit Report

Department: Finance

Presented by: Jennifer Brown

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Presentation of FY2022 Annual Comprehensive Financial Report (ACFR) report by Jobe, Hastings & Associates.

Staff Recommendation

Approve the FY2022 ACFR as submitted.

Background Information

Annually, the City is audited by an independent audit firm as required by the State of Tennessee. The audit opinion given for FY2022 is the financial statements present fairly, in all material respects, the financial position of the City of Murfreesboro, in accordance with accounting principles generally accepted in the US.

Council Priorities Served

Responsible budgeting

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

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Brinkley Road Improvement Project - Change Order #2

Department: Engineering

Presented by: Michele Emerson – City Engineer

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Change Order #2 Brinkley Road Improvement Project.

Staff Recommendation

Approve change order #2 with Bell and Associates, LLC for the Brinkley Road Phase 1 project.

Background Information

This change order is for the addition of bridge drains to be added to the construction contract. During the construction of this project, it was discovered that these items were needed and not included in the original quantities for the job. A total of 11 drains will be installed with this addition, six in the phase 1 deck and 5 within the phase 2 parapet wall. A breakdown of this addition is included in the attached change order.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

The amount of the change order, \$3,667 increases the construction amount to \$3,859,457 which is within the project budget funded by the FY16, FY21, and FY22 CIP Bonds.

Attachments

Brinkley Rd. Phase 1 – Change Order #2

CHANGE ORDER NO. 2

PROJECT: Brinkley Road Phase 1
Murfreesboro, Tennessee

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

DATE: February 9, 2023

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

DESCRIPTION:

These additional items have been requested due to the ponding that has been observed in some areas of the bridge. A total of 11 drains will be installed, six (6) with the phase 1 deck and five (5) within the phase 2 parapet wall. The following items are requested to be added:

ITEMS TO BE ADDED

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
610-10.45	Deck Drains (PVC Drain)	EA	6	\$418.98	\$2,513.88
610-10.46	Deck Drains (Parapet)	EA	5	\$230.66	\$1,153.30

The Original Contract Sum was..... \$3,839,997.40
 The Contract Sum will be increased by this Change Order..... \$ 3,667.18
 The Final Contract Amount including all Change Orders..... \$3,859,457.38

ENERGY LAND & INFRASTRUCTURE, LLC

ENGINEER

BY: 

DATE 2/9/23

CITY OF MURFREESBORO

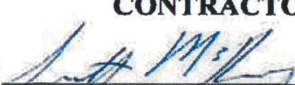
ENGINEERING DEPT

BY: 
Executive Director

DATE: 2-9-23

BELL CONSTRUCTION

CONTRACTOR

BY: 

DATE 2/9/2023

CITY OF MURFREESBORO

OWNER

BY: _____
Mayor

DATE: _____



January 30, 2023

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

**Re: Brinkley Road
Contract Budget Extension**

Dear Mr. Griffith:

This letter serves as recommendation for the Brinkley Road Bridge project to add drains to the deck and parapet wall due to the ponding that has been observed. The requested additional items have been requested due to the ponding that has been observed in the Phase I section of the bridge as well. A total of 11 drains will be installed, six (6) with the Phase I deck and five (5) within the Phase II parapet wall. The following items are requested to be added and:

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
610-10.45	Deck Drains (PVC Drain)	EA	6	\$ 418.98	\$ 2,513.88
610-10.45	Deck Drains (Parapet)	EA	5	\$ 230.66	\$ 1,153.30

Total	\$ 3,667.18
-------	-------------

Please see the attached letter from Bell and Associates Construction dated January 30th, 2023. ELI, recommends approval of these additional items of \$3,667.18. If you have any questions, please feel free to give me a call.

Regards,

ENERGY LAND & INFRASTRUCTURE, LLC

Uri Sowell, PE

Attachments



January 30, 2023

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

Re: **Request for Change Order No. 2**
Contract: Brinkley Road Bridge Over Overall Creek
County: Rutherford

Mr. Sowell:

The City of Murfreesboro has requested additional drainage measures be added to the Brinkley Road Bridge over Overall Creek. Per the City's request for pricing, below is BELL's pricing to perform the added scope of work:

Description	Unit	Quantity	Unit Price	Total Item Price
610-10.45 - Deck Drains (PVC Drain)	EA	6	\$ 418.98	\$ 2,513.88
610-10.46 - Deck Drains (Parapet)	EA	5	\$ 230.66	\$ 1,153.30
Total			\$	3,667.18

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

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

Sincerely,

BELL & ASSOCIATES CONSTRUCTION, LLC

Abby Redditt, PE
Project Manager



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

CHANGE ORDER NO.:	2
JOB:	BRINKLEY ROAD BRIDGE
DESCRIPTION:	Murfreesboro - Bridge Replacement
DATE:	Friday, January 27, 2023

	DESCRIPTION	QUANTITY	UNIT	LABOR		EQUIPMENT		MATERIAL		SUBCONTRACTOR		TOTAL COSTS	COMMENTS
				UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL		
	BRIDGE DECK DRAINS (PVC)	6.00	EACH										
1	Drilling a 4" Diameter Core with Larger Embed Core	1.00	LS		\$		\$		\$	1.00	\$ 1,000.00	\$ 1,000.00	True-Line Cutting and Coring
2	Installing the PVC with Flange	6.00	HRS	50.00	\$ 300.00		\$		\$		\$	300.00	2 Men @ 1 HR/Hole
3	Methacrylate	1.00	GAL	100.00	\$ 100.00		\$	500.00	\$ 500.00		\$	600.00	
4	PVC with Flange	6.00	EACH		\$		\$	25.00	\$ 150.00		\$	150.00	
5					\$		\$		\$		\$	\$	
6					\$		\$		\$		\$	\$	
7					\$		\$		\$		\$	\$	
8					\$		\$		\$		\$	\$	
9					\$		\$		\$		\$	\$	
10					\$		\$		\$		\$	\$	
11					\$		\$		\$		\$	\$	
12					\$		\$		\$		\$	\$	
13					\$		\$		\$		\$	\$	
14					\$		\$		\$		\$	\$	
15					\$		\$		\$		\$	\$	
16					\$		\$		\$		\$	\$	
17					\$		\$		\$		\$	\$	
18					\$		\$		\$		\$	\$	
19					\$		\$		\$		\$	\$	
20					\$		\$		\$		\$	\$	
	SUBTOTAL				\$ 400.00		\$	650.00	\$ 650.00	5.00%	\$ 50.00	\$ 1,050.00	\$ 2,459.99
	LABOR BURDEN			30.44%	\$ 121.76							\$ 121.76	
	LABOR PROFIT AND OVERHEAD (20%)			20.00%	\$ 80.00							\$ 80.00	
	MATERIAL PROFIT AND OVERHEAD (15%)							15.00%	\$ 97.50			\$ 97.50	
	SALES TAX							9.25%	\$ 60.13			\$ 60.13	
	FEE FOR SUBS									5.00%	\$ 50.00	\$ 50.00	
	SUBTOTAL				\$ 601.76		\$	807.63	\$ 807.63		\$ 1,050.00	\$ 2,459.99	
	Insurance Umbrella									0.13%		\$ 3.12	
	Builder's Risk									0.78%		\$ 19.38	
	SUBTOTAL										\$ 1.30%	\$ 31.16	
	BOND											\$	
	TOTAL											\$	2,513.85



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

CHANGE ORDER NO.:	2
JOB:	BRINKLEY ROAD BRIDGE
DESCRIPTION:	Murfreesboro - Bridge Replacement
DATE:	Friday, January 27, 2023

	DESCRIPTION	QUANTITY	UNIT	LABOR		EQUIPMENT		MATERIAL		SUBCONTRACTOR		TOTAL COSTS	COMMENTS
				UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL		
	420-10.09: Concrete Parapet Bridge Drain	5.00	EACH										
1	Labor	5.00	EACH	100.00	\$ 500.00		\$ -		\$ -		\$ -	\$ 500.00	
2	Misc Material	5.00	EACH	50.00	\$ 250.00		\$ -		\$ -		\$ -	\$ 250.00	
3					\$ -		\$ -		\$ -		\$ -	\$ -	
4					\$ -		\$ -		\$ -		\$ -	\$ -	
5					\$ -		\$ -		\$ -		\$ -	\$ -	
6					\$ -		\$ -		\$ -		\$ -	\$ -	
7					\$ -		\$ -		\$ -		\$ -	\$ -	
8					\$ -		\$ -		\$ -		\$ -	\$ -	
9					\$ -		\$ -		\$ -		\$ -	\$ -	
10					\$ -		\$ -		\$ -		\$ -	\$ -	
11					\$ -		\$ -		\$ -		\$ -	\$ -	
12					\$ -		\$ -		\$ -		\$ -	\$ -	
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16					\$ -		\$ -		\$ -		\$ -	\$ -	
17					\$ -		\$ -		\$ -		\$ -	\$ -	
18					\$ -		\$ -		\$ -		\$ -	\$ -	
19					\$ -		\$ -		\$ -		\$ -	\$ -	
20					\$ -		\$ -		\$ -		\$ -	\$ -	
	SUBTOTAL				\$ 750.00		\$ -		\$ -		\$ -	\$ 750.00	
	LABOR BURDEN			30.44%	\$ 228.30		\$ -		\$ -		\$ -	\$ 228.30	
	LABOR PROFIT AND OVERHEAD (20%)			20.00%	\$ 150.00		\$ -		\$ -		\$ -	\$ 150.00	
	MATERIAL PROFIT AND OVERHEAD (15%)						15.00%	\$ -			\$ -	\$ -	
	SALES TAX						9.25%	\$ -			\$ -	\$ -	
	FEE FOR SUBS								5.00%	\$ -	\$ -	\$ -	
	SUBTOTAL				\$ 1,128.30		\$ -		\$ -		\$ -	\$ 1,128.30	
	Insurance Umbrella								0.13%		\$ -	\$ 1.43	
	Builder's Risk								0.78%		\$ -	\$ 8.80	
	BOND								1.30%		\$ -	\$ 14.76	
	SUBTOTAL										\$ -	\$ 230.66	UNIT PRICE
	TOTAL										\$ -	\$ 1,476.72	TOTAL PRICE
											\$ -	\$ 1,153.29	

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Acquisition of ROW and Easements for Butler Drive Realignment Project

Department: Engineering

Presented by: Michele Emerson, City Engineer

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Acquisition of property for the Butler Drive Realignment project.

Staff Recommendation

Approve funding for appraisal services and the acquisition of right of way and easements.

Background Information

A combination of right of way, slope easements, drainage easements, and temporary construction easements are required from six total parcels for the realignment of Butler Drive. Staff has requested appraisal services for five to six of these parcels.

Actual negotiations for the needed right of way and easements are pending. If agreements are not reached, staff recommends proceeding with condemnation after appraising the property and depositing the appraised value in court. The cost of these appraisal services is \$30,000, which is incorporated within the project's budget. An exhibit of the proposed project layout is attached for review.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

This expenditure, estimated to be \$30,000, is budgeted within the FY21 CIP budget for this project.

Attachments

1. Right of Way acquisition contract from Greg Peck & Associates.
2. Project Map

Gregory Peck and Associates



info@GregoryPeckandAssociates.com

Commercial Investment Real Estate
Representation - Valuation - Investment Analysis - Feasibility



GregoryPeckandAssociates.com

February 9, 2023

Mr. David Ives | Deputy City Attorney
City of Murfreesboro
111 Vine St
Murfreesboro, TN 37130
Email: dives@murfreessorotn.gov
Phone #: (615) 410-8235
Phone #: (615) 849-2616
Fax #: (615) 849-2662

RE: Butler Drive Realignment
Murfreesboro, Rutherford County, Tennessee

Purpose: Thank you for your request concerning the proposal of the preparation of appraisals of the referenced properties. The purpose of the appraisals is to assist the City of Murfreesboro in acquiring the necessary land of Tracts 1, 5, 6, 16, and 21 involved in a right-of-way project known as the Butler Drive Realignment in Murfreesboro, Rutherford County, Tennessee.

Client: The client is the City of Murfreesboro. The reports are intended for use only by the City of Murfreesboro and its representatives. Use of these reports by others is not intended by the appraiser and no third party may rely upon the appraisals for any purpose without the written consent of the appraiser.

Services: The reports will comply with the requirements set forth under the Uniform Standards of Professional Appraisal Practice (USPAP). Involved in the appraisals is a determination of the market value of the fee simple interest of the larger parcel for each tract, the easement/acquisition areas, and the remainders including any damages or benefits that results from the acquisition. Any necessary methods of valuation will be analyzed. A visitation to the properties is included.

Fee: The total fee for the completion of the five complete appraisals in an Appraisal Report format as defined by USPAP under Standards Rule 2-2(a) should be no more than \$30,000 impending the retrieval and review of the detailed plans by the appraiser. The base cost of each report is \$5,000. These fees are presumptive without the further necessary detailed plans.

The fixed fee set forth in the foregoing does not cover testimony in public or private hearings in court with reference to the property. In the event either or both appraisers are subpoenaed or otherwise

required to attend any such hearings as a result of having prepared these appraisals, an additional fee of \$300 per hour will be charged for the preparation of court exhibits, pretrial conferences, depositions, travel time out side of Rutherford County, and testimony. The fee quote does not include the cost of any conferences that you might request, or counseling services beyond the foregoing assignment.

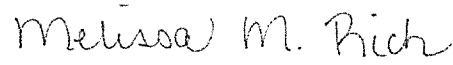
Contract Term: This Contract shall be effective when the City's transportation director instructs us to proceed. The length of this time period should take into account plan changes, inclement weather, reviews, additions, and/or corrections to the appraisals after submission.

Appraisal Updates: All appraisal updates shall be in compliance with standards set forth in USPAP, except that the standards in force as of the date of employment to conduct the updated appraisal service shall apply. In the event of plan revisions of any kind outside of the appraiser's control (changes to the acquisition table, staking the project, survey mistakes, errors made by the City municipal, etc.) resulting in the need for the appraisal to be updated after it has been submitted, the updated appraisal shall be appraised at up to 50% of the initial appraisal cost. Major plan revisions which substantially change the appraisal assignment may necessitate a re-negotiated fee. The "update" appraisal request may require the Consultant to consider and include minor plan revisions and changes in market conditions.

Termination: You may terminate this agreement at any time for any reason whatsoever at your sole discretion. Should termination occur, we will charge you, and you agree to reimburse for all services rendered at the rate of \$300 per hour for our time and all costs advanced in connection with said work, prior to receipt of such written notice, but in no case more than the total fee stated in the foregoing. Such termination notice is to be written and delivered via e-mail.

Comments: Our appraisal work is performed in conformity with and subject to the Code of Ethics and Standards of Professional Practice of the Appraisal Institute. We are also "State Certified General Real Estate Appraisers" under the State Licensing and Certified Real Estate Appraisers Law, which requires that our appraisals meet the Uniform Standard of Professional Practice (USPAP) as promulgated by the Appraisal Foundation.

Best regards,

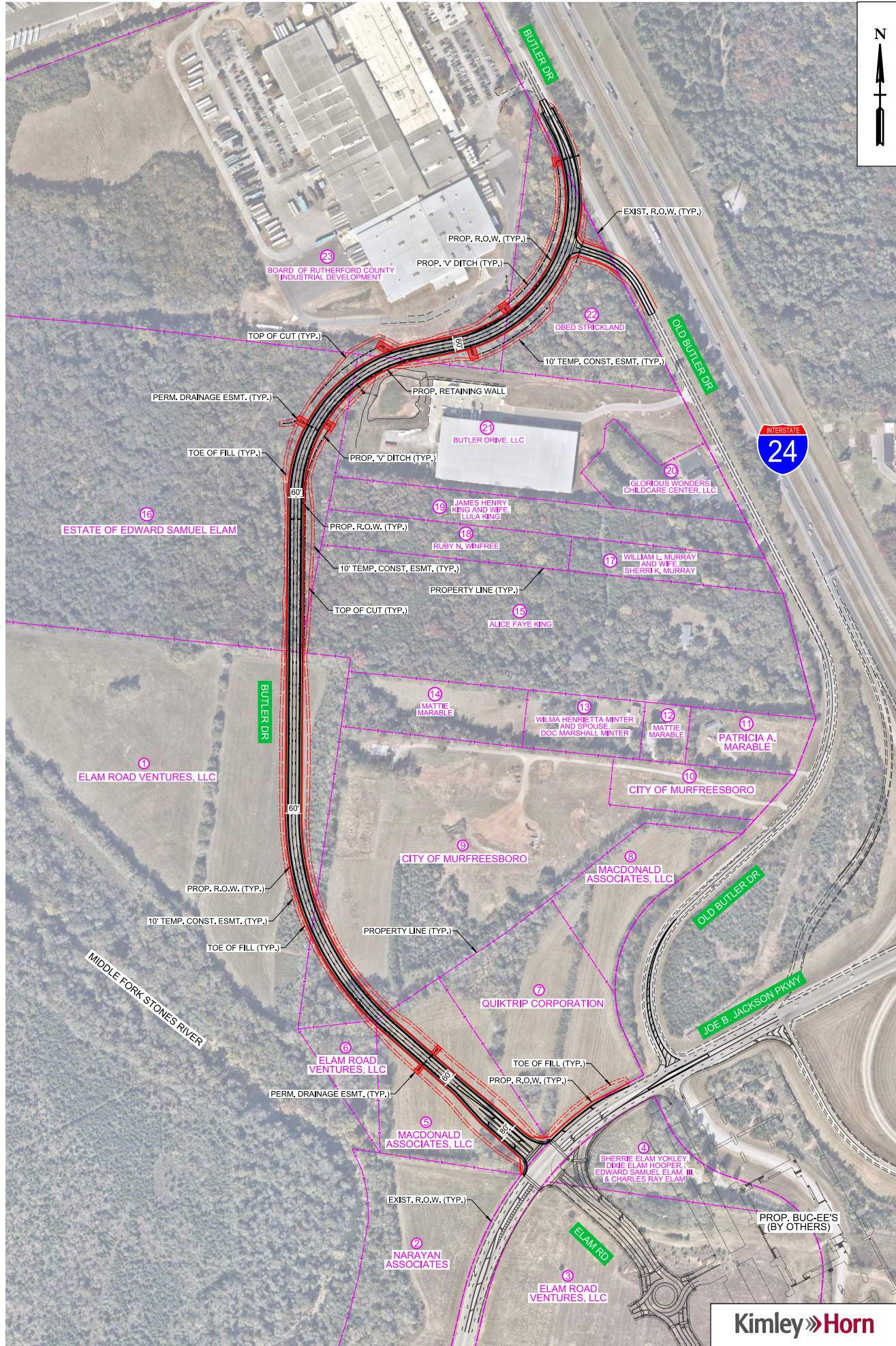

Melissa M. Rich, MAI, CG-4781


Gregory O. Peck, CCIM, SRPA, CG-140

Accepted

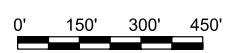
By 

Date February 9, 2023



**BUTLER DRIVE REALIGNMENT
PRELIMINARY DESIGN MAP**

MURFREESBORO, TN 11/08/2022



COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Agreement between TDOT and the City for the South Church Street (SR 10) Bridge over CSX Railroad

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider Resolution 23-R-03 between the City and TDOT.

Staff Recommendation

Approval of Resolution 23-R-03 between the City and TDOT.

Background Information

TDOT is currently in the ROW phase for the replacement of the South Church Street (SR-10) bridge over the CSX railroad. The existing bridge was built in 1928 and scored a 48.9 out of 100 sufficiency rating. The age of the bridge, along with sufficiency rating, has spurred TDOT to replace the bridge.

The new bridge will be an arch bridge with a tunnel for the railroad that supports an additional rail as well as increasing the height clearance of the rail track. The bridge will consist of a 5-lane cross section with four travel lanes, each 12 feet wide, and a 14-foot center lane, along with curb, gutter, and sidewalk.

Staff believes the project is necessary to maintain the City's transportation infrastructure and will thereby support the City's future economic development.

Council Priorities Served

Responsible Budgeting

Use of the Improve Act funds assist with the City budgeting of roadway projects.

Fiscal Impact

This project is funded 100% by state and federal funds through the Improve Act.

Attachments

1. Resolution 23-R-03
2. Exhibit A TDOT Proposal
3. Site Map

RESOLUTION 23-R-03 accepting the State of Tennessee Department of Transportation’s proposals to construct a road improvement project described as “(South Church Street) Bridge over CSX R/R, LM 12.63 (IA) Route: SR-10” within the City of Murfreesboro, Tennessee, specifically Federal Project No. BR-NH-10(80)/State Project No. 75005-0230-04, 75005-0232-94, 75005-1232-94, 75005-2232-94, 75005-3232-94.

WHEREAS, the State of Tennessee Department of Transportation (“TDOT”) has proposed to construct a roadway project in the City of Murfreesboro, Tennessee (“City”), designated as Federal Project No. BR-NH-10(80)/State Project No. 75005-0230-04, 75005-0232-94, 75005-1232-94, 75005-2232-94, 75005-3232-94, and described as the a “(South Church Street), Bridge over CSX R/R, LM 12.63 (IA) Route: SR-10” project in Exhibit A, attached hereto (hereafter referred to as the “Project”); and,

WHEREAS, the Project is conditioned on the City agreeing to cooperate with TDOT in accordance with the terms and conditions set forth in TDOT’s proposals, so that TDOT’s general highway program may be carried out in accordance with the intent of the General Assembly of the State of Tennessee; and,

WHEREAS, the Project is necessary to improve the City’s transportation infrastructure and will thereby support the City’s future economic development.

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

SECTION 1. The City of Murfreesboro encourages and supports the construction of the Project.

SECTION 2. The Murfreesboro City Council hereby authorizes the Mayor, on behalf of the City, to sign TDOT’s proposal for the Project, a copy of which is attached hereto as Exhibit A.

SECTION 3. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and economic development of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

43A2035E51F9401...
Adam F. Tucker
City Attorney

PROPOSAL

OF THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF TENNESSEE

TO THE CITY OF MURFREESBORO, TENNESSEE:

The DEPARTMENT OF TRANSPORTATION of the State of Tennessee, hereinafter "DEPARTMENT", proposes to construct a project in the City of Murfreesboro, Tennessee, hereinafter "CITY", designated as Federal Project No. BR-NH-10(80), State Project No. 75005-0230-04,75005-0232-94,75005-3232-94,75005-2232-94,75005-1232-94 , that is described as "(South Church Street), Bridge over CSX R/R, LM 12.63 (IA) Route: SR-10", provided the CITY agrees to cooperate with the DEPARTMENT as set forth in this proposal, so that the general highway program may be carried out in accordance with the intent of the General Assembly of the State.

Accordingly, the parties agree as follows:

1. That in the event any civil actions in inverse condemnation or for damages are instituted by reason of the DEPARTMENT, or its contractor, going upon the highway right-of-way and easements, and constructing said project in accordance with the plans and as necessary to make the completed project functional, it will notify in writing the Attorney General of the State, whose address is 425 Fifth Avenue North, Nashville, Tennessee, 37243, of the institution of each civil action, the complaint and all subsequent pleadings, within ten (10) days after the service of each of the same, under penalty of defending such actions and paying any judgments which result therefrom at its own expense.

2. The CITY will close or otherwise modify any of its roads, or other public ways if indicated on the project plans, as provided by law.

3. The CITY will transfer or cause to be transferred to the DEPARTMENT, without cost

to the DEPARTMENT, all land owned by the CITY or by any of its instrumentalities as required for right-of-way or easement purposes, provided such land is being used or dedicated for road or other public way purposes.

4. Where privately, publicly or cooperatively owned utility lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned facilities such as fire and police signal systems and street lighting systems are located within the right-of-way of any road or other public way owned by the CITY or any of its instrumentalities, the CITY agrees that it will take any action necessary to require the removal or adjustment of any of the above-described facilities as would conflict with the construction of the project. But the foregoing may not be a duty of the CITY since it shall become operative only after the DEPARTMENT has been unsuccessful in its efforts to provide for said removals or adjustments for the benefit of the CITY.

The foregoing does not apply to those utility facilities which are owned by the CITY or one of its instrumentalities, it being understood that the CITY has the duty to relocate or adjust such facilities, if required, provided the CITY is notified to do so by the DEPARTMENT with detailed advice as to this duty of the CITY.

5. The CITY will maintain any frontage road to be constructed as part of the project;

6. After the project is completed and open to traffic, the CITY will accept jurisdiction and maintenance such parts of any existing DEPARTMENT highway to be replaced by the project, as shown on the attached map.

7. The CITY will make no changes or alter any segment of a road on its road system that lies within the limits of the right-of-way acquired for any interchange to be constructed as part of the project and will not permit the installation or relocation of any utility facilities within the

right-of-way of any such a segment of one of its roads without first obtaining the approval of the DEPARTMENT.

8. No provision hereof shall be construed as changing the maintenance responsibility of the CITY for such part of the project as may presently be on its highway, street, road or bridge system.

9. It is understood and agreed between the DEPARTMENT and the CITY that all traffic control signs for the control of traffic on a street under the jurisdiction of the CITY and located within the DEPARTMENT's right-of-way shall be maintained and replaced by the CITY.

10. When traffic control devices for the direction or warning of traffic, lighting of roadways or signing, or any of them, which are operated or function by the use of electric current are constructed or installed as part of the project, they will be furnished with electricity and maintained by the CITY.

11. If, as a result of acquisition and use of right-of-way for the project, any building and/or structure improvements become in violation of a CITY setback line or building and/or structure requirement, including, but not limited to, on-premise signs, the CITY agrees to waive enforcement of the CITY setback line or building and/or structure requirement and take other proper governmental action as necessary to accomplish such waiver.

12. If, as a result of acquisition and use of right-of-way for the project, any real property retained by any property owner shall become in violation of a CITY zoning regulation or requirement, the CITY agrees to waive enforcement of the CITY zoning regulation or requirement and take other proper governmental action as necessary to accomplish such waiver.

13. The CITY will not authorize encroachments of any kind upon the right-of-way, nor will the CITY authorize use of the easements for the project in any manner which affects the DEPARTMENT's use thereof.

14. The CITY will obtain the approval of the DEPARTMENT before authorizing parking on the right-of-way and easements for the project.

15. The CITY will not install or maintain any device for the purpose of regulating the movement of traffic on the roadway except as warranted and in conformity with the Manual on Uniform Traffic Control Devices.

16. If the project is classified as full access control (i.e. a project which has no intersecting streets at grade), then the DEPARTMENT will maintain the completed project. If the project is not classified as full access control, then the DEPARTMENT will maintain the pavement from curb to curb where curbs exist, or will maintain the full width of the roadway where no curbs exist. The CITY agrees to maintain all other parts of non-access control projects; provided, however, that any retaining walls, box culverts, or other like structures constructed as part of the project that support the structural integrity or stability of the roadway surface shall be maintained by the DEPARTMENT.

17. If a sidewalk is constructed as a component of this project, the CITY shall be responsible for maintenance of the sidewalk and shall assume all liability for third-party claims for damages arising from its use of the sidewalk or premises beyond the DEPARTMENT'S maintenance responsibilities as set forth in section 16 of this Proposal.

18. When said project is completed, the CITY thereafter will not permit any additional median crossovers, the cutting of the pavement, curbs, gutters and sidewalks, by any person, firm, corporation, or governmental agency, without first obtaining the approval of the DEPARTMENT.

19. The DEPARTMENT will acquire the right-of-way and easements, construct the project and defend any inverse condemnation for damage or civil actions of which the Attorney General has received the notice and pleadings provided for herein; provided, however, that if the

project is being constructed pursuant to a contract administered by the DEPARTMENT's Local Programs Development Office, the terms of that contract shall control in the event of a conflict with this Proposal..

20. The project plans hereinbefore identified by number and description are incorporated herein by reference and shall be considered a part of this proposal, including any revisions or amendments thereto, provided a copy of each is furnished the CITY.

21. The acceptance of this proposal shall be evidenced by the passage of a resolution or by other proper governmental action, which shall incorporate this proposal verbatim or make reference thereto.

IN WITNESS WHEREOF, the DEPARTMENT has caused this proposal to be executed by its duly authorized official on this the ____ day of _____, 20____.

THE CITY OF _____, TENNESSEE

BY: _____
MAYOR

DATE: _____

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: _____
HOWARD H. ELEY
COMMISSIONER

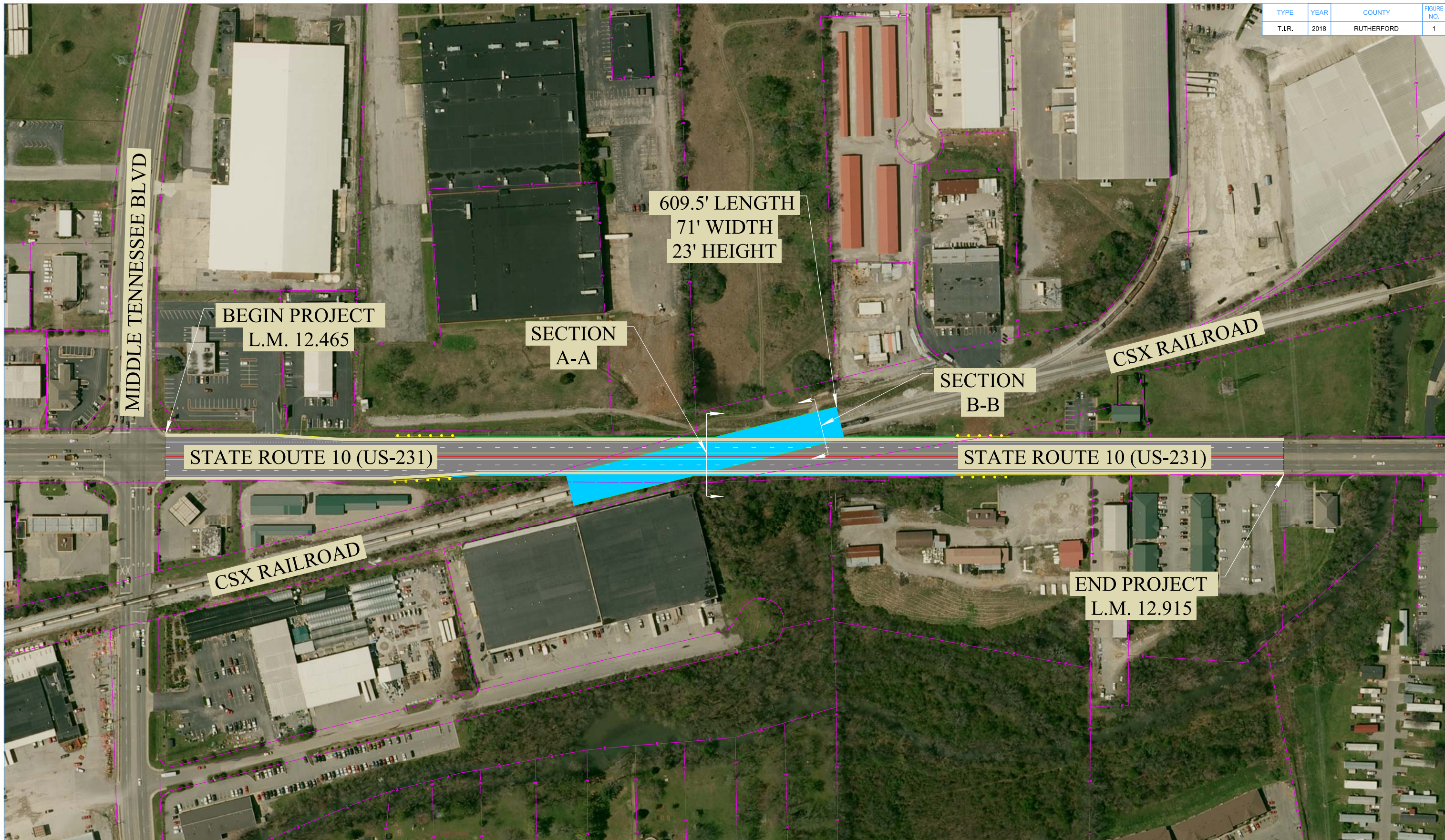
DATE: _____

APPROVED AS TO FORM AND LEGALITY:

BY: _____
JOHN REINBOLD
GENERAL COUNSEL

DATE: _____

TYPE	YEAR	COUNTY	FIGURE NO.
T.I.R.	2018	RUTHERFORD	1



1/16/2019 9:17:42 AM
T:\PRJ\188689 TDOT STID On-Call\016 SR 10 Bridge TIR\124688-00-BridgeTIR.sht



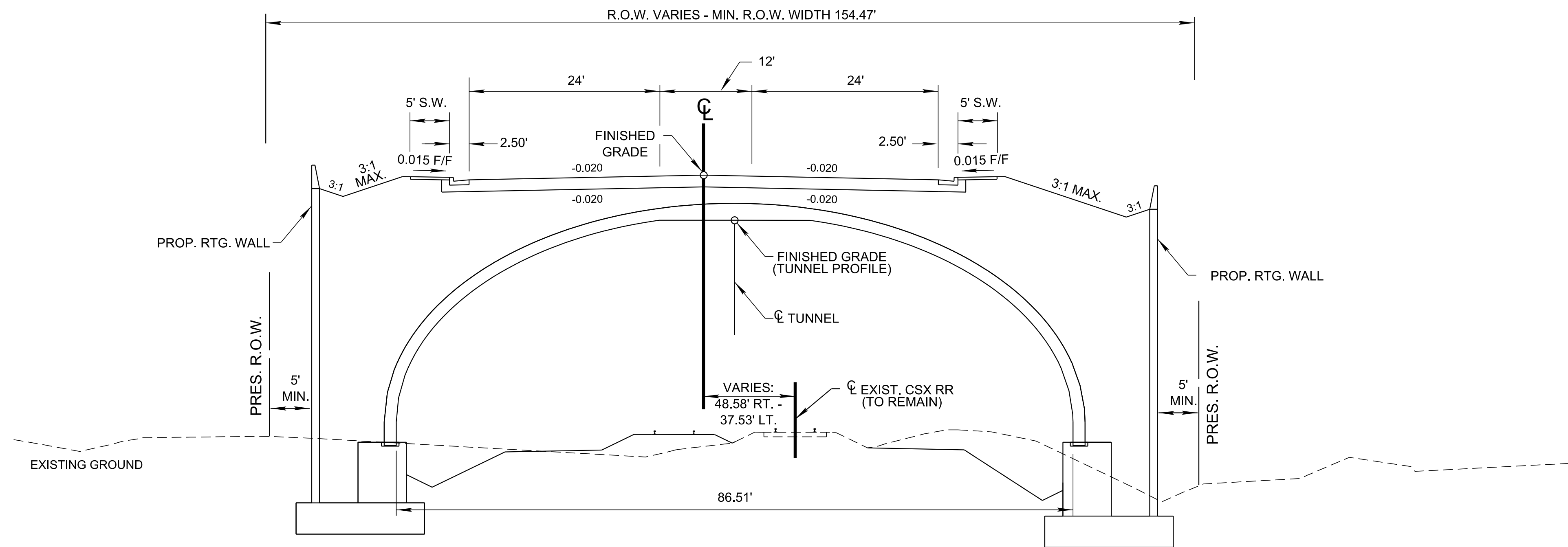
BRIDGE T.I.R.

STATE ROUTE 10 (US-231, SOUTH CHURCH STREET)
BRIDGE 75SR010007 OVER CSX RAILROAD (L.M. 12.63)
RUTHERFORD COUNTY

STATE OF TENNESSEE
DEPARTMENT OF
TRANSPORTATION

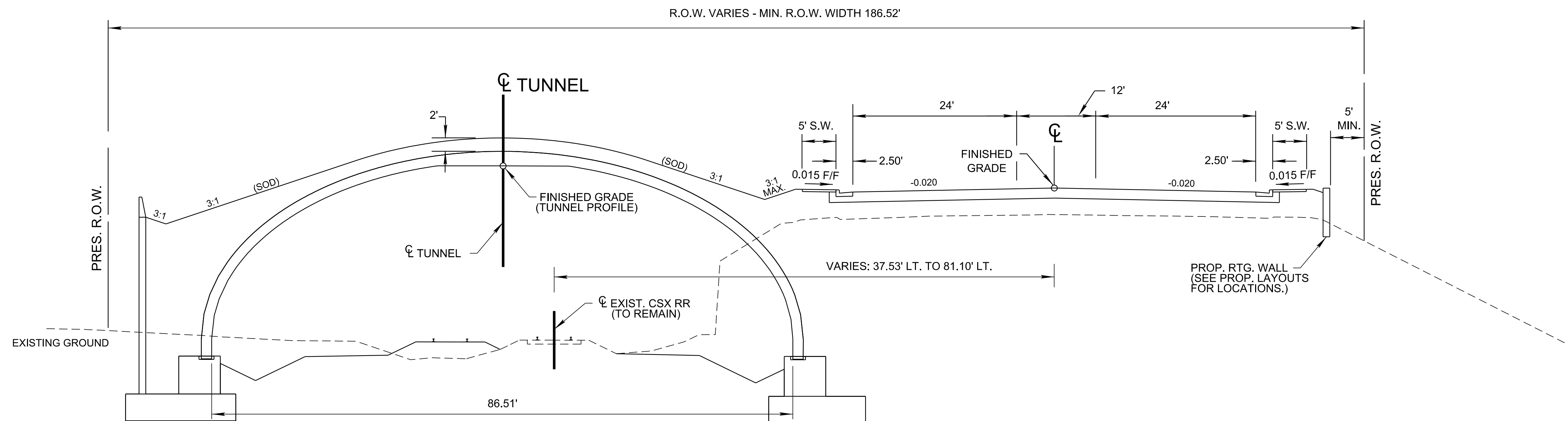
FIGURE 1
STATE ROUTE 10
L.M. 12.63

TYPE	YEAR	PROJECT NO.	SHEET NO.
R.O.W.	2022	75005-2232-94	2B1



MAINLINE TYPICAL SECTION OVER TUNNEL

STA. 69+00.00 TO STA. 72+50.00



MAINLINE TYPICAL SECTION OVER TUNNEL

STA. 72+50.00 TO STA. 74+27.07

R.O.W.
FIELD
REVIEW

SEALED BY

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

TYPICAL
SECTIONS

MAINLINE

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Cherry Lane Phase 3 Supplement Request for Right-of-Way Acquisition

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Supplement Request for the ROW acquisition of Cherry Lane Phase 3 with Volkert, Inc.

Staff Recommendation

Approve supplement request with Volkert, Inc.

Background Information

On April 8th, 2021, the City entered into a professional services agreement for the ROW acquisitions services of Cherry Lane Phase 3. During the ROW acquisition phase, it was determined that relocation was needed for Tract 44, rather than a partial acquisition. The fee for the additional relocation of Tract 44 is \$6,250. This would raise the contract ceiling to \$378,250.

This expense is funded 80% federal funds and 20% local funds. The local portion is funded by FY19 CIP Budget.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Fiscal Impact

This expense is funded by 80% federal and state funds and 20% local funds. The local portion, \$1,250, is funded by FY19 CIP Budget.

Attachments

1. Supplement Request from Volkert
2. Original Contract



750 Old Hickory Blvd, Suite 1-230
Brentwood, TN 37027
615.656.1845
www.volkert.com

February 8, 2023

Jim Kerr
Transportation Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37133-1139

**Re: Cherry Lane Phase 3 PIN No. 116200.00
Right-of-Way Acquisition Scope of Services Supplement Request**

Dear Jim:

Volkert, Inc. appreciates the opportunity to submit this supplement request for the Right-of-Way Acquisition of the Cherry Lane Phase 3 Project within the City of Murfreesboro, Tennessee, pursuant to the original agreement dated April 8, 2021.

Relocation Scope of Services

Tract 44 was a late add for a relocation (was originally just a partial acquisition). Our experienced relocation specialists will use standard forms and procedures for moving bids, salvage values, relocation assistance, movement payments, etc. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW relocations.

Project Fee

The fee for this additional relocation of Tract 44 will be \$6,250. This is a not-to-exceed per relocation tract fee and will be invoiced on a monthly basis as work is completed. Should additional tracts need to be added for acquisition negotiations, the fee per tract will be \$3,500. Should additional tracts need to be added for relocation assistance, the fee per tract will be \$6,250.

If you have any questions, please feel free to contact me.

Dyan C. Damron, PE, PTP
Director of Traffic, Planning & ROW
Volkert, Inc.

Justin Eckel, PE
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: _____

BY: _____

TITLE: _____

CONSULTANT: Volkert, Inc.

BY: Justin I Eckel

TITLE: Vice President

Approved as to Form:

Witness:

Adam Tucker, City Attorney



302 Innovation Drive, Suite 100
Franklin, Tennessee 37067
615.656.1845
www.volkert.com

March 16, 2021

Jim Kerr
Transportation Director
City of Murfreesboro
111 West Vine Street
P.O. Box 1139
Murfreesboro, TN 37133-1139

**Re: Cherry Lane Phase 3 PIN No. 116200.00
Right-of-Way Acquisition Scope of Services**

Dear Jim:

Volkert, Inc. appreciates the opportunity to submit this scope of work and fee estimate for the Right-of-Way Acquisition of the Cherry Lane Phase 3 Project within the City of Murfreesboro, Tennessee.

Right-of-Way Acquisition Scope of Services

We will provide the manpower and management to help perform the right-of-way (ROW) acquisition services for the Cherry Lane Phase 3 Project from Sulphur Springs Road to Northwest Broad Street and Interchange at I-840, a Local Programs Project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for 31 tracts:

Meetings

- A public meeting may be beneficial given the depth and complexity of this project. Depending on the timing and COVID restrictions, we plan to coordinate and attend one public meeting (whether in person or virtual) hosted by the City of Murfreesboro. Volkert will be present and available for communicating with property owners as well as other ROW team members. We expect the City will be responsible for posting all advertisements and alerting property owners of the meeting.

Titles and Closings

- The City of Murfreesboro will handle the title reports and closings.

Appraisals

- We are proud to partner with Randy Button & Associates, and his well-established appraisal firm for the appraisals. We expect 16 formal appraisals and 15 formal part affected appraisals.
- Appraisals will include a Market Data Brochure.
- Appraisal reports for property owners requiring relocations, miscellaneous moves, or uneconomic remnants will be provided first, because these properties require more time to close and meet state and federal guideline requirements.
- Appraisal reports for property owners for properties with any unusual liens or chain of ownership will be completed early because of the need for additional time by our title attorney.
- Appraisal reports for property owners with multiple tracts will be provided at the same time to expedite negotiations.

Review Appraisals and Form 2's

- We will employ Boozer & Company, P.C. for review appraisals and LPA Form 2's.
- Volkert will submit one cohesive package for each tract including appraisal, review appraisal, and Form 2 to the City for review and to get all LPA Form 2's approved/executed.

Negotiations

- The City will be responsible for the staking for ROW negotiations.
- The City will provide Volkert a copy of the plan set for each tract, which contains a property map and acquisition table (most recent copy provided on 2/22/21) and individual easement exhibits and legal descriptions for each tract. These files will be updated periodically throughout the project by the City.
- The City will provide Volkert with the Title Report for each tract.
- Upon receipt of Title Reports, Volkert will send the Notice of Proposed Acquisition (Form 4) to property owners. We will send via trackable shipping and will follow up with any that are not marked as delivered.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and negotiating with property owners. We will meet with property owners no more than three (3) times and make contact via trackable shipping and phone/email as needed. Volkert will perform due diligence to contact each property owner. Should all resources be exhausted, the City will assist in finding contact info for unfound property owners.
- Volkert will negotiate ROW and easements as shown in the current plan set.
- Volkert will use standard TDOT forms, with City titles as appropriate, for all letters, forms, and negotiations with property owners.
- It is assumed, based on our review of the plans and parcels, none of these tracts will fall under NPP (Nominal Payment Parcel).

Relocation Scope of Services

We understand this project will likely include relocations. We will provide the manpower and management to help perform the relocations services for the Cherry Lane Phase 3 Project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition.

The following acquisition services will be provided for two tracts:

- We will prepare an Acquisition Stage Relocation Plan (ASRP) at the onset of the project.
- Our experienced relocation specialists will use standard forms and procedures for moving bids, salvage values, relocation assistance, movement payments, etc.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and working with tenants. We will find comps and obtain approval as soon as possible due to lack of available housing and the housing market. Inspections and interviews will be conducted either in person or by live video conference. If any deviation from the TDOT guidelines due to COVID is required, we will submit all documents and approvals.

Project and File Management

- Volkert will maintain frequent communication and coordination with the City's Project Manager, appraisers, attorneys, and other team members by phone and email as appropriate.
- Volkert will coordinate with a TDOT ROW Agent for their review and to obtain approval of the "Four Step" process to ensure all procedures are acceptable and conform with the Uniform Act.

- Volkert will submit monthly progress reports to the City's Project Manager. These updates will include a link to a shareable interactive tool for progress on each tract.
- Volkert will maintain electronic and hard copy files of all necessary and proper files, according to the Uniform Act. Upon completion of the project, these files will be given to the City for their use/verification purposes.

Schedule

- Volkert understands the time sensitivity of this project. From the Notice to Proceed for ROW Acquisition, we expect to complete the ROW Acquisition phase with 24 months.
 - Approximately one month for public meeting and notification distribution.
 - Appraisals - approximately five months (can be in conjunction with public meeting/notices.)
 - Review appraisals - approximately one month.
 - Form 2 execution by the City - approximately two weeks.
 - Negotiations - this typically requires 12 months; however, relocations can be complicated, so we recommend allowing 18 months in the project schedule for negotiations. Negotiations on the first tract appraisals can begin while additional appraisals are being completed.
- During negotiations, we will update the City on any foreseen problems or complications that may lead to settlement or condemnation.

Project Fee

The fee to manage the ROW acquisition services for the Cherry Lane Phase 3 Project from Sulphur Springs Road to Northwest Broad Street and Interchange at I-840 will be \$372,000. This is a not-to-exceed lump sum fee and will be invoiced on a monthly basis as work is completed. Volkert's monthly invoice will include all subcontractor's fees as one invoice. The breakdown is as follows:

- Randy Button & Associates, Inc.'s appraisal fee will be \$161,000, which includes appraisals for all 31 tracts.
- Boozer & Company, P.C.'s fee for review appraisals and Form 2's for all 31 tracts will be \$89,000.
- Volkert's fee to conduct ROW negotiations and acquisitions and manage the ROW acquisition services will be \$106,000.
- Volkert's fee for the Acquisition Stage Relocation Plan will be \$3,500.
- Volkert's fee to conduct relocation services will be \$12,500.

If unforeseen changes require the on-going negotiations process to be restarted or revised significantly, Volkert will immediately notify the City of the change. Any subsequent changes to the appraisals, reviews, or Form 2's or additional negotiations due to changes by the City and/or roadway plan that require restart of negotiations will be additional scope and fee.

Assumptions

- Tract 4 will not be included in our appraisal and negotiation scope.
- Tract 70 will be included in our appraisal and negotiation scope.
- Due to complexity and potential mortgage holds, all tracts will have an appraisal – no NPP's.
- Tract 59 and Tract 63 are contiguous with the same owner and will combined into one appraisal and offer.
- Relocations will include Tract 20 and Tract 45.

Volkert, Inc. appreciates the opportunity to submit this scope of services. If you have any questions, please feel free to contact me. We look forward to working with you on this very important and exciting project for the City of Murfreesboro.

Sincerely,

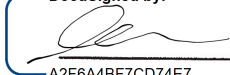


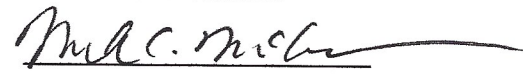
Dyan C. Damron, PE, PTP
Traffic Engineering & Planning Manager
Volkert, Inc.



Brad Thompson, AICP
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: MSM
DocuSigned by:
BY: 
A2F6A4BF7CD74E7...
TITLE: Mayor

CONSULTANT: Volkert, Inc.
BY: 
TITLE: West Gulf St. Vice President

Approved as to Form:



43A2035E51F9401...

Adam Tucker, City Attorney

Witness:



GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this 8th day of April, 2021 by and between City of Murfreesboro, hereinafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT;

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional engineering services as outlined in the Scope of Work.

SECTION I – SCOPE OF WORK

CONSULTANT'S Scope of Work hereunder is finite and limited to only those items explicitly stated or enumerated herein or attached hereto. Any work or services desired by OWNER that are not stated herein or attached hereto shall be considered Extra Work and shall entitle CONSULTANT to mutually agreed-upon additional compensation.

SECTION II – TERMS OF PAYMENT

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. The OWNER will pay the CONSULTANT for special services performed by Subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the Subconsultant's services.
- C. Reimbursable expenses are defined as follows:
 - Travel and subsistence cost, printing and reproduction, computer services, advertising costs, mail distribution costs, permit fees, application fees or deposits, and all other costs incidental to performing the assignment.
- D. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- E. The total fee for professional services shall not exceed \$372,000 unless authorized by OWNER.

- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: ***Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042***

SECTION III – MISCELLANEOUS

- A. **Extra Work:** It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. **Ownership and Reuse of Documents:** All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER is hereby granted a royalty-free, non-exclusive, limited-use license therein, and may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project, and the limited-use license granted hereunder does not apply to any future use. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.
- C. **Exclusivity of Remedies:** To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors,

employees, agents and independent professional associates and Consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or Consultants, or any of them, shall be limited to and shall not exceed the amount of available insurance proceeds.

- D. Insurance & Indemnification: CONSULTANT shall procure and maintain the types and amounts of insurance as are set forth below. CONSULTANT shall cause OWNER to be an additional insured on CONSULTANT's policy of commercial general liability and automobile liability insurance. :

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
I Worker's Compensation Employer Liability	State – Statutory \$1,000,000 Per Accident \$1,000,000 Disease/Each Accident \$1,000,000 Disease/Policy Limit
II Comprehensive or Commercial General Liability	\$1,000,000 Per Person Bodily Injury \$1,000,000 Per Occurrence Bodily Injury \$1,000,000 Property Damage \$2,000,000 Policy Aggregate
III Automobile Liability	\$1,000,000 Combined Single Limit
IV Professional Liability	\$2,000,000 Each Claim \$2,000,000 Annual Aggregate

Indemnification by CONSULTANT. To the fullest extent permitted by law, and up to the limits of the Exclusivity of Remedies provision contained herein, CONSULTANT shall indemnify OWNER and OWNER's officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional Services hereunder. In any matters involving allegations of negligent performance of professional Services by CONSULTANT, CONSULTANT's defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT's actual negligent performance.

Indemnification by OWNER. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless CONSULTANT and its officers, directors, members,

partners, agents, employees, and subconsultants 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, including the loss of use resulting therefrom, but only to the extent caused by any negligent act, omission, or willful misconduct of OWNER or OWNER officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the OWNER with respect to this Agreement or to the Project.

E. Termination:

1. For cause,

(a) By either party upon 30 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.

(b) By CONSULTANT:

(1) upon seven days written notice if OWNER demands that CONSULTANT furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional; or

(2) upon seven days written notice if the CONSULTANT's services for the Project are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.

(3) CONSULTANT shall have no liability to OWNER on account of such termination.

(c) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph III.E.1 if the party receiving such notice begins, within seven 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

(a) By OWNER effective upon CONSULTANT's receipt of notice from OWNER.

3. Effective Date of Termination. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Project 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.

4. Payments upon Termination

(a) In the event of any termination, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all Services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

(b) In the event of termination by OWNER for convenience, or by CONSULTANT for cause, CONSULTANT shall be entitled, in addition to invoicing for those items identified in Paragraph III.E.4(a), to invoice OWNER and to 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 CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth herein.

F. Time of Completion: In accordance with the Standard of Care set out herein, all services under this Agreement will commence upon authorization to proceed from the OWNER.

G. Successors and Assigns:

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by Section III.G.2, the assigns of OWNER and CONSULTANT) 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 of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including but 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 CONSULTANT from employing such independent professional associates and Consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.
3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and

CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

- H. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation before recourse to litigation. The OWNER's and CONSULTANT's representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Only after the parties have exhausted direct discussions AND mediation in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.
- I. Right of Entry: OWNER shall arrange for safe access to, and make all provisions for, CONSULTANT to enter upon public and private property as may be required for CONSULTANT to perform Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its Services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT's operations on the property in furtherance of CONSULTANT's Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT's operations is not included in CONSULTANT's compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT's operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional compensation.
- J. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised by similarly situated professional consultants practicing under similar conditions at the same time in the same or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- K. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either

Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.

- L. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.

- M. Waiver of Subrogation: Owner and CONSULTANT hereby mutually waive all rights of subrogation, as well as all claims and other rights they may have against each other for loss of and/or damage to (a) the Work and any Project therein, (b) all materials, machinery, equipment and other items used in the Project and/or to be incorporated into the Project, while the same are in transit, at Project sites, during erection and otherwise, and (c) all property owned by or in the custody of OWNER and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such instance held by the OWNER as trustee. If OWNER is not the sole owner of the Project sites and all property at and adjacent thereto, OWNER shall obtain an undertaking from the other owners thereof sufficient to provide CONSULTANT the same protection from liability for loss or damage as would be afforded to CONSULTANT under this Agreement if OWNER were the sole owner. OWNER shall cause all policies of property insurance relating to the Project to contain a provision or endorsement to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against CONSULTANT or its subconsultants, or any insureds, additional insureds, or loss payees thereunder.

- N. Jurisdiction/Venue: This Agreement shall be governed by the laws of the State of Tennessee, exclusive of its choice of law provisions, and any disputes relate to or arising out of this Agreement or its alleged breach shall be brought in the Circuit or Chancery Courts of Rutherford County.

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Bradyville Pike Reconstruction Supplement Request for Right-of-Way Acquisition

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Supplement Request for the ROW acquisition of Bradyville Pike Reconstruction with Volkert, Inc.

Staff Recommendation

Approve supplement request with Volkert, Inc.

Background Information

On November 1st, 2018, the City entered into a professional services agreement for the ROW acquisitions services of Bradyville Pike. During the ROW acquisition phase, it was determined that additional or restart of offers and negotiations was needed for seven tracts. The fee for the additional seven tracts is \$21,000. This would raise the contract ceiling to \$471,000.

The City has already met its contract obligations for this project; therefore, this expense is funded 100% by federal and state funds.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Fiscal Impact

This expense is funded 100% by federal funds and state funds.

Attachments

1. Supplement Request from Volkert
2. Original Contract



750 Old Hickory Blvd, Suite 1-230
Brentwood, TN 37027
615.656.1845
www.volkert.com

February 8, 2023

Jim Kerr
Transportation Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37133-1139

**Re: Bradyville Pike PIN No. 116310.00
Right-of-Way Acquisition Scope of Services Supplement Request**

Dear Jim:

Volkert, Inc. appreciates the opportunity to submit this supplement request for the Right-of-Way Acquisition of the Bradyville Pike Project within the City of Murfreesboro, Tennessee, pursuant to the original agreement dated November 1, 2018.

Right-of-Way Acquisition Scope of Services

Since the start of the project, we have had seven tracts that have required an additional or restart of offers/negotiations. We have made all seven additional offers up to this point. All acquisition services have conformed, and any future services will conform, with the Uniform Act and TDOT Guidelines for ROW relocations.

Project Fee

The fee for this additional seven tracts will be \$21,000. This is a not-to-exceed per relocation tract fee and will be invoiced on a monthly basis as work is completed. Should additional tracts need to be added for acquisition negotiations, the fee per tract will be \$3,000.

If you have any questions, please feel free to contact me.

Dyan C. Damron, PE, PTP
Director of Traffic, Planning & ROW
Volkert, Inc.

Justin Eckel, PE
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: _____

CONSULTANT: Volkert, Inc.

BY: _____

BY: Justin I. Eckel

TITLE: _____

TITLE: Vice President

Approved as to Form:

Witness:

Adam Tucker, City Attorney



Volkert, Inc.

302 Innovation Drive
Suite 100
Franklin, TN 37067

Office 615.656.1845
Fax 615.656.1870

www.volkert.com

November 1, 2018

Jim Kerr
Transportation Director
City of Murfreesboro
111 West Vine Street
P.O. Box 1139
Murfreesboro, TN 37133-1139

**Re: SR 99 (Bradyville Pike) Widening from SR 2 (SE Broad St) to S. Rutherford Blvd
Right-of-Way Acquisition Scope of Services**

Dear Jim:

Volkert, Inc. appreciates the opportunity to submit this scope of work and fee estimate for the Right-of-Way Acquisition of the State Route 99 Widening within the City of Murfreesboro, Tennessee.

Right-of-Way Acquisition Scope of Services

We will provide the manpower and management to help perform the right-of-way (ROW) acquisition services for the State Route 99 Widening from State Route 2 (SE Broad Street) to S. Rutherford Boulevard, a Local Programs Project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for 150 tracts:

Negotiations

- The City will be responsible for the staking for ROW negotiations.
- The City will handle the title work and closings in-house.
- The City will provide Volkert a copy of the plan set for each tract, which contains a property map and acquisition table (provided on 8/1/18) and individual easement exhibits and legal descriptions for each tract.
- The City will provide Volkert with the Title Report, three copies of Appraisal, Review Appraisal and City-approved LPA Form 2 for each tract.
- Upon receipt of Title Reports, Volkert will send the Notice of Proposed Acquisition (Form 4) to property owners. We will send via certified mail, and will follow up with any that are not marked as delivered.
- Volkert will meet with property owners no more than three (3) times and make contact via phone as needed. The City will provide phone numbers for the property owners.
- Volkert will negotiate ROW and easements as shown in the current plan set.
- Volkert will use standard TDOT forms, with City of Murfreesboro titles as appropriate, for all letters, forms, and negotiations with property owners.
- For any tracts that fall under NPP (Nominal Payment Parcel), the City will front the money for those offers that are immediately accepted.

Project and File Management

- Volkert will maintain frequent communication and coordination with the City's Project Manager, appraisers, attorneys, and other team members by phone and email as appropriate.



- Volkert will coordinate with a TDOT ROW Agent for their review and to obtain approval of the "Four Step" process to ensure all procedures are acceptable and conform with the Uniform Act.
- Volkert will submit bi-weekly progress reports to the City's Project Manager. These updates will include a link to a shareable interactive tool for progress on each tract.
- Volkert will maintain electronic and hard copy files of all necessary and proper files, according to the Uniform Act. Upon completion of the project, these files will be given to the City for their use/verification purposes.

Schedule

- Volkert understands the time sensitivity of this project. From the Notice to Proceed for ROW Acquisition, we expect to complete the ROW Acquisition phase with 24 months.
- During negotiations, we will update the City on any foreseen problems or complications that may lead to settlement or condemnation.

Project Fee

The fee to manage the ROW acquisition services for the State Route 99 Widening State Route 2 (SE Broad Street) to S. Rutherford Boulevard will be \$450,000. This is a not to exceed amount reflecting a \$3,000 fee per tract and will be invoiced on a monthly basis as work is completed.

If the initial offer for any tracts that fall under NPP is rejected, negating the NPP, an appraisal would be required and negotiations restarted. If unforeseen changes require the on-going negotiations process to be restarted or revised significantly, Volkert will immediately notify the City of the change. Any additional negotiations due to rejected NPP or restart of negotiations will be additional scope and fee.

Volkert, Inc. appreciates the opportunity to submit this scope of services. If you have any questions, please feel free to contact me. We look forward to working with you on this very important and exciting project for the City of Murfreesboro.

Sincerely,



Dyan C. Damron, PE, PTP
Traffic Engineering & Planning Manager
Volkert, Inc.



Brad Thompson, AICP
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: City of Murfreesboro

BY: [Signature]

TITLE: Mayor

CONSULTANT: Volkert, Inc.

BY: [Signature]

TITLE: SENIOR VICE PRESIDENT

Approved as to Form:



Adam Tucker, City Attorney

Witness:



GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this ___ day of _____, 2018, by and between City of Murfreesboro, hereinafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT;

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional engineering services as outlined in the Scope of Work.

SECTION I – SCOPE OF WORK

CONSULTANT'S Scope of Work hereunder is finite and limited to only those items explicitly stated in the scope or enumerated herein. Any work or services desired by OWNER that are not stated herein or attached hereto shall be considered Additional Services and shall entitle CONSULTANT to mutually agreed-upon additional compensation.

SECTION II – TERMS OF PAYMENT

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Partial Payments will be prepared and invoiced to the client monthly based on labor of personnel utilized on the project and applied multiplier for compensation during the course of the project. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. The OWNER will pay the CONSULTANT for special services performed by Subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the Subconsultant's services.
- C. Reimbursable expenses are defined as follows:

Travel and subsistence cost, long distance telephone, printing and reproduction, computer services, application fees or deposits, and all other costs incidental to performing the assignment.
- D. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.

- E. The Lump Sum total fee for professional services as outlined in Attachment A shall not exceed \$450,000 unless authorized by OWNER.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address:

Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042.

SECTION III – MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. To the fullest extent permitted by law, OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.

- C. Insurance & Indemnification: CONSULTANT shall furnish OWNER with Certificate of Insurance confirming following forms and minimum limits of insurance:

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
I Worker's Compensation Employer Liability	State - Statutory \$1,000,000 Per Accident \$1,000,000 Disease/Each Accident \$1,000,000 Disease/Policy Limit
II Comprehensive or Commercial General Liability	\$1,000,000 Per Person Bodily Injury \$1,000,000 Per Occurrence Bodily Injury \$1,000,000 Property Damage \$2,000,000 Policy Aggregate
III Automobile Liability	\$1,000,000 Combined Single Limit
IV Professional Liability	\$2,000,000 Each Claim \$2,000,000 Annual Aggregate

Indemnification by CONSULTANT: To the fullest extent permitted by law, and up to the limits of the Exclusivity of Remedies provision contained herein, CONSULTANT shall indemnify OWNER and OWNER's officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, willful misconduct, errors and omissions of CONSULTANT in the performance of its professional Services hereunder. In any matters involving allegations of negligent performance of professional Services by CONSULTANT, CONSULTANT's defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT's actual negligent performance.

Indemnification by OWNER: To the fullest extent permitted by law, OWNER shall indemnify and hold harmless CONSULTANT and its officers, directors, members, partners, agents, employees, and subconsultants 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, including the loss of use resulting therefrom, but only to the extent caused by any negligent act, omission, or willful misconduct of OWNER.

D. Termination:

1. For Cause:

(a) By either party upon 30 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.

(b) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph III.E.1 if the party receiving such notice begins, within seven 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For Convenience:

(a) By OWNER effective upon CONSULTANT's receipt of notice from OWNER.

3. Effective Date of Termination: The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Project 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.

4. Payments upon Termination:

(a) In the event of any termination, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all Services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

(b) In the event of termination by OWNER for convenience, or by CONSULTANT for cause, CONSULTANT shall be entitled, in addition to invoicing for those items identified in Paragraph III.E.4(a), to invoice OWNER and to 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 CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth herein.

E. Time of Completion: In accordance with the Standard of Care set out herein, all services under this Agreement will commence immediately upon authorization to proceed from the OWNER.

F. Successors and Assigns:

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by Section III.G.2, the assigns of OWNER and CONSULTANT) 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 of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including but 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 CONSULTANT from employing such independent professional associates and Consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.
3. Nothing under this Agreement shall be construed to give any right or benefits in this agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

- G. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation before recourse to litigation in accordance with the mediation rules of the American Arbitration Association. The OWNER's and CONSULTANT's representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Only after the parties have exhausted direct discussions AND mediation in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of

them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.

- H. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field at the same time in the same or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- I. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.
- J. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.
- K. Waiver of Subrogation: Owner and CONSULTANT hereby mutually waive all rights of subrogation, as well as all claims and other rights they may have against each other for loss of and/or damage to (a) the Work and any Project therein, (b) all materials, machinery, equipment and other items used in the Project and/or to be incorporated into the Project, while the same are in transit, at Project sites, during erection and otherwise, and (c) all property owned by or in the custody of OWNER and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such instance held by the OWNER as trustee. If OWNER is not the sole owner of the Project sites and all property at and adjacent thereto, OWNER shall obtain an undertaking from the other owners thereof sufficient to provide CONSULTANT the same protection from liability for

loss or damage as would be afforded to CONSULTANT under this Agreement if OWNER were the sole owner. OWNER shall cause all policies of property insurance relating to the Project to contain a provision or endorsement to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against CONSULTANT or its subconsultants, or any insureds, additional insureds, or loss payees thereunder.

- L. Jurisdiction/Venue: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Tennessee. This contract shall be governed by the laws of the State of Tennessee. The Circuit Court in Rutherford County, Tennessee shall have jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.

No items.

COUNCIL COMMUNICATION

Meeting Date: 02/16/2023

Item Title: Master Services Agreement for Low-Voltage Cabling Services

Department: IT Department

Presented by: Matthew Jarratt, Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Enter into a Master Services Agreement with LanLink Communications for Low-Voltage Cabling Services.

Recommendation

Approve the attached Master Agreement with LanLink Communications.

Background Information

Through a competitive bid process, LanLink Communications was determined to have provided be the lowest responsible submittal for installation and maintenance of low-voltage communication cabling for connectivity enhancement on a project basis. Staff proposes a Master Services Agreement with LanLink Communications to be utilized when cabling design and installation services are required on City projects.

Council Priorities Served

Responsible budgeting

A master service agreement is a cost-effective and efficient manner to secure qualified services that are frequently required on a project basis.

Fiscal Impacts

None. The Master Service Agreement is implemented for projects that will be funded separately with specific budgetary approval as required.

Attachments

LanLink Communications Master Agreement

Agreement for Low Voltage and Fiber Optic Cabling

This Agreement is entered into and effective as of the ____ day of _____ 2023 (the “Effective Date”), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **LanLink Communications, LLC**, a Tennessee limited liability company (“Contractor”).

This Agreement consists of the following documents:

- This document
- RFCSP-11-2023, Low Voltage and Fiber Optic Cabling issued January 17, 2023 (the “Solicitation”);
- Contractor’s Proposal, dated January 31, 2023 (“Contractor’s Proposal”);
- Contractor’s Price Proposal, dated January 31, 2023 (the “Price Proposal”), and attached hereto as Exhibit A;
- Any properly executed amendments to this Agreement;
- Any properly executed Work Order(s) (which may also be called a Statement of Work, Task Order, and/or Purchase Order) issued and accepted pursuant to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, Any properly executed Statement(s) of Work issued and accepted pursuant to this Agreement;
- Fourth, the Solicitation; and
- Lastly, Contractor’s Proposal.

1. Duties and Responsibilities of Contractor.

1.1. Contractor is engaged to provide low-voltage communication cabling for numerous City locations per the terms and specifications of the Solicitation. This cabling may include copper (Cat 6 and above) and fiber (single and multimode) within buildings as well as outside cabling as needed. Installation of racks, patch panels, and uninterruptable power supplies (UPS) will also be needed as part of some projects. Additionally, cabling and mounting of POE surveillance cameras, wireless access points, and access control equipment is also anticipated.

1.2. In undertaking the work set forth herein, Contractor must comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.

2. Scope of Services; Work Orders.

- 2.1. Contractor will perform the Services set forth in the Work Order(s) in a good and workmanlike manner. With the specifics agreed to by the Parties, the Work Order(s) shall include, but not be limited to: a description of the nature, scope, and schedule of the Services to be provided; the term/time within which the Services will be provided; Work Products, including any specifically cited deliverables, to be produced for and provided to the City; Contractor resource(s) to be used; the fixed price for the project or the hourly rate of pay per the Price Proposal; costs, invoicing and payment information; and any other relevant terms and conditions relating to the Services.
- 2.2. The City may request changes to any Work Order by providing Contractor with a written request that describes the desired change ("Work Order Amendment" or "Amendment"). Prior to implementing any Amendment and before the City incurs any costs associated with any Amendment, Contractor will provide the City with a written quotation which specifies any change(s) in scope, the applicable increase or decrease in the cost and/or the time that will be necessary to implement the Client requested changes specified within the Amendment. Provided that either the terms and conditions of the written quotation are acceptable to the City as presented or the terms and conditions are acceptably modified through additional negotiation, the resulting, mutually agreed upon change(s) in scope, and any associated increase or decrease in the cost and/or time required, shall be incorporated into the Amendment and, prior to Contractor performing any work based on the Amendment, the Amendment must be signed by the designated City representative responsible for the Work Order indicating City's concurrence and the Amendment must be approved/signed by authorized representatives of both Parties.
- 2.3. The City may cancel any Work Order at its sole convenience upon thirty (30) days' prior written notice to Contractor. In the event that the City cancels any Work Order under this Section 2.3, the City shall pay Contractor the costs of any mutually agreed upon Work Order-cited Services, performed by Contractor, up to the effective date of cancellation. Such payment by the City will be made to Contractor no later than thirty (30) days from the date that an undisputed Contractor invoice is received by the City with such date of receipt of invoice to be no sooner than the effective date of cancellation of the Work Order. No later than thirty (30) days following the effective cancellation date of a Work Order, Contractor shall provide the City any and all Work Products, including any cited deliverables, or any parts thereof, that Contractor developed or produced via the Work Order up to the effective date of cancellation. For purposes of clarification, "Work Order" as used in this Section 2.3, shall be construed to mean a Work Order and any Amendment(s) to that Work Order. Cancellation of any Work Order shall not be deemed or construed to be a cancellation of this Agreement.

3. Term.

- 3.1. The term of this Agreement commences on the Effective Date and shall run for a period of three (3) years, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein.
- 3.2. Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement other than non-payment, which may be subject to suspension or termination as provided in Section 3.2, below. 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.
- c. 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.
- d. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

4. Compensation; Method of Payment.

- 4.1. Contractor will be compensated upon the completion of tasks as outlined in the Price Proposal and upon the completion of a Task and submission of an invoice to the City at its address for Notices. Payment terms shall be net 30 days from the City's receipt of an invoice, unless the City objects to all or any portion of said invoice within 30 days.
 - 4.2. In the event the City is in arrears with any payment due from it to Contractor at any time, whether in respect to the Proposal price or any other amount due from the City to Contractor under the terms of this Agreement, the amount in arrears shall bear interest at the rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less, as from the date each amount falls due, pending actual payment thereof in full, without prejudice to any relief or remedy available to Contractor. Should the City remain in arrears more than 90 days, then upon notice to the City and without waiving any other rights or remedies to which it may be entitled, Contractor may place City's account in a credit hold and/or suspend or terminate performance of its duties and responsibilities until payment of the amount in arrears is received.
- 5. Work Product.** Except as otherwise provided herein, all data, documents and materials produced by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

6. Warranty.

6.1. Contractor warrants that:

- a. Immediately prior to delivery, it had good title to the Products, free from any lien or encumbrance unless otherwise specified;
- b. For a period of (90) days from delivery and acceptance of the Products and Services, or, with respect to Products manufactured by a third party, such longer period of time provided by such manufacturer, the Products and Services will (i) be free from defects in materials or workmanship and (ii) conform to the requirements of the Proposal, including any instructions, specifications and documentation incorporated therein;
- c. With respect to Services, Contractor's personnel shall possess the requisite level of training, skill, and experience to address the requisite tasks efficiently and will perform the Services provided hereunder in a professional and workmanlike manner consistent with generally accepted industry standards.

6.2. Contractor shall not be liable for nor have any warranty obligations with respect to Products that are in any way misused, altered and/or repaired by someone other than a representative of the Contractor which, within the sole, reasonable judgment of the Contractor, results in an adverse effect, including effects upon performance or reliability of the Products.

6.3. In order to make a warranty claim, the City shall promptly notify Contractor in writing and Contractor will, subject to the applicable manufacturer's warranty policy, repair or replace such defective Product at no cost to the City. Contractor will attempt to reply to warranty claims received from the City within 72 hours. Normal working hours are 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The City shall reasonably and promptly cooperate with Contractor's request for information regarding the claim and with return of the defective Product if required.

6.4. Contractor's sole obligation with respect to Products manufactured by someone other than Contractor shall be to pass through the applicable warranties, if any, provided by the manufacturer.

6.5. Depending on product line and manufacturer warranty, additional charges may apply for onsite support of In Warranty parts repair or replacement. Contractor recommended and supported products will carry one year of support for replacement or repair if deemed a manufacturer defect. For Out-of-Warranty products that Contractor does not recommend, support will be deemed to be out-of-warranty, therefore, service labor for replacement and repair will be considered a billable activity. If upon return and repair, it is deemed that the product was damaged by the City or its guests/occupants, the service would be a billable activity. If product is deemed defective by manufacturer, In Warranty by manufacturer, a product that Contractor supports and within the one year labor warranty period, then Contractor will remove, return/repair and reinstall the defective item under the one year labor warranty. If the product is deemed not defective by the manufacturer, out of manufacturer warranty, not a supported product of Contractor or beyond the one year labor warranty period based upon purchase date,

then the City is responsible for any removal, replacement, repair and/or reinstall as a billable activity from Contractor. The storage of equipment, cardboard boxes, and packaging for returned materials for 30 days from the purchase date and then subsequent discarding of packaging materials and boxes are a billable activity at the “material handling” rate with a minimum of 1 hour charge.

6.6. Contractor will offer a 25-year Warranty on CommScope products and a Manufacturer Warranty on non-CommScope products. All labor will be warranted for one year.

7. Insurance.

7.1. During the term of this Agreement, Contractor shall maintain at least the following commercial insurance policies for the duration of the contract in the amounts specified:

- a. Workers’ compensation and employer’s liability insurance – Workers’ compensation in compliance with the applicable state and federal laws; employer’s liability with a limit of \$1,000,000 per occurrence.
- b. Comprehensive general liability insurance – insurance including blanket contractual, broad form property damage, completed operations, and independent contractor’s liability, all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- c. Comprehensive automobile liability insurance – Must include owned, hired, and nonowned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000 each occurrence.
- d. Professional liability (errors and omissions) insurance affording professional liability insurance – To a limit of \$1,000,000 each claim, and \$1,000,000 aggregate.
- e. Technology Errors and Omissions insurance – to include data breach and loss of personally identifiable information – To a limit of \$1,000,000 each claim, and \$2,000,000 aggregate.
- f. Commercial umbrella policy to a limit of \$5,000,000 aggregate.

7.2. Contractor will provide to the City: (i) standard certificates of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: “The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents.”

8. Indemnification.

8.1. 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.

8.2. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

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

- a. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
- b. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - i. Procure for the City the right to continue using the products or services.
 - ii. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 - iii. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

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

9. Notices. Notices to the parties, including but not limited to notice of assignment of any rights to money due to Contractor under this Agreement, must be mailed, hand delivered, and/or emailed to the addresses below, or as may be updated in writing by the parties from time to time. Any notice to a party relative to any part of this Agreement will be considered delivered and the service thereof completed when said notice is posted by registered mail, to the receiving party at its last given address or delivered in person to said party or, in the case of Contractor, its authorized representative on site.

If to the City:
City of Murfreesboro
Attn: City Manager
111 W. Vine St.
Murfreesboro, TN 37130

With a copy to:
City of Murfreesboro
Attn: City Attorney
111 W. Vine St.
Murfreesboro, TN 37130

If to Contractor:
LanLink Communications LLC
Attn: Keegan Erickson
1513 W. College St.
Murfreesboro, TN 37129
kerickson@lanlinkcommunications.com

With a copy to:
LanLink Communications LLC
Attn: Rodney Oldenburg
1513 W. College St.
Murfreesboro, TN 37129
rodney@lanlinkcommunications.com

10. Maintenance of Records. Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.

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

12. Relationship of the Parties. Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

- 13. Non-Solicitation.** Each Party agrees that during the Non-Solicitation Term, defined herein, that it shall not directly or indirectly solicit or hire any employee, consultant, independent contractor, agent or other representative of the other Party ("Employee") to work or provide any services in direct competition with such other Party. "Non-Solicitation Term" shall mean the shorter of (a) the term of this Agreement plus a period of twelve (12) months after the termination of this Agreement, or (b) a period of six (6) months after the relevant Employee last worked for the non-soliciting Party.
- 14. Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 15. Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- 16. Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
- 17. Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor

under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

18. Federal Contractor Requirements.

18.1. 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.

18.2. 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.

18.3. 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.

19. Assignment. The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of the parties hereunder may be assigned or transferred in whole or in part without the prior written consent of the other party. Any such assignment or transfer does not release Contractor from its obligations hereunder unless specifically waived by the City in writing.

20. Integration. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.

21. Force Majeure. No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

22. Governing Law and Venue. The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

23. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.

24. Attorney Fees. In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

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

IN WITNESS WHEREOF, the parties enter into this agreement as of the Effective Date.

City of Murfreesboro, Tennessee

Lanlink Communications, LLC

By: _____
Shane McFarland, Mayor

By: _____

Approved as to form:

Print: _____

City Attorney

Its: _____

EXHIBIT A

Labor Cost Per Hour	Business	
	Hours M-F	After Hours
BICSI- Certified RCDD	\$ 120.00	\$ 180.00
BICSI- Certified RTPM/ Sales Engineering	\$ 90.00	\$ 135.00
BICSI- Certified Fiber Technician Level II	\$ 80.00	\$ 95.00
BICSI- Certified Copper Technician Level II	\$ 70.00	\$ 105.00
Helper/ Warehouse Material Mobilization	\$ 60.00	\$ 90.00
Systems Installer (A/V and like systems)	\$ 90.00	\$ 135.00
System Programmer/Integrator	\$ 100.00	\$ 150.00
Materials/Equipment Cost		
Percentage Above Invoiced Cost	17%	

Labor Increase Rate: After the first year, the labor rates herein will increase by 1% per year.

