

**MURFREESBORO CITY COUNCIL**  
**Regular Meeting Agenda**  
**Council Chambers – 6:00 PM**  
**June 15, 2023**

**Submittals**

**PRAYER**

Mr. Austin Maxwell

**PLEDGE OF ALLEGIANCE**

**CEREMONIAL ITEMS**

**Consent Agenda**

1. Emergency Operations Center Improvements Change Order #1 (Administration)
2. MTE Easement and Primary Service (Airport)
3. FY24 Tennessee Housing Development Agency Emergency Solutions Grant (Community Development)
4. FY23 City Manager Approved Budget Amendments (Finance)
5. Contract with Murfreesboro Medical Clinic (Fire Rescue)
6. Motlow Payment Agreement (Fire Rescue)
7. Asphalt and Concrete Purchase Report (Street)
8. Approval of State Maintenance Contract for FY 2023-2025 (Street)
9. 2023 Water Treatment Plant Chemical Contracts (Water Resources)
10. Asphalt Purchases Report (Water Resources)
11. Memorandum of Understanding with MTSU for Renewal of Stormwater Permit (Water Resources)
12. G20 Technologies Amendment No. 1 (Water Resources)

**Minutes**

**Old Business**

Ordinance

13. Ordinance 23-O-21 Impact Fee Schedule (Administration)
  - a. Second Reading: Ordinance 23-O-21
14. 23-O-22 Community Decency Standards Ordinance (Administration)
  - a. Second Reading: Ordinance 23-O-22

Land Use Matters

**New Business**

Land Use Matters

Ordinance

15. Ordinance 23-O-23 Termination of Osborne Lane Special Sanitary Sewer Assessment District (Water Resources)
  - a. First Reading: Ordinance 23-O-23

#### Resolution

16. Resolution 23-R-22 Ratify Private Chapter 24 to Authorize Creation of a Municipal Solid Waste Authority (Administration)
17. Resolution 23-R-23 Policy for Public Comment at Public Meetings (Administration)

#### On Motion

18. Titan Aviation Fuels Agreement (Airport)
19. City Concrete and Storm Drainage Annual Contract Renewal (Engineering)
20. Annual Paving Contract Award (Engineering)
21. Wetland Mitigation Credit Purchase – Rutherford Blvd (Engineering)
22. Contract for Sidewalk Repair Services for ADA Compliance (Engineering)
23. Master Services Agreement - TTL (Engineering)
24. Purchase of Liability, Property, Vehicle, Cyber, Crime, and Workers' Compensation Insurance (Legal)
25. Sewer Allocation Variance- Restaurant and Retail Development on South Church Street (Planning)

#### **Board & Commission Appointments**

26. Water Resources Board Appointment (Administration)

#### **Licensing**

27. Beer Permits (Finance)

#### **Payment of Statements**

#### **Other Business**

#### **Adjourn**

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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Item Title: Change Order # 1 to Construction Contract for Emergency Operations Center Improvements

Department: Administration

Presented by: Scott Elliott, Project Development Manager

Requested Council Action:

Ordinance

Resolution

Motion

Direction

Information

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## Summary

Change Order #1 for improvements at the Emergency Operations Center (EOC).

## Staff Recommendation

Approve Change Order #1 to the Construction Contract with Rock City Construction.

## Background Information

Change Order #1 includes additional cost for door hardware to the new ADA-compliant bathrooms.

## Council Priorities Served

### *Responsible budgeting*

Modifications that are designed to maintain ADA-compliance is consistent with the responsible project budgeting.

## Fiscal Impact

The amount of the change order, 1,585.10, can be accommodated within the project budget that is funded by FY21 CIP budget.

## Attachments

1. Change Order #1 for contract with Rock City Construction.
2. Final Application for Payment.

# AIA<sup>®</sup> Document G701<sup>™</sup> – 2017

## Change Order

<b>PROJECT:</b> <i>(name and address)</i> Murfreesboro PD EOC Renovations and Addition 1004 N Highland Ave Murfreesboro, Tennessee 37130	<b>CONTRACT INFORMATION:</b> Contract For: Murfreesboro Police Headquarters Renovation Date:	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 001 Date: 3/10/2023
<b>OWNER:</b> <i>(name and address)</i> CITY OF MURFREESBORO 111 WEST VINE STREET MURFREESBORO, Tennessee 37130	<b>ARCHITECT:</b> <i>(name and address)</i> CMH Architects, Inc. 1800 International Park Drive, Suite 300 Birmingham, Alabama 35243	<b>TO CONTRACTOR:</b> <i>(name and address)</i> Rock City Construction Company, LLC 1885 General George Patton Drive Franklin, Tennessee 37067

**THE CONTRACT IS CHANGED AS FOLLOWS:**

PCO 001 CE #004 - Change in Men's and Women Restroom Door Hardware \$1,585.10

The original Contract Sum was	\$ 336,925.00
The net change by previously authorized Change Orders	\$ 0.00
The Contract Sum prior to this Change Order was	\$ 336,925.00
The Contract Sum will be changed by this Change Order in the amount of	\$ 1,585.10
The new Contract Sum including this Change Order will be	\$ 338,510.10
The Contract Time will be by	
The new date Substantial Completion will be	


**NOTE:** This Change Order does not include adjustment in the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

CMH Architects, Inc. <hr/> <b>ARCHITECT</b> <i>(Firm name)</i>  <hr/> <b>SIGNATURE</b> Blake Nelson - Senior VP/AoR <hr/> <b>PRINTED NAME AND TITLE</b> 03/12/2023 <hr/> <b>DATE</b>	Rock City Construction Company, LLC <hr/> <b>CONTRACTOR</b> <i>(Firm name)</i> DocuSigned by:  <hr/> <b>SIGNATURE</b> John Lee Managing Principal <hr/> <b>PRINTED NAME AND TITLE</b> 3/14/2023 <hr/> <b>DATE</b>	CITY OF MURFREESBORO <hr/> <b>OWNER</b> <i>(Firm Name)</i> <hr/> <b>SIGNATURE</b> <hr/> <b>PRINTED NAME AND TITLE</b> <hr/> <b>DATE</b>
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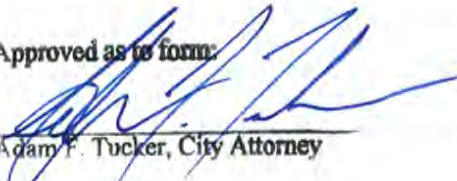
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User Notes: (1932678762)

*Approved.*  
  


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 Scott Elliott  
 Manager Project Dvlp  
 Date 3/14/23

**Approved as to form:**  
  


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 Adam F. Tucker, City Attorney



April 30, 2023

Attn:  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN. 37130

**Re: Murfreesboro Police Department**

**EOC Access & ADA Compliant Restrooms  
Request for Payment No. 4  
Rock City Construction Co. Job# 6220029**

Enclosed Herewith, please find the following documents:

- ◊ Rock City Construction Co LLC. Invoice No. 0602300017
- ◊ Application and Certificate for Payment AIA G702
- ◊ Application for Payment and Sworn Statement dated April 30, 2023
- ◊ Waiver of Lien in the amount of \$122,815.60
- ◊ Back - up Documentation.

Should you have any questions, please do not hesitate to call me at (773) 645-5845

Yours Truly,  
Rock City Construction Co LLC.

*Leo Drogolewicz*

Leo Drogolewicz  
Project Accountant Supervisor

*Sam Huddleston 6/1/23*

Sam Huddleston Date  
Assistant City Manager

Enclosed (1)  
cc: M. Mangum

1885 General George Patton Drive  
Franklin, TN. 37067 | 773.794.6691  
[www.rockcityconstruction.com](http://www.rockcityconstruction.com)

*Scott Elliott 6/1/23*  
Scott Elliott Date  
Manager Project Dvlp



**ROCKCITY**  
CONSTRUCTION CO.  
EST. 1913

Invoice No. 0602300017  
Date of Invoice: April 30, 2023  
Customer No. CITMU 900

# INVOICE

Job# 6220029  
Pay Request # 4

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

To invoice for work completed at:

**Murfreesboro Police Department**

**EOC Access & ADA Compliant Restrooms**  
**1004 N Highland Ave.**  
**Murfreesboro, TN. 37130**

<b>AMOUNT OF ORIGINAL CONTRACT</b>	\$	336,928.00
EXTRAS TO CONTRACT	\$	1,585.10
CREDITS TO CONTRACT	\$	-
<b>ADJUSTED CONTRACT AMOUNT</b>	\$	<u>338,513.10</u>
WORK COMPLETED TO DATE	\$	338,513.10
LESS RETAINED	\$	-
NET AMOUNT EARNED	\$	<u>338,513.10</u>
PREVIOUS REQUESTED	\$	<u>(215,697.50)</u>
<b>NET AMOUNT THIS PAYMENT</b>	\$	<u><u>122,815.60</u></u>

Prepared by: Leo Drogolewicz

*MPD-EOC Revisions + Additions*

# APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: CITY OF MURFREESBORO  
 111 WEST VINE STREET  
 MURFREESBORO, TN  
 37130 UNITED STATES

PROJECT: EOC Access & ADA Compliant Restrooms  
 1004 N Highland Ave  
 MURFREESBORO, TN  
 37130 UNITED STATES

FROM CONTRACTOR: Rock City Construction Co. LLC  
 1885 General George Patton Drive  
 Franklin, TN, 37067 United States

ARCHITECT:

APPLICATION NO.: 4  
 PERIOD TO: 30-APR-23  
 PROJECT NOS.: 6220029  
 INVOICE NO.: 06202300017  
 CONTRACT DATE: 13-SEP-22

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

CONTRACT FOR: EOC Access & ADA Compliant Restrooms

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation sheet is attached.

1. ORIGINAL CONTRACT SUM ..... \$ 336,928.00
2. Net change by change orders ..... \$ 1,585.10
3. CONTRACT SUM TO DATE (Line 1 +/- 2) ..... \$ 338,513.10
4. TOTAL COMPLETED & STORED TO DATE ..... \$ 338,513.10  
 (Column G on G703)
5. RETAINAGE:  
 Total retainage Column I of G703 ..... \$ 0.00  
 6. TOTAL EARNED LESS RETAINAGE ..... \$ 338,513.10  
 (Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT  
 (Line 6 from prior Certificate) ..... \$ 215,697.50
8. CURRENT PAYMENT DUE ..... \$ 122,815.60
9. BALANCE TO FINISH, INCLUDING RETAINAGE.  
 (Line 3 less Line 6) ..... \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Change Order approved in previous months by Owner	0.00	0.00
APPROVED THIS MONTH		
Number Date Approved		
OC0001 13-MAR-2023	1,585.10	<i>Signed Change Order is checked.</i>
<b>Net Change by Change Orders</b>	<b>1,585.10</b>	<b>0.00</b>
<b>CURRENT TOTAL</b>	<b>1,585.10</b>	<b>1,585.10</b>

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for work for which previous Certificates for payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Contractor: Rock City Construction Co. LLC  
 by Michael Sudel Date: 04 / 30 / 2023

State of: IL  
 County of: COOK  
 Subscribed and sworn to before me this 30th day of April 2023



Notary Public: Foo Phogolowicz  
 My Commission expires: 01/27/2024

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of Work is in accordance with the Contract Documents, and the Contractor is entitled to the payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$ 122,815.60  
 (Attach explanation if amount certified differs from the amount applied for. Initial figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: [Signature] Date: 05/19/2023  
*Pay Contractor*  
*Retainage to be w/h*  
*Retainage w/h 1-3*  
 105,889.94  
 5513.16  
 11,352.50  
 122,815.60

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*Approvals are attached.*

Rock City Construction Co. LLC

**CONTINUATION SHEET AIA DOCUMENT G703**  
 AIA DOCUMENT G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing  
 Contractor's signed Certification is attached.  
 In tabulation below, amounts are stated to the nearest cent.  
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER : 4  
 APPLICATION DATE : 04/30/2023  
 PERIOD TO : 04/30/2023  
 PROJECT NO : 8220029

PAGE: 2  
 INVOICE NO  
 06202300017

A	B	C	D		E	F	G	H	I	
			FROM PREVIOUS APPLICATION	WORK COMPLETED (D+E)						
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE			THIS PERIOD	MATERIAL PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	PER-% (G / C)	BALANCE TO FINISH	RETAINAGE
01000	General Conditions	67,531.30	26,440.00		41,091.30	0.00	67,531.30	100.00	0.00	0.00
01520	Bond	2,785.00	2,785.00		0.00	0.00	2,785.00	100.00	0.00	0.00
01521	Subcontractor Bond	292.00	292.00		0.00	0.00	292.00	100.00	0.00	0.00
02001	Demolition	4,319.00	4,319.00		0.00	0.00	4,319.00	100.00	0.00	0.00
03000	FOOTING PREP/FINE GRADE	2,420.00	0.00		2,420.00	0.00	2,420.00	100.00	0.00	0.00
06000	Rough Carpentry	41.24	1,160.00		-1,118.76	0.00	41.24	100.00	0.00	0.00
06300	INSTALL TOILET ACCESSORIES	0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00
08101	Supply Door/ Frame / Hardware	12,531.24	0.00		12,531.24	0.00	12,531.24	100.00	0.00	0.00
08101M	Door / Frame Material	1,128.66	1,272.76		-144.10	0.00	1,128.66	100.00	0.00	0.00
08400	Glass / Glazing	55,990.68	37,000.00		18,990.68	0.00	55,990.68	100.00	0.00	0.00
09200	Drywall	10,640.00	10,640.00		0.00	0.00	10,640.00	100.00	0.00	0.00
09300	Ceramic / Tile	3,600.00	0.00		3,600.00	0.00	3,600.00	100.00	0.00	0.00
09500	Acoust Ceiling	78.54	64.00		-5.46	0.00	78.54	100.00	0.00	0.00
09500S	Acoust Ceiling	2,600.00	2,600.00		0.00	0.00	2,600.00	100.00	0.00	0.00
09600	Flooring	10,761.96	9,400.00		1,361.96	0.00	10,761.96	100.00	0.00	0.00
09900	Painting	5,430.00	5,430.00		0.00	0.00	5,430.00	100.00	0.00	0.00
10001	Division 10 Supplier	2,163.70	2,987.00		-223.30	0.00	2,163.70	100.00	0.00	0.00
15000	Mechanical	30,363.00	29,488.00		875.00	0.00	30,363.00	100.00	0.00	0.00
15400	Plumbing	54,138.04	54,700.00		-561.96	0.00	54,138.04	100.00	0.00	0.00
15500	Fire Protection	6,093.00	6,093.00		0.00	0.00	6,093.00	100.00	0.00	0.00
16000	Electrical	25,109.00	22,598.10		2,510.90	0.00	25,109.00	100.00	0.00	0.00
16601	Security Systems	26,410.00	0.00		26,410.00	0.00	26,410.00	100.00	0.00	0.00
81999	General Liability Insurance	3,638.00	3,638.00		0.00	0.00	3,638.00	100.00	0.00	0.00



Rock City Construction Co. LLC

**CONTINUATION SHEET**      **AIA DOCUMENT G703**  
**AIA DOCUMENT G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing**  
 Contractor's signed Certification is attached.  
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 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER : 4      PAGE: 3  
 APPLICATION DATE : 04/30/2023      INVOICE NO  
 PERIOD TO : 04/30/2023      06202300017  
 PROJECT NO : 6220029

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED (D+E)		E THIS PERIOD	F MATERIAL PRESENTLY STORED	G TOTAL COMPLETED AND STORED TO DATE	PER-% (G/C)	H BALANCE TO FINISH	I RETAINAGE
			FROM PREVIOUS APPLICATION							
83000	FEE	10,258.74	5,593.14		3,735.50	0.00	10,258.74	100.00	0.00	0.00
<b>PROJECT TOTAL :</b>		<b>339,513.10</b>	<b>227,050.00</b>		<b>111,463.10</b>	<b>0.00</b>	<b>339,513.10</b>	<b>100.00</b>	<b>0.00</b>	<b>0.00</b>

AIA DOCUMENT G703 - APPLICATION AND CERTIFICATE FOR PAYMENT  
 THE AMERICAN INSTITUTE OF ARCHITECTS 1735 NEW YORK AVENUE NW WASHINGTON DC 20006

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** MTE Easement and Primary Service

**Department:** Airport

**Presented by:** Chad L. Gehrke, Airport Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Proposed MTE underground electric easement and primary service for the new Murfreesboro Fuel Farm

**Staff Recommendation**

Approve the easement for Middle Tennessee Electric Membership Corporation.

**Background Information**

This mandatory referral proposes a dedication of electric easement to Middle Tennessee Electric Membership Corporation (MTE) on City property at Murfreesboro Municipal Airport's apron. This easement provides for the installation of the three-phase electricity required to power the new aviation fuel farm.

Conduit for the electric line was installed with the construction of the Hanger 1 Project. The expenses for install the three-phase electric service is estimated at \$20,000 and will be funded through the FY21 CIP Budget

**Council Priorities Served**

*Expand infrastructure*

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

**Fiscal Impact**

None.

**Attachments**

1. Planning Commission Referral
2. MTE easement survey



**MEMORANDUM  
CITY OF MURFREESBORO  
LEGAL DEPARTMENT**

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**TO:** Chair Jones and Members of the Planning Commission  
**CY:** Chad Gehrke, Matthew Blomeley, Scott Elliot  
**FROM:** David A. Ives  
**DATE:** May 17, 2023  
**RE:** Mandatory Referral: Proposed Underground Electric Easement to MTE

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**CONSENT AGENDA**

The Airport is requesting an underground electric easement to Middle Tennessee Electric ("MTE") over City-owned property located at 1930 Memorial Boulevard to provide power to the fuel farm that is being relocated.

The easement area has been surveyed and a copy of the drawing is attached. Additionally, conduit has already been installed, which was approved with the construction of the Hanger I Project.

I will be available if you have any questions.

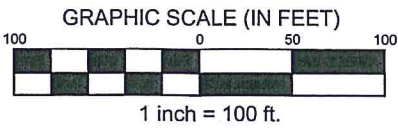
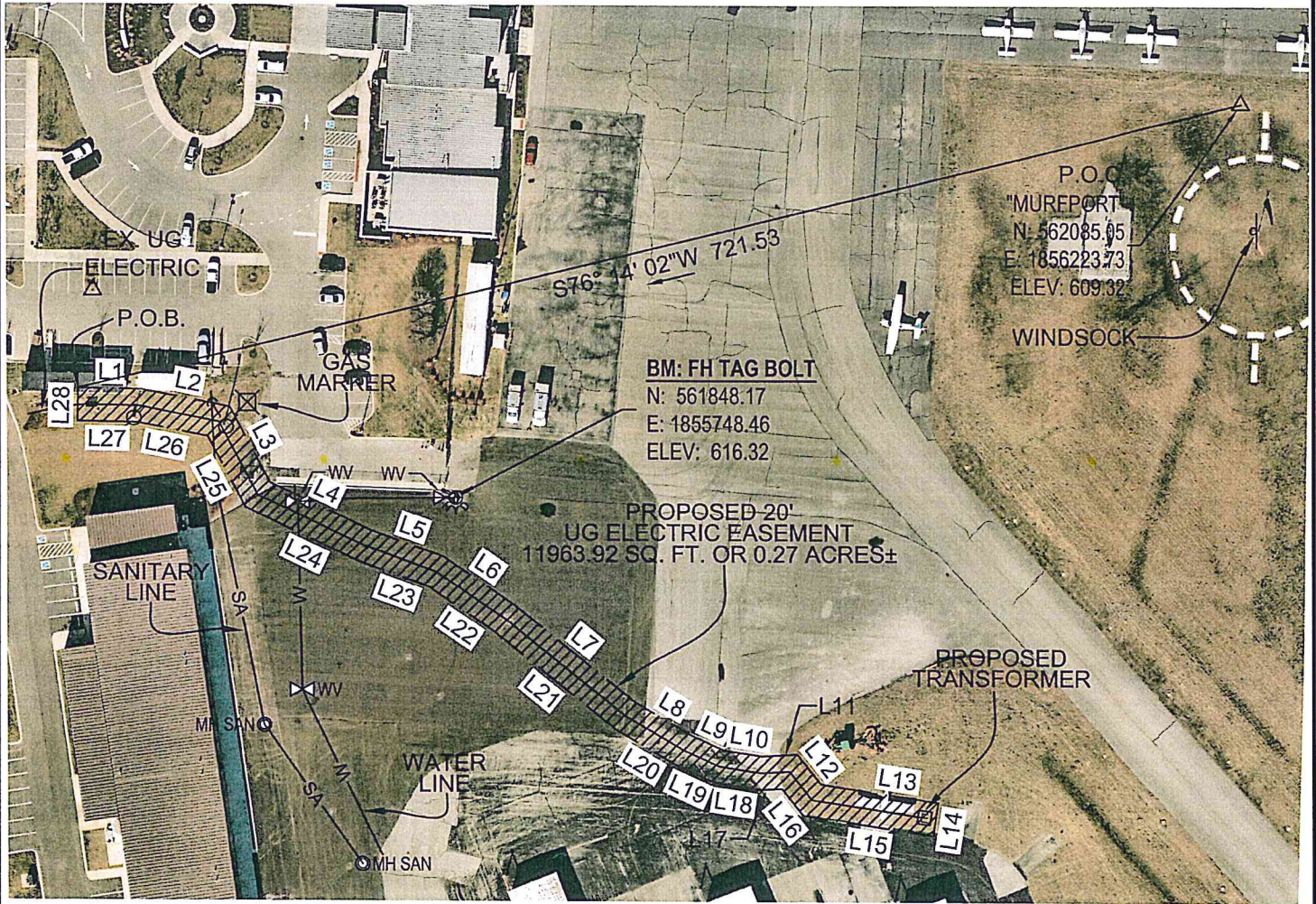


TENNESSEE STATE PLANE  
NAD 83 (2011)

Line Table		
Line #	Length	Direction
L1	37.82	S89° 02' 54"E
L2	53.96	S78° 50' 59"E
L3	51.27	S27° 55' 09"E
L4	67.12	S64° 34' 44"E
L5	46.20	S70° 07' 53"E
L6	51.35	S55° 40' 59"E
L7	92.77	S51° 17' 48"E
L8	39.33	S59° 41' 36"E
L9	21.82	S65° 35' 40"E
L10	23.10	S81° 12' 16"E

Line Table		
Line #	Length	Direction
L11	21.23	N86° 48' 34"E
L12	22.93	S38° 28' 52"E
L13	71.48	S81° 14' 26"E
L14	20.00	S08° 45' 34"W
L15	79.31	N81° 14' 26"W
L16	20.41	N38° 28' 52"W
L17	12.98	S86° 48' 34"W
L18	27.95	N81° 12' 16"W
L19	25.59	N65° 35' 40"W
L20	41.83	N59° 41' 36"W

Line Table		
Line #	Length	Direction
L21	93.48	N51° 17' 48"W
L22	48.05	N55° 40' 59"W
L23	44.63	N70° 07' 53"W
L24	74.72	N64° 34' 44"W
L25	48.37	N27° 55' 09"W
L26	42.65	N78° 50' 59"W
L27	36.04	N89° 02' 54"W
L28	20.00	N00° 57' 06"E



UNDERGROUND ELECTRIC EASEMENT  
AREA = 11,963.92 SQ. FT.±

- LEGEND**
- PROPERTY LINE
  - EASEMENT LINE
  - UG - UNDERGROUND
  - P.O.B. - POINT OF BEGINNING
  - P.O.C. - POINT OF COMMENCEMENT
  - POWER POLE
  - FIRE HYDRANT
  - COMMUNICATIONS BOX
  - SIGN
  - GUY WIRE



PREPARED BY:  
**ENERGY LAND & INFRASTRUCTURE**  
745 S CHURCH ST. SUITE 801 • MURFREESBORO, TN 37130  
OFFICE 615-383-6300 • WWW.ELI-LLC.COM  
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EXHIBIT "A"  
**CITY OF MURFREESBORO**  
**MURFREESBORO MUNICIPAL AIRPORT**  
DEED BOOK 099, PAGE 512 & DEED BOOK 109, PAGE 139  
TAX MAP 080, PARCEL 37.00  
13TH CIVIL DISTRICT OF RUTHERFORD COUNTY, TN  
UNDERGROUND ELECTRIC EASEMENT

PROJECT # 19-12-2501      DATE: rev. 05/16/2023

# COUNCIL COMMUNICATION

Meeting Date: 6/15/2023

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**Item Title:** FY24 Tennessee Housing Development Agency Emergency Solutions Grant

**Department:** Community Development

**Presented by:** Robert Holtz, Director of Community Development

**Requested Council Action:**

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

**Summary**

Tennessee Housing Development Agency (THDA) Emergency Solutions Grant (ESG) for homelessness assistance grant award.

**Staff Recommendation**

Approve acceptance of the THDA grant agreement.

**Background Information**

The ESG grant provides funding to eligible non-profit agencies for emergency services to assist homeless individuals and individuals in danger of becoming homeless. Funding is provided by HUD through THDA. The City through Community Development awards local non-profit agencies grants from these funds for the administration of emergency services.

THDA has notified the City of award of the ESG Set Aside totaling \$134,375.

**Council Priorities Served**

*Responsible Budgeting*


Grant funds supplement or supplant funds that may otherwise be budgeted from City revenues for community services.

**Fiscal Impact**

No expenditure. Funding provides \$125,000 for grant award activities and \$9,375 for administrative expense.

**Attachments**

THDA ESG Agreement

 <b>GOVERNMENTAL GRANT CONTRACT</b> (cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)					
<b>Begin Date</b> 07/01/2023		<b>End Date</b> 06/30/2024		<b>Agency Tracking #</b> ESG-23-04	
<b>Edison ID</b> 77925				<b>Edison Vendor ID</b> 4110	
<b>Grantee Legal Entity Name</b> City of Murfreesboro				<b>Edison Vendor ID</b> 4110	
<b>Subrecipient or Recipient</b> <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient		<b>Assistance Listing Number 14.231 Emergency Solutions Grants Program</b>  <b>Grantee's fiscal year end</b>			
<b>Service Caption (one line only)</b> Emergency Solutions Grant (ESG) 2023					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
2023		\$134,375			\$134,375
<b>TOTAL:</b>		<b>\$134,375</b>			<b>\$134,375</b>
<b>Grantee Selection Process Summary</b>					
<input type="checkbox"/> Competitive Selection			Emergency Solutions Grants (ESG) funds are made available competitively to nonprofit organizations and local governments to implement eligible activities. Funds are awarded based on the scoring criteria identified in the 2023 ESG Program Description.		
<input checked="" type="checkbox"/> Non-competitive Selection			Each of these jurisdictions ("Set-Aside Cities") have either recently lost their direct ESG allocation from HUD or are the location of a major entity serving veterans.		
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - GG	
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			

**GRANT CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**TENNESSEE HOUSING DEVELOPMENT AGENCY,**  
**AND**  
**City of Murfreesboro**

This grant contract ("Grant Contract"), by and between the State of Tennessee, and the Tennessee Housing Development Agency ("THDA"), hereinafter referred to as the "State" or the "Grantor State Agency" and Grantee **City of Murfreesboro**, hereinafter referred to as the "Grantee," is for the provision of **services to the homeless and those at risk of homelessness under the Emergency Solutions Grants ("ESG") Program**, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID # **4110**

**A. SCOPE OF SERVICES AND DELIVERABLES:**

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. ESG funds may be used to maintain and operate emergency homeless shelters; to provide essential services, street outreach and/or rapid re-housing services to the homeless; to provide prevention services to households at risk of homelessness; and to perform data collection activities for all persons assisted as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, and ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these terms shall govern in order of precedence below:
- a. Title 24 Code of Federal Regulations, Part 576, and Part 91 of the Emergency Solutions Grants Program authorized by Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11371-11378) Interim Regulations (the "Federal ESG Regulations").
  - b. The United States Department of Housing Urban Development ESG Desk Guide for Program and Eligibility Policies and Procedures.
  - c. The THDA 2023 ESG Program Description and the ESG Manual "the THDA ESG Requirements").
  - d. Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D.
- A.4. The Grantee shall comply with the Eligibility Activity Requirements of 24 CFR Part 576, Subpart B, and Part 91 as applicable to the type of project assisted.
- A.5. The Grantee shall comply with the Program Requirements of 24 CFR Part 576, Subpart E, and Part 91 as applicable to the type of project assisted.
- A.6. The Grantee shall maintain records adequate to document compliance with 24 CFR Part 576, along with such other records the State determines necessary to enable the State to fulfill its responsibilities in the ESG Program. All records will be retained for the more restrictive of the period required in 24 CFR Part 576 or as provided in Section D15 of this contract.

- A.7. The Grantee shall furnish to the State all reports required to be filed in accordance with any directives of the State and within the time period prescribed by the State for such reports.
- A.8. The Grantee shall comply with the required consultation with the applicable local Continua of Care; participation in the coordinated entry of the applicable local Continua of Care; and ESG reporting standards using, as required under the ESG regulations, the Homeless Management Information System (HMIS) of the Continua of Care in which the ESG-funded services of the Grantee are provided.

**B. TERM OF CONTRACT:**

This Grant Contract shall be effective on 07/01/2023 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed One Hundred and Thirty Four Thousand Three Hundred and Seventy Five Dollars and Zero Cents (\$\$134,375) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment C is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed or, upon approval, advanced for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement or advance payment of allowable costs.

If approved for Periodic Advance Payment. The Grantee shall be advanced for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. A maximum of 20% of this contract's Maximum Liability shall be paid to the Grantee in advance upon approval of this Grant Contract and on Date(s) on which the state will make advance payment(s). The total of said payments shall not exceed the Maximum Liability of this Grant Contract.

- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State based on an approved payment schedule, using the forms and providing all necessary supporting documentation specified by the THDA ESG, and present such electronically to THDA using the Grants Management System as directed by THDA.

- a. The Grantee understands and agrees to all of the following.



- (1) An invoice under this Grant Contract shall include only reimbursement or approved advance payment requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable expenditure reimbursements.
- (2) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

An invoice under this Grant Contract shall be presented to THDA within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. THDA will not deem such Grantee costs to be allowable and reimbursable unless, at the sole discretion of THDA, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it shall be signed by a Grantee agent that would be authorized to sign this Grant Contract.

The final invoice under this Grant Contract shall be submitted to THDA by 11:59:59 PM on August 14, 2024. An invoice submitted after that date will NOT be paid.

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Any change in the Grant Budget, line items and/or grand total amounts shall require an amendment of this Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
  - b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
  - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the State pursuant to this Grant Contract.
  - d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal

agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.

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

**D. STANDARD TERMS AND CONDITIONS:**

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

- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed in accordance with Federal ESG Regulations and THDA ESG Requirements as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee. Upon such termination, the Grantee shall have no claim to any ESG funds remaining under this Grant Contract.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

The Grantee acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Grantee is, or within the past six months has been, an employee of the State of Tennessee or if the Grantee is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

Each Grantee also must adopt a conflict of interest policy in accordance with 24 CFR § 576.404 which prohibits any employee, persons with decision making positions or having information about decisions made by an organization, from obtaining a personal or financial interest or benefit from the organization's activity, including through contracts, subcontracts, or agreements.

- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Don Watt, Chief Program Officer  
Tennessee Housing Development Agency  
Andrew Jackson Building, Third Floor  
Nashville, TN 37243  
DWatt@thda.org  
Telephone # 615-815-2032

The Grantee:

Shane McFarland, Mayor  
City of Murfreesboro  
111 W Vine Street, Murfreesboro, TN 37130  
smcfarland@murfreesborotn.gov  
Telephone # (615) 849-2629  
FAX # N/A

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

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the

State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. **Nondiscrimination**. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. **HIPAA Compliance**. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.
- D.12. **Public Accountability**. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.
- The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.
- D.13. **Public Notice**. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall

include the statement, "This project is funded under a grant contract with the State of Tennessee through the U.S. Department of Housing and Urban Development." All notices must include the fair housing and Americans with Disabilities Act logos as stated in the THDA ESG Requirements. All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period that is greater than five (5) full years from the date of the final payment or the term specified in 24 CFR 576.500 (y), and shall be subject to audit at any reasonable time and upon reasonable notice by THDA, the U. S. Department of Housing and Urban Development, the Tennessee Comptroller of the Treasury, or their duly appointed representatives.

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

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

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

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury, THDA, or the U.S. Department of Housing and Urban Development.

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

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

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the U.S. Department of Housing and Urban Development, the Tennessee Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. The Grantee shall submit all reports in form and substance and within deadlines as specified in the Federal ESG Regulations and the THDA ESG Requirements.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law. If the Grantee is subject to an audit under this provision, then the Grantee shall complete Attachment F.

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

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

- D.20. **Procurement.** If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.

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

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

The Grantee shall also comply with all procurement requirements as stated in the Federal ESG Regulations and in the THDA ESG Requirements.

- D.21. **Strict Performance.** Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.
- D.22. **Independent Contractor.** The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.
- D.24. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default

or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.

- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. Reserved.
- D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

The Grantee grants the State a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant Contract. This Grant Contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment or motor vehicles. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any



financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract. The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Vehicle identification number;
- c. Manufacturer's serial number or other identification number, when applicable;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment or motor vehicles is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant Contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: [http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-408.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.34. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

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

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. **Work Papers Subject to Review.** The Grantee shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by THDA, the U.S. Department of Housing and Urban Development, the State Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.
- E.3. **Federal Funding Accountability and Transparency Act (FFATA).**

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

The Grantee shall comply with the following:

- a. **Reporting of Total Compensation of the Grantee's Executives.**
- (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee's preceding completed fiscal year, if in the Grantee's preceding fiscal year it received:
- i. 80 percent or more of the Grantee's annual gross revenues from Federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or

15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

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

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

- E.4. Training. The Grantee shall attend all training sessions regarding management of the ESG Program as required by THDA.
- E.5. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This

prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

- E.6. ESG Program Requirements. Under this Grant Contract, Grantee is receiving an allocation or grant of Emergency Solutions Grants Program funds. The Grantee understands that these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds, the Grantee agrees and certifies to comply with all of the following:
- a. The Grantee shall abide by all requirements of 24 CFR Part 576 and Part 91, the Emergency Solutions Grants Program.
  - b. The Grantee will match dollar-for dollar the ESG Funding the Grantee receives under this Grant Contract with funds from other public and private sources, as permitted and required under the Federal ESG Regulations and THDA ESG Requirements.
  - c. The Grantee will comply with other applicable Federal Requirements in 24 CFR Part 576 and Part 91, as follows:
    - (1) 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;
    - (2) 24 CFR 576 B Applicability of OMB Circulars;
    - (3) 24 CFR 576 Subpart B Lead-Based Poisoning Prevention Act;
    - (4) 24 CFR 576.404 Conflicts of Interest;
    - (5) 24 CFR 24.50 Environmental Review;
    - (6) 24 CFR 576.4089 Relocation and Acquisition;
    - (7) Title VI and Executive Order 13166 Affirmative Outreach
  - d. If the Grantee is a primarily religious organization, the Grantee agrees to use ESG funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
  - e. The Grantee will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
  - f. The Grantee will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
  - g. The Grantee will comply with the requirements of the Residential lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 4 CFR Part 35, Subparts A, B, H, J, K, and M, as applicable.
  - h. The Grantee will use ESG funds pursuant to the local, HUD-approved Consolidated Plan or the State, HUD-approved Consolidated Plan, as applicable, and all requirements of 24 CFR, Part 576 and Part 91.
  - i. If the Grantee is a unit of government, the Grantee will obligate all ESG grant funds to sub-recipients within one hundred twenty (120) days of the date the funds were made available to the State.
  - j. The Grantee will maintain adequate documentation of homelessness status to determine and verify eligibility of persons served by the ESG funded program.
  - k. The Grantee will establish and implement a formal process by which it may terminate ESG assistance to an individual or family who violates program requirements in accordance with 24 CFR Part 576.402 The formal process adopted by the Grantee must

allow for the due process of the terminated participant's rights through a grievance procedure that allows a hearing regarding the termination of assistance.

- l. The Grantee will ensure that at least one homeless or formerly homeless individual participates in a policy-making function within the organization in accordance with 24 CFR Part 576.405. The Grantee will involve homeless individuals and families in the operation of the ESG funded program through work or volunteer activities in accordance with 24 CFR Part 576.405.
- m. The Grantee will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition, the address and location of family violence shelters may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.

- E.7. Homeless Management Information System (HMIS). The Grantee and its subgrantees, if applicable, must participate in the local Continuum of Care and ensure that data on all persons served on all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS.

If the Grantee or its subgrantees is a victim service provider or a legal services provider, the Grantee or the subgrantee may opt to not use the established HMIS for the applicable Continuum of Care, but alternatively, must use a comparable database that collects client-level data over time (e.g., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to a local HMIS.

- E.8. Centralized or Coordinated Assessment System. The Grantee and its subgrantees, if applicable, must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the applicable Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area, in accordance with HUD's standards on participation and coordination.

- E.9. Drug-Free Workplace. The Grantee will or will continue to provide a drug-free workplace by:
- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition;
  - b. Establishing an ongoing drug-free awareness program to inform employees about:
    - 1. The dangers of drug abuse in the workplace;
    - 2. The Grantee's policy of maintain a drug-free workplace;
    - 3. Any drug counseling, rehabilitation and employee assistance programs; and,
    - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - c. Making it a requirement that each employee to be engaged in the performance of the Grant Contract be given a copy of the statement required by Paragraph E.10 (a).
  - d. Notifying the employee in the statement required by Paragraph E.10a that, as a condition of employment under the Grant Contract, the employee will:
    - 1. Abide by the terms of the statement; and
    - 2. Notify the Grantee in writing of his or her conviction for a violation of a criminal drug statute occurring the workplace no later than five calendar days after such conviction.

- e. Notifying the State in writing, within ten (10) calendar days after receiving notice under Paragraph E.10(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
  - f. Take one of the following actions, within thirty (30) calendar days of receiving notice under Paragraph E.10(d)(2), with respect to any employee who is so convicted:
    - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
    - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health law enforcement or the appropriate agency.
  - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs E.10 (a), (b), (c), (d), (e), and (f).
- E.10. Corrective Action. If HUD orders the State to take corrective or remedial action as outlined in 24 CFR §576.67 that is the result of any action taken by the Grantee, the Grantee will take any action required by THDA to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying ESG funds to THDA for repayment to HUD.

IN WITNESS WHEREOF,

City of Murfreesboro:

Shane McFarland, Mayor

DATE

Tennessee Housing Development Agency:

Cynthia Peraza, Director of Community Programs

DATE

APPROVED AS TO FORM

*Adam Tucker*

Adam F. Tucker, City Attorney

**ATTACHMENT A**

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
2023 ESG PROGRAM  
DESCRIPTION OF GRANTEE ACTIVITIES**

**GRANTEE NAME: CITY OF MURFREESBORO**

- I. The activities for the 2023 ESG Project shall consist of the following:**
1. Administer ESG funds through subrecipient agreements with the following agencies: Barnabas Vision and Salvation Army Murfreesboro
  2. Salvation Army of Murfreesboro will use ESG funds to provide Shelter services to homeless individuals and/or families in the City of Murfreesboro.
  3. Barnabas Vision will use ESG funds to provide Homelessness Prevention services to homeless individuals and/or families in the City of Murfreesboro.
  4. Except as noted in #6 below, an invoice under this Grant Contract shall be presented to THDA within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. THDA will not deem such Grantee costs to be allowable and reimbursable unless, at the sole discretion of THDA, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it shall be signed by a Grantee agent that would be authorized to sign this Grant Contract.
  5. The final invoice under this Grant Contract shall be submitted to THDA by August 14, 2024. An invoice submitted after that date will NOT be paid.



**ATTACHMENT B**

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
2023 ESG PROGRAM  
IMPLEMENTATION PLAN FOR ESG PROJECTS**

**GRANTEE:**           **City of Murfreesboro**

**I.     The time table for completing the activities for the project shall be:**

- |   |            |
|---|------------|
| 1. Determination of status for Environmental Review | 07/01/2023 |
| 2. Release of funds                                 | 07/01/2023 |
| 3. Begin providing services to homeless             | 07/01/2023 |
| 4. Contract complete                                | 06/30/2024 |
| 5. Final date to submit draw support                | 08/14/2024 |

## ATTACHMENT C

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
2023 ESG PROGRAM  
PROJECT BUDGET**

**GRANTEE NAME: CITY OF MURFREESBORO**

**ACTIVITY BUDGET: \$125,000**

STREET OUTREACH	\$0
EMERGENCY SHELTER (SALVATION ARMY)	\$61,250
HOMELESSNESS PREVENTION (BARNABAS VISION)	\$63,750
RAPID REHOUSING	\$0
DATA COLLECTION (HMIS)	\$0
ADMINISTRATION	\$9,375

**MATCHING FUNDS: \$125,000**

OTHER NON-ESG FUNDS	\$0
FEDERAL FUNDS	\$0
STATE GOVERNMENT FUNDS	\$0
LOCAL GOVERNMENT FUNDS	\$0
PRIVATE FUNDS	\$125,000
PROGRAM INCOME	\$0
OTHER	\$0

**TOTAL PROJECT BUDGET: \$259,375**

## ATTACHMENT D

**Federal Award Identification Worksheet**

Subrecipient's name (must match name associated with its Unique Entity Identifier (SAM))	City of Murfreesboro
Subrecipient's Unique Entity Identifier (SAM)	
Federal Award Identification Number (FAIN)	
Federal award date	07/01/2023
Subaward Period of Performance Start and End Date	
Subaward Budget Period Start and End Date	
Assistance Listing number (formerly known as the CFDA number) and Assistance Listing program title.	
Grant contract's begin date	07/01/2023
Grant contract's end date	06/30/2024
Amount of federal funds obligated by this grant contract	\$3,238,192.00
Total amount of federal funds obligated to the subrecipient	\$134,375
Total amount of the federal award to the pass-through entity (Grantor State Agency)	\$3,238,192.00
Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))	
Name of federal awarding agency	U.S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Erik D. Hogle, Director of Community Planning and Development 710 Locust St. SW Knoxville, TN 37902 Phone: (865)474-8221
Name of pass-through entity	Tennessee Housing Development Agency
Name and contact information for the pass-through entity awarding official	Don Watt, Chief Program Officer Tennessee Housing Development Agency Andrew Jackson Building, Third Floor Nashville, TN 37243 DWatt@thda.org Telephone # 615-815-2032
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	

## ATTACHMENT E

## Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to [cpo.auditnotice@tn.gov](mailto:cpo.auditnotice@tn.gov). *The Grantee should submit only one, completed "Notice of Audit Report" document to the State ninety (90) days prior to the Grantee's fiscal year.*

- City of Murfreesboro is subject to an audit for fiscal year 2023.
- City of Murfreesboro is not subject to an audit for fiscal year 2023.

Grantee's Edison Vendor ID Number:

Grantee's fiscal year end:

Any Grantee that is subject to an audit must complete the information below.

Type of funds expended	Estimated amount of funds expended by end of Grantee's fiscal year
Federal pass-through funds	
a. Funds passed through the State of Tennessee	a.
b. Funds passed through any other entity	b.
Funds received directly from the federal government	
Non-federal funds received directly from the State of Tennessee	

**ATTACHMENT F**

**Parent Child Information**

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

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

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

Grantee's Edison Vendor ID number:

Is **City of Murfreesboro** a parent?    Yes                No           

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

Is **City of Murfreesboro** a child?    Yes                No           

If yes, complete the fields below.

Parent entity's name: \_\_\_\_\_

Parent entity's tax identification number: \_\_\_\_\_

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

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

Parent entity's contact information

Name of primary contact person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

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

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

---

**Item Title:** FY23 City Manager Approved Budget Amendments

**Department:** Finance

**Presented by:** Jennifer Brown, Finance Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Notification to Council of City Manager approved budget amendments.

**Background Information**

Ordinance 15-O-48 requires notification to Council of City Manager approved budget amendments. The following budget amendments have been approved:

Police

To purchase an Alternative Light Source Camera for the crime lab. Move \$42,556 from Salary – Full-Time - Regular to Restricted Felony Funds.

Finance

To replace six conference room chairs. Move \$5,000 from Accounting & Auditing Services to Furniture & Fixtures.

Facilities Maintenance

To place the order for the purchase of an electric scissor lift so that it will be received during FY24. Move \$22,000 Unforeseen Contingencies to Fleet Machinery & Equipment.

Fleet

The cost for sublet repairs has been higher than expected due to several unpredictable factors. Move \$100,000 from Unforeseen Contingencies to Fleet Sublet Repairs & Maintenance.

Golf

Part-Time wages have been higher than budgeted at Bloomfield Links. Move \$10,000 from Bloomfield Links Machinery & Equipment to Bloomfield Links Part-Time Regular Wages.

To move excess VA salary budget to Old Fort due to the salary allotment no longer being used and to move excess VA operating and fixed asset budget to Old Fort for increased supplies for resale. Move \$64,477 from various VA salary and benefits to various Old Fort salary and benefits and move \$70,000 from various VA salary and benefits, operating, and fixed assets to Old Fort Supplies for Resale.

**Council Priorities Served**

*Responsible budgeting*

Inter-Fund budget amendments reallocate resources in an efficient manner.

**Fiscal Impact**

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

**Attachments**

Detailed Inter-Fund Budget Requests



... creating a better quality of life

**Inter-Fund Budget Amendment Request**

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:

Org 10210007  
Object 511100  
Acct Name Salary - Full-Time - Regular  
Amount \$42,556.00

Move funds to:

Org 10210008  
Object 574200  
Acct Name Restricted - Felony Funds

Explanation: To purchase an Alternative Light Source Camera for the crime lab.

[Signature]  
Department Head Signature

4-18-23  
Date

Amanda DeRosia  
Reviewed by Finance

04/19/2023  
Date

Approved	<input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>4-19-23</u>
Declined	<input type="checkbox"/>	City Manager	Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.





... creating a better quality of life

### Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:

Org 10112008  
Object 525300  
Acct Name Accounting & Auditing Services  
Amount \$5,000.00

Move funds to:

Org 10112009  
Object 594901  
Acct Name Furniture & Fixtures

Explanation: To replace 6 conference rooms chairs.

Jennifer Bess  
Department Head Signature

4/19/2023  
Date

Amanda DeRosia  
Reviewed by Finance

04/19/2023  
Date

Approved   
Declined

[Signature]  
City Manager

4.20.23  
Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.



**Inter-Fund Budget Amendment Request**

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:

Org 10130008

Object 599909

Acct Name Unforeseen Contingencies

Amount \$22,000.00

Move funds to:

Org 10120039

Object 594000-DA21

Acct Name Machinery & Equipment

Explanation: To place the order for the purchase of an electric sissor lift so that it will be received during  
FY24.

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Jennifer Beon  
 Department Head Signature

5/5/2023  
 Date

Amanda DeRosia  
 Reviewed by Finance

05/05/2023  
 Date

Approved	<input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/5/23</u>
Declined	<input type="checkbox"/>	City Manager	Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.



... creating a better quality of life

**Inter-Fund Budget Amendment Request**

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:

Org 10130008

Object 599909

Acct Name Unforeseen Contingencies

Amount \$100,000.00

Move funds to:

Org 10125008

Object 526102

Acct Name Fleet - Sublet Repairs & Maintenance

Explanation: The cost for sublet repairs has been higher than expected due to several unpredictable factors.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Department Head Signature

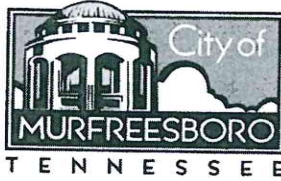
5-22-2023  
Date

Amanda DeRosia  
Reviewed by Finance

05/22/2023  
Date

Approved	<input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/22/23</u>
Declined	<input type="checkbox"/>	City Manager	Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.



... creating a better quality of life

**Inter-Fund Budget Amendment Request**

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:

Org 10414229  
Object 594000  
Acct Name Machinery & Equipment  
Amount \$10,000.00

Move funds to:

Org 10414227  
Object 512100  
Acct Name Part-Time Regular Wages

Explanation: Part-Time wages have been higher than budgeted.

Move funds from:

Org See Attached List  
Object \_\_\_\_\_  
Acct Name \_\_\_\_\_  
Amount \_\_\_\_\_

Move funds to:

Org See Attached List  
Object \_\_\_\_\_  
Acct Name \_\_\_\_\_

Explanation: To move excess VA Salary budget to Old Fort due to the salary allotment no longer being used.

To move excess VA operating and fixed asset budget to Old Fort for increased supplies for resale.

[Signature]  
Department Head Signature

5/23/23  
Date

Amanda DeRosia  
Reviewed by Finance

05/23/2023  
Date

Approved	<input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/25/23</u>
Declined	<input type="checkbox"/>	City Manager	Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

Move From		Move To	Amount	
10414217-511100	Salary - Full-Time - Regular	10414207-511100	Salary - Full-Time - Regular	14,296.00
10414217-511100	Salary - Full-Time - Regular	10414208-535003	Supplies for Resale	14,037.00
10414217-511500	Holiday Pay	10414208-535003	Supplies for Resale	200.00
10414217-512100	Part-Time Regular Wages	10414207-512100	Part-Time Regular Wages	39,312.00
10414217-512300	Overtime Wages	10414207-512300	Overtime Wages	500.00
10414217-514100	Social Security & Medicare Tax	10414207-514100	Social Security & Medicare Tax	5,058.00
10414217-514200	Hospital & Health Insurance	10414208-535003	Supplies for Resale	5,058.00
10414217-514203	Dental Insurance - Delta	10414208-535003	Supplies for Resale	257.00
10414217-514300	Defined Benefit Plan	10414207-514300	Defined Benefit Plan	5,311.00
10414217-514500	LTD & Life Insurance	10414208-535003	Supplies for Resale	179.00
10414218-524100	Electricity	10414208-535003	Supplies for Resale	4,519.00
10414218-524502	Internet	10414208-535003	Supplies for Resale	1,024.00
10414218-524600	Solid Waste Fees	10414208-535003	Supplies for Resale	434.00
10414218-526200	Repair & Maint. Other Mach & Equip	10414208-535003	Supplies for Resale	9,003.00
10414218-526600	Repair & Maint Buildings	10414208-535003	Supplies for Resale	2,549.00
10414218-531000	Office Supplies & Materials	10414208-535003	Supplies for Resale	191.00
10414218-532000	Operating Supplies	10414208-535003	Supplies for Resale	800.00
10414218-532100	Agriculture & Hort Supplies	10414208-535003	Supplies for Resale	9,061.00
10414218-532101	Landscaping Supplies	10414208-535003	Supplies for Resale	500.00
10414218-532505	Golf Shop Supplies	10414208-535003	Supplies for Resale	971.00
10414218-532507	Golf Supplies	10414208-535003	Supplies for Resale	600.00
10414218-532601	Clothing and Uniforms	10414208-535003	Supplies for Resale	500.00
10414218-533100	Gas, Oil, Diesel, Grease, Etc.	10414208-535003	Supplies for Resale	1,632.00
10414218-534101	Handtools & Hardware	10414208-535003	Supplies for Resale	300.00
10414218-535000	Supplies for Resale	10414208-535003	Supplies for Resale	4,088.00
10414218-541001	Sand-Cement-Lumber	10414208-535003	Supplies for Resale	3,000.00
10414218-549000	Other Supplies & Materials	10414208-535003	Supplies for Resale	500.00
10414218-553300	Machinery & Equipment Rental	10414208-535003	Supplies for Resale	140.00
10414218-599900	Miscellaneous Expense	10414208-535003	Supplies for Resale	300.00
10414218-599902	Sales Tax	10414208-535003	Supplies for Resale	657.00
10414219-594000	Machinery & Equipment	10414208-535003	Supplies for Resale	8,000.00
10414219-594700	Office Machinery & Equipment	10414208-535003	Supplies for Resale	1,500.00

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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Item Title: Contract with Murfreesboro Medical Clinic

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

Ordinance

Resolution

Motion

Direction

Information

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## Summary

Contract with Murfreesboro Medical Clinic (MMC) to provide physicals and cancer screenings.

## Staff Recommendation

Approve the contract with MMC for physicals and cancer screenings.

## Background Information

Since 2020, the City has contracted with MMC to provide physicals and cancer screenings to firefighters on an annual basis to comply with requirements of the Barry Brady Act. The current contract expired June 2, 2023. The department proposes to continue using MMC for these services.

## Council Priorities Served

### *Maintain public safety*

Approving this contract will comply with the Barry Brady Act and assist firefighters in maintaining their health which allows them to provide the highest level of service to the community.

## Fiscal Impact

Funding for the MMC Contract is included in Fire Rescue's FY24 Budget.

## Attachments

Contract with Murfreesboro Medical Clinic

**CONTRACT BETWEEN  
CITY OF MURFREESBORO  
AND  
MURFREESBORO MEDICAL CLINIC, P.A.  
FOR  
BARRY BRADY ACT PROGRAM**

This contract is entered into on this \_\_\_\_\_, by and between **THE CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **MURFREESBORO MEDICAL CLINIC, P.A.**, a corporation of the State of Tennessee ("Contractor"). This contract consists of the following documents as may be amended from time to time:

- *This Contract*

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

- *Any properly executed amendment or change order to this contract (most recent with first priority)*
- *This Contract*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide annual medical examinations that includes cancer screenings for Non-Hodgkin's Lymphoma cancer, colon cancer, skin cancer, leukemia, testicular cancer and multiple myeloma cancer for Murfreesboro Fire and Rescue Department employees and any subsequent mutually agreed upon written amendments to this contract. In addition to the duties and responsibilities set forth in the above referenced documents, the Contractor shall:

- a. Comply with all applicable laws and regulations, including but not limited to the Barry Brady Act codified at T.C.A. §7-51-201(d) and;
- b. Comply with all requirements set forth in City of Murfreesboro Fire and Rescue Department policies and procedures relative to testing of city employees as amended and provided to Contractor from time to time;
- c. For the avoidance of doubt, Contractor is only providing the aforementioned specific screenings on the basis of the fee schedule in subsequent Section 4. Any additional screenings, follow-up care, or follow-on care provided by the Contractor to MFRD employees, if any, shall be provided in the normal course of business on the basis of the Contractor's standing financial policy whereas patients and/or their insurance providers are billed the contractual fee-for-service.

2. **Duties and Responsibilities of the City.** The City shall:

- a. Pay the Contractor in cash-equivalent certified funds within 30 days (NET 30) of receipt by the City of a duly prepared invoice from the Contractor line-itemizing all services rendered and the applicable cost.
- b. Allow the Contractor to prepare various marketing, advertising, and promotional materials to be disseminated via normal channels of marketing and communication, including, but not limited to, promotional videos, TV advertising, radio advertising, print advertising, freestanding physical media advertising, and social media advertising and posting. In return, Contractor shall agree that any such marketing or promotional content shall be prepared and published in keeping with local community standards of good taste and decency, Contractor shall not represent in any such marketing or promotional content that it is the exclusive or preferred healthcare provider for the City, and Contractor shall obtain any necessary consent

and waiver forms by any City employees, contractors, associates, or agents whose name, image, or likeness might appear in any such marketing or promotional content.

3. **Term.** The term of this contract shall be from June 19, 2023, to June 18, 2024, renewable up to a maximum of three years. This contract shall not be effective until signed by all required parties.
4. **Fees.** The fees for an annual medical examination that includes cancer screenings for Non-Hodgkin's Lymphoma cancer, colon cancer, skin cancer, leukemia, testicular cancer and multiple myeloma cancer for a certified Murfreesboro Fire and Rescue Department employee provided under this contract shall be at the rates set forth below. Any changes in the fees must be agreed upon in writing by both parties through an amendment to this contract.
  - a. Medical Hx & Exam (1582 form)- \$210
  - b. CMP - \$33
  - c. CBC (Leukemia screening)- \$30
  - d. Lipid Panel - \$45
  - e. Fecal Occult - \$35
  - f. EKG - \$45
  - g. PFT \$ 30
  - h. Audiogram/ Hearing Test - \$45
5. **Termination—Breach.** In the event that any of the provisions of the Contract are violated by the Contractor, the City may serve written notice upon the Contractor of its intention to terminate the Contract, and unless within seventy-two (72) hours after the serving of such notice upon the Contractor such violation or delay shall cease and satisfactory arrangement for correction be made, the City may immediately terminate the Contract at any time after said seventy-two (72) hours. Such termination shall not relieve Contractor of any liability to City for damages sustained by virtue of any breach by Contractor.
6. **Termination—Funding.** Should funding for the services provided under this contract be discontinued, City shall have the right to terminate the contract immediately upon written notice to Contractor.
7. **Termination—Notice.** City may terminate this Contract at any time upon thirty (30) days written notice to Contractor. In that event, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state, and local laws and regulations.
9. **Notices.**
  - a. Notices to City including but not limited to notice of assignment of any rights to money due to Contractor under this Contract must be mailed or hand delivered to the attention of City Manager, Post Office Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139.
  - b. Notices to Contractor shall be mailed or hand delivered to Contractor, Murfreesboro Medical Clinic, Attention Amy Wolaver, Department Manager, 1272 Garrison Drive, Murfreesboro, TN 37129.
10. **Maintenance of Records.** Contractor shall maintain documentation for all charges associated with services provided pursuant to this Contract. 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 Generally Accepted Accounting Principles, as such standards are applied to corporate entities who operate on the basis of tax-basis accounting.

11. **Modification of Contract.** This contract may be modified only by written amendment executed by all parties and their signatories hereto.
12. **Partnership/Joint Venture.** Nothing herein shall 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 shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
13. **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.
14. **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, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
15. **Non-Discrimination: Affirmative Action.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

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

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

16. **Indemnification and Hold Harmless.** Contractor shall indemnify and hold harmless City, its officers, agents, and employees from:
- 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.
17. **Insurance.** The Contractor must maintain commercial general liability insurance for bodily injury and property damage (minimum \$1,000,000) and workers’ compensation insurance as required by the State of Tennessee. Contractor must notify City if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.
18. **Attorney Fees.** Contractor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the Contract, and in the event City prevails, Contractor shall pay all expenses of such action including City's attorney fees and costs at all stages of the litigation.
19. **Assignment—Consent Required.** The provisions of this Contract shall inure to the benefit of and shall be 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 shall be assigned or transferred in whole or in part without the prior written consent of City. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF CITY MANAGER, POST OFFICE BOX 1139, 111 WEST VINE STREET, MURFREESBORO, TENNESSEE 37133-1139.
20. **Entire Contract.** This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
21. **Force Majeure.** No party shall have 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 war, order of legal authority, act of nature, or other unavoidable causes not attributed to fault or negligence of Contractor.
22. **Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.
23. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.
24. **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.

25. **Notices.** Any notice to Contractor from the City relative to any part of the Contract shall be considered delivered and the service thereof completed when said notice is posted by registered mail, to the said Contractor at its last given address or delivered in person to said Contractor or its authorized representative on the work.

a. Notices to City shall be sent to:

**Department:** City of Murfreesboro Administration  
**Attention:** City Manager  
**Address:** Post Office Box 1139  
111 West Vine Street  
Murfreesboro, TN 37133-1139

b. Notices to Contractor shall be sent to:

**Contractor:** Murfreesboro Medical Clinic, P.A.  
**Attention:** Amy Wolaver, Practice Administrator  
**Address:** 1272 Garrison Drive  
Murfreesboro, TN 37129

26. **Effective Date.** This Contract shall not be binding upon the parties until it has been signed first by the Contractor and then approved and signed by the City. When it has been so signed, this Contract shall be effective as of the date first written above.

**CITY OF MURFREESBORO**

**MURFREESBORO MEDICAL CLINIC, P.A.**

By: \_\_\_\_\_  
Shane McFarland, Mayor

DocuSigned by:  
By: Mitchell Frank  
C671394EEE4849F...  
Mitchell Frank, Chief Financial Officer

**APPROVED AS TO FORM:**

DocuSigned by:  
Adam Tucker  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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Item Title: Motlow Payment Agreement

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

Ordinance

Resolution

Motion

Direction

Information

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## Summary

Payment agreement for paramedic classes at Motlow State Community College (MSCC).

## Staff Recommendation

Approve the payment agreement for MSCC.

## Background Information

On October 12, 2022, Council approved to accept of the Assistance to Firefighters Grant Award in the amount of \$1,728,000 to send Advanced Emergency Medical Technicians to obtain paramedic licensures through MSCC. Fourteen students began class on May 30<sup>th</sup> and 13 students will begin August 21<sup>st</sup>. Total tuition cost for both groups is \$187,839. A payment agreement must be signed for MSCC to invoice the department at the end of each semester.

## Council Priorities Served

### *Maintain public safety*

This paramedic training will elevate the skills of emergency responders to significantly improve patient outcomes and survivability.

## Fiscal Impact

The expense, \$187,839, is funded by the Assistance to Firefighters Grant Award.

## Attachments

Third Party Payment MSCC Agreement with Motlow State Community College



**COMPLETED BY THIRD PARTY:**

Company/Third Party Payor Name: City of Murfreesboro TIN: 62-6000374

Address: 111 W. Vine Street Murfreesboro TN 37130  
(street) (city) (state) (zip)

Phone: 615-893-5210 Email: accountspayable@murfreesborotn.gov

**Course Coverage Information:**  See attached Voucher (or complete the information below):

Choose Coverage Period:  Fall Semester  Spring Semester  Summer Semester

Choose Coverage Type(s):  Tuition  Mandatory Fees Coverage Amount: \$ \_\_\_\_\_ or \_\_\_\_\_ %

Course Information (if needed) - Ex. MAT101: \_\_\_\_\_

Company/Third Party is first payer  Company/Third Party is last payer

As a legally authorized signer of the Company/Third Party, I agree:

- To accept standard invoicing from MSCC for all covered charges.
- To make payment immediately upon receipt of MSCC's invoice.
- Payment is not contingent on the student's academic performance or class attendance.
- MSCC reserves the right to cancel this agreement at any time.
- If the Company/Third Party Payor does not pay the invoiced charges before the end of each term of attendance, the STUDENT WILL BE RESPONSIBLE FOR ALL CHARGES.

Printed Name of Person Legally Authorized to Sign for Company/Third Party Payor \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Person Legally Authorized to Sign Company/Third Party Payor \_\_\_\_\_

**Motlow State Community College and the FOLLETT Bookstore are separate entities.**

To receive a third party billing from the Follett bookstore, please submit a promissory letter/billing authorization to:

Follett Bookstore  
6051 Ledford Mill Rd  
Forrester Ctr  
Tullahoma, TN 37388  
0197mgr@follett.com; 0197asm@follett.com

**Questions about bookstore purchases?** Contact Follett Bookstore: 931-393-1569.

## THIRD PARTY PAYMENT AGREEMENT

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### INSTRUCTIONS

#### **When to use this form:**

This form is required when Third Party agrees to be responsible for student account charges, ***regardless of whether or not the student earns a particular grade*** or whether or not the student attends classes. MSCC will **not** accept this form from a Company or Third Party Payor who requires the student to earn a particular grade in class before they will pay your tuition, fees, and other charges.

#### **How to submit this form:**

Please submit completed form to email [businessoffice@mscc.edu](mailto:businessoffice@mscc.edu) or to:

Motlow State Community College  
Business Office-Third Party Billing  
PO Box 8500  
Lynchburg, TN 37355-8500

#### **How often to submit this form:**

A fully completed and signed Third Party Payment Agreement must be **received** by the Business Office **before** the beginning of *every term* the student attends MSCC, or whenever there is a change in student eligibility.

This form **must** be signed by the Third Party Payor even if a company voucher is used.

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# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Asphalt and Concrete Purchase Report

**Department:** Street

**Presented by:** Raymond Hillis, Executive Director, Public Works

**Requested Council Action:**

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

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## 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.

## 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
3/7/2023	Hawkins	307 BM hot mix	\$ 82.80	11.92	\$986.98	\$ 1,430.16
3/7/2023	Hawkins	307 BM hot mix	\$ 82.80	9.23	\$ 764.24	\$ 2,194.40

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
2/24/2023	Vulcan	411E PG 64-22	\$ 84.50	15.21	\$ 1,285.10	\$ 6,781.03
2/28/2023	Vulcan	411E PG 64-22	\$ 84.50	8.79	\$ 742.67	\$ 7,523.70



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
3/7/2023	Wiregrass Construction	411-E	\$ 86.54	13.84	\$ 1,197.71	\$2,823.06
4/11/2023	Wiregrass Construction	411-E	\$ 86.54	10.09	\$ 873.19	\$3,696.25
4/13/2023	Wiregrass Construction	411-E	\$ 86.54	11.97	\$ 1,035.88	\$ 4,732.13
4/17/2023	Wiregrass Construction	411-E	\$ 86.54	8.74	\$ 756.36	\$ 5,488.49
4/18/2023	Wiregrass Construction	411-E	\$ 86.54	12.25	\$ 1,060.12	\$ 6,548.61
4/19/2023	Wiregrass Construction	411-E	\$ 86.54	10.10	\$ 874.05	\$ 7,422.66
4/20/2023	Wiregrass Construction	411-E	\$ 86.54	12.75	\$ 1,103.39	\$ 8,526.05
4/21/2023	Wiregrass Construction	411-E	\$ 86.54	10.39	\$ 899.15	\$ 9,425.20
5/2/2023	Wiregrass Construction	411-E	\$ 86.54	39.31	\$ 3,401.89	\$ 12,827.09

5/17/2023	Wiregrass Construction	411-E	\$	86.54	11.71	\$	1,013.38	\$	13,840.47
5/18/2023	Wiregrass Construction	411-E	\$	86.54	8.11	\$	701.84	\$	14,542.31

**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
7/20/2022	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
1/27/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1	\$ 138.00	\$ 10,608.50
1/27/2023	Nashville Ready Mix	NonOChloride Accelerator	\$ 6.00	1	\$ 6.00	\$ 10,614.50
1/27/2023	Nashville Ready Mix	Full Fibers	\$ 5.00	1	\$ 5.00	\$ 10,619.50
2/7/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	2.5	\$ 345.00	\$ 10,964.50
2/10/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	4	\$ 552.00	\$ 11,516.50
2/10/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 11,591.50
2/10/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 11,641.50
2/21/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	2.5	\$ 345.00	\$ 11,986.50
2/23/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	2.5	\$ 345.00	\$ 12,331.50
2/24/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	1	\$ 138.00	\$ 12,469.50
3/6/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 12,883.50
3/8/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 13,159.50
3/9/2023	Nashville Ready Mix	3500PSI Chips AE	\$ 138.00	2.5	\$ 345.00	\$ 13,504.50
3/16/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	5	\$ 690.00	\$ 14,194.50
3/16/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 14,269.50
3/16/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 14,319.50
3/21/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	5.5	\$ 759.00	\$ 15,078.50
3/21/2023	Nashville Ready Mix	Min Load charge	\$75	1	\$ 75.00	\$ 15,153.50
3/21/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 15,203.50
3/23/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1	\$ 138.00	\$ 15,341.50
3/24/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 15,617.50
3/24/2023	Nashville Ready Mix	Min Load charge	\$75	1	\$ 75.00	\$ 15,692.50
3/24/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 15,742.50
3/24/2023	Nashville Ready Mix	Full Fibers-.75lb dose	\$ 5.00	2	\$ 10.00	\$ 15,752.50
3/27/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3.5	\$ 483.00	\$ 16,235.50
3/27/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 16,310.50
3/27/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 16,360.50
3/28/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	5.5	\$ 759.00	\$ 17,119.50
3/28/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 17,194.50
3/28/2023	Nashville Ready Mix	fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 17,244.50
3/29/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 17,520.50
3/29/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 17,595.50
3/29/2023	Nashville Ready Mix	Fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 17,645.50
4/4/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	5	\$ 690.00	\$ 18,335.50
4/4/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 18,410.50
4/4/2023	Nashville Ready Mix	Fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 18,460.50
4/5/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 18,874.50
4/10/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2.5	\$ 345.00	\$ 19,219.50
4/10/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 19,294.50
4/10/2023	Nashville Ready Mix	Fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 19,344.50
4/25/2023	Nashville Ready Mix	4000 PSI Chips AE	\$ 140.00	3	\$ 420.00	\$ 19,764.50
4/25/2023	Nashville Ready Mix	Min Load charge	\$ 75.00	1	\$ 75.00	\$ 19,839.50
4/25/2023	Nashville Ready Mix	Fuel surcharge	\$ 50.00	1	\$ 50.00	\$ 19,889.50
4/25/2023	Nashville Ready Mix	Full fibers- .75 lb dose	\$ 5.00	3	\$ 15.00	\$ 19,904.50
5/5/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 20,180.50
5/9/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 20,594.50
5/10/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 20,870.50
5/11/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 21,146.50

5/15/2023 Nashville Ready Mix 3500 PSI Chips AE \$ 138.00 1 \$ 138.00 \$ 21,284.50

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
3/14/2023	Orgain Ready Mix	3500 PSI 1/2" Agg	\$ 135.00	3		\$ 405.00	\$ 405.00
3/14/2023	Orgain Ready Mix	Fuel Surcharge			\$ 40.00	\$ 40.00	\$ 445.00
3/14/2023	Orgain Ready Mix	Delivery Charge	\$ 50.00			\$ 50.00	\$ 495.00
3/30/2023	Orgain Ready Mix	3500 PSI 1/2" Agg	\$ 135.00	3		\$ 405.00	\$ 900.00
3/30/2023	Orgain Ready Mix	Fuel Surcharge			\$ 40	\$ 40	\$ 940.00
3/30/2023	Orgain Ready Mix	Delivery Charge	\$ 50			\$ 50	\$ 990.00
5/1/2023	Orgain Ready Mix	3500 PSI 1/2" Agg	\$ 135.00	3		\$ 405.00	\$ 1,395.00
5/1/2023	Orgain Ready Mix	Fuel Surcharge			\$ 40.00	\$ 40.00	\$ 1,435.00
5/1/2023	Orgain Ready Mix	Delivery Charge	\$ 50.00			\$ 50.00	\$ 1,485.00

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Approval of State Maintenance Contract for FY 2023-2025

**Department:** Street Department

**Presented by:** Raymond Hillis, Executive Director

**Requested Council Action:**

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

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**Summary**

TDOT Maintenance Contract for Fiscal Year 2023-2025.

**Staff Recommendation**

Approve the TDOT Maintenance Contract.

**Background Information**

The proposed agreement allows the City to perform routine maintenance and improvements of state routes located within the city limits. TDOT will reimburse the costs associated with improvements and maintenance of state routes located within the city limits to not exceed \$791,217.

**Council Priorities Served**

*Maintain Public Safety*

This contract allows the City to have more control over the selection and performance of all contracted related maintenance work.

**Fiscal Impact**

None. Costs of work under the Agreement is reimbursed by TDOT.

**Attachments**

State of Tennessee Department of Transportation Contract

**STATE OF TENNESSEE**  
**DEPARTMENT OF TRANSPORTATION**  
**CONTRACT – CITY OF MURFREESBORO**

**PROJECT NO. TBD**  
**CONTRACT NO. - CMA2462**  
**FISCAL YEAR – 2023-2025**



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**COMMISSIONER'S OFFICE**  
SUITE 700, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-2848

**BUTCH ELEY**  
DEPUTY GOVERNOR AND  
COMMISSIONER OF TRANSPORTATION

**BILL LEE**  
GOVERNOR

**To:** City of Murfreesboro  
Attn: Raymond Hillis, Superintendent  
Engineering Dept. – Street Division  
620 West Main Street  
Murfreesboro, TN 37130

**Date:** May 11<sup>th</sup>, 2023

**Re:** City of Murfreesboro Maintenance Contract for 2023-2025

Enclosed, you will find the new twenty-four month contract for Fiscal Years 2023-2024 and 2024-2025.

Please read the contract, add labor rates on the *Exhibit B* page, sign in the appropriate places and return to our office. After you have signed the new contract and returned it to us, we will forward the contract to our office in Nashville for signatures. Once the Commissioner and our attorney have signed the contract, we will return a signed copy to you for your records.

If you have any questions, please feel free to contact me at 931.270.5030.

Thank you,

Jarrold Bonar, PE, TDOT Operations District Supervisor



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

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and City of Murfreesboro, hereinafter referred to as the "Contractor," is for the provision of the routine maintenance of state routes, as further defined in the "SCOPE OF SERVICES."

Contractor Edison Registration ID # 0000004110  
Contract #: CMA 2462

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Tenn. Code Ann. § 54-5-201 provides that the State is authorized to enter into contracts with municipalities regarding the improvement and maintenance of streets over which traffic on state highways is routed.
- A.3. Tenn. Code Ann. § 54-5-202 provides that streets constructed, reconstructed, improved and maintained by the State shall be of a width and type that the State deems proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.
- A.4. Tenn. Code Ann. § 54-5-203 provides that the State is authorized to enter into contracts with municipalities that are organized to care for streets to reimburse, subject to the approval of the State, for improvements and maintenance.
- A.5. Tenn. Code Ann. § 54-16-106 provides that the highway authorities of the state, counties, cities, and town are authorized to enter into agreements with each other respecting the improvement and maintenance of controlled-access facilities, defined by Tenn. Code Ann. § 54-16-101 as a highway or street specially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement of access from abutting properties.
- A.6. Tenn. Code Ann. § 54-5-139 provides that the State may enter into a contract with a qualified county to perform maintenance activities upon the rights-of-way of state highways located outside of municipalities and metropolitan governments; and, that the reimbursement shall be on an actual cost basis.
- A.7. The State is hereby contracting with the Contractor for the improvements and maintenance specified in Attachment "Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities," attached and incorporated hereto as part of this Contract.

**B. TERM OF CONTRACT:**

This Contract shall be effective on July 1, 2023 ("Effective Date"), and extend for a period of twenty-four (24) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred and Ninety-One Thousand, Two Hundred and Seventeen Dollars and Six Cents (\$791,217.06). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Exhibit A titled "Guidelines Covering Maintenance of State Highways through Municipalities"	See Exhibit A
Exhibit B containing the maximum allowable labor and equipment rates.	See Exhibit B

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

TN Department of Transportation  
 2099 Fayetteville Highway  
 Belfast, TN 37019

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
  - (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date

- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Tennessee Department of Transportation
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name & title as applicable) of each service invoiced
- ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
- iv. Amount Due by Service
- v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the

Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon

reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jarrod Bonar, P.E., TDOT Operations District Supervisor  
State of Tennessee, Department of Transportation  
2099 Fayetteville Highway  
Belfast, TN 37019  
jarrod.bonar@tn.gov  
Telephone # (931)-270-5030  
FAX # (931)-276-2333

The Contractor:

Raymond Hillis, Director, Street Division  
City of Murfreesboro  
620 West Main Street  
Murfreesboro, TN 37130  
rhillis@murfreesborotn.gov  
Telephone # (615)-893-4380

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. MUTCD. In accordance with Tenn. Code Ann. 54-5-108, the Contractor shall conform to and act in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by rules of the State. Particularly, the Contractor shall sign work-zones associated with this Contract in accordance with the aforesaid MUTCD.

- E. 5. Maintenance. Nothing contained in this Contract shall change the maintenance obligations governed by the laws of the State of Tennessee, it being the intent of this Contract not to enlarge the present maintenance obligations of the State.

IN WITNESS WHEREOF,

CITY OF MURFREESBORO:

---

CONTRACTOR SIGNATURE

DATE

---

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

APPROVED AS TO FORM AND LEGALITY

---

CONTRACTOR ATTORNEY SIGNATURE

DATE

---

PRINTED NAME AND TITLE OF CONTRACTOR ATTORNEY SIGNATORY (above)

STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION:

---

HOWARD H ELEY, COMMISSIONER

DATE

APPROVED AS TO FORM AND LEGALITY

---

JOHN REINBOLD, GENERAL COUNSEL

DATE



GUIDELINES COVERING MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following items where applicable are eligible for reimbursement by the State to the Contractor under the Standard Maintenance Agreement:

Activity	Maintenance Work Type	Unit Of Measure
401	Manual Spot Patching	Tons
402	Crack Repair	Pounds
404	Mechanical Continuous Patching	Tons
405	Milling	Square Yards
406	Surface Replacement	Tons
411	Concrete Pavement Repair	Cubic Yards
412	Concrete Joint Repair	Linear Feet
425	Grading Unpaved Surface (Shoulder)**	Linear Miles
427	Patching Unpaved Surface (Shoulder)**	Tons
435	Machine Mowing**	Acres
438	Debris Removal**	Man Hours
441	Litter Removal**	Roadway Miles
446	Mechanical Sweeping and Street Flushing	Miles
447	Manual Roadway Sweeping	Man Hours
460	Plowing Snow	Lane Miles
461	De-icing Salt and/or Sand for Snow & Ice Removal	Tons
463	Anti-icing (Salt Brine)	Gallons
470	Pavement Markings	Line Miles
471	Specialty Markings	Each

\*\* Work must be inside the area eligible for reimbursements as detailed in "CITY MAINTENANCE ROADWAY TYPICAL SECTIONS".

The following items are the responsibility of the Contractor and are not eligible for reimbursement by the State:

1. Mowing right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
2. Litter from right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
3. Storm drainage
4. Traffic control signs and signals and any other traffic control or monitoring devices.
5. Street lighting
6. Street name signs
7. Tree removal and vegetation control on right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
8. Sidewalks

NOTE:

1. Major resurfacing when generally required will be performed by the State as a construction project, in accordance with a program developed after consultation with the Contractor.
2. The State will furnish and maintain route markers through the Municipalities.

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the current roadway surface area to the nearest whole square yard which will be routinely maintained, swept, or flushed by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for street maintenance, excluding machine mowing and litter removal, not to exceed the calculated maximum reimbursement below.

City of Murfreesboro- Roadway Surface

Approved Maximum Reimbursement Per Square Yard:	\$ 0.17
Total Roadway Surface Area (YD*2):	1,978,869.00
Calculated Maximum Annual Reimbursement (Roadway Surface):	\$ 336,407.73
Total Maximum Reimbursement (Roadway Surface):	\$ 672,815.46

Roadway Surface Inventory Worksheet													
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)	
SR 1	Broad St./M/Boro Rd.	BEGIN	Murfreesboro City Limits to N. of Medical Center Pkwy	1G	No	9.717	15.77	31959.84	100	28	99430.61	255678.72	
SR 1	Median cross-overs		Between LM9.7&LM15.77		No			6666	30		0.00	22220.00	
SR 1	Broad St.	CHANGE	N. of Medical Center Pkwy to Broadmor Blvd.	1D	No	15.77	16.34	2983.2	84		0.00	27843.20	
SR 1	Broad St.	CHANGE	Broadmor Blvd. To W. Lytle St.	1D	No	16.34	16.59	1346.4	96		0.00	14361.60	
SR 1	Broad St.	CHANGE	W. Lytle St. to S. of Maney Ave.	1D	No	16.59	17.47	4625.28	84		0.00	43169.28	
SR 1	Broad St./Mercury Blvd. Intersection	CHANGE	S. Maney Ave. to Mercury Blvd.	1D	No	17.47	17.64	918.72	42		0.00	4287.36	
SR 1	Mercury Blvd	CHANGE	E. of SR 2 (US 41) Broad St.	1D	No	17.64	17.78	712.8	71		0.00	5623.20	
SR 1	Mercury Blvd - Eastbound	CHANGE		1G	No	17.78	19.14	7180.8	82	26	20744.53	44680.53	
SR 1	Mercury Blvd - Eastbound	CHANGE		2A	Yes	19.14	19.6	2455.2	102	26	7092.80	20732.80	
SR 1	Mercury Blvd - Eastbound	CHANGE		2A	Yes	19.6	19.72	633.6	102	16	1126.40	6054.40	
SR 1	John Bragg Hwy-Eastbound	END	East City Limits	2A	Yes	19.72	20.07	1853.28	100	22	4530.24	16061.76	
SR 1	Median cross-overs			1C	No			2375	20		0.00	5277.78	

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the current roadway surface area to the nearest whole square yard which will be routinely maintained, swept, or flushed by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for street maintenance, excluding machine mowing and litter removal, not to exceed the calculated maximum reimbursement below.

City of Murfreesboro- Roadway (cont.)

Roadway Surface Inventory Worksheet												
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)
SR 2	Broad St.	BEGIN	S. of SR 1 (US 70S) Mercury Blvd	1C	No	0	2.24	11827.2	46		0.00	60450.13
SR 2	Manchester Pike	CHANGE	S. of Rutherford Blvd	1C	No	2.24	3.23	5227.2	42		0.00	24393.60
SR 2	Manchester Pike	CHANGE	Ramsey Road	1C	No	3.23	5	9345.6	42		0.00	43612.80
SR 2	Manchester Pike	END	N of Mount Tabor Rd/City Limits	1C	No	5	6	5280	42		0.00	24640.00

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City of Murfreesboro- Roadway (cont.)

Roadway Surface Inventory Worksheet												
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)
SR 10	Shelbyville Hwy	BEGIN	City Limits - Murfreesboro	1G	No	8	8.689	3637.92	124	36	14551.68	35570.77
SR 10	Shelbyville Hwy	CHANGE	City Limits - Murfreesboro	1C	No	8.689	9.065	1985.28	80		0.00	17646.93
SR 10	Shelbyville Hwy	CHANGE	Joe B. Jackson Pkwy	1C	No	9.065	9.336	1430.88	84		0.00	13354.88
SR 10	S Church St.	CHANGE	Barfield Crescent Rd/Veterans Pkwy	1D	No	9.336	11.034	8965.44	84		0.00	83677.44
SR 10	S Church St.	CHANGE	Westgate Blvd(l-24 Int.)	1D	No	11.034	11.366	1752.96	100		0.00	19477.33
SR 10	S Church St.	CHANGE	I-24 W Ramp Intersection	1D	No	11.366	12.197	4387.68	84		0.00	40951.68
SR 10	S Church St.	CHANGE	Rutherford Blvd.	1D	No	12.197	13.47	6721.44	60		0.00	44809.60
SR 10	Broad St.	SHIFT	Turn Left onto Broad St. 0.669 Mi.	1D	No	13.47						
SR 10	Memorial Blvd	SHIFT	Turn Right onto Memorial Blvd	1D	No	13.47	14.05	3062.4	80		0.00	27221.33
SR 10	Memorial Blvd	CHANGE		1D	No	14.05	14.375	1716	80		0.00	15253.33
SR 10	Memorial Blvd	CHANGE	Clark Blvd.	1D	No	14.375	14.506	691.68	80		0.00	6148.27
SR 10	Memorial Blvd	CHANGE		1D	No	14.506	14.91	2133.12	86		0.00	20383.15
SR 10	Memorial Blvd	CHANGE	Northfield Blvd.	1D	No	14.91	15.975	5623.2	60		0.00	37488.00
SR 10	Memorial Blvd	CHANGE		1D	No	15.975	16.57	3141.6	84		0.00	29321.60
SR 10	Memorial Blvd	CHANGE		1D	No	16.57	17.987	7481.76	60		0.00	49878.40
SR 10	Memorial Blvd	CHANGE		1C	No	17.987	18.6	3236.64	60		0.00	21577.60
SR 10	Memorial Blvd	END	City Limits - Murfreesboro	1C	No	18.6	18.894	1552.32	48		0.00	8279.04

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

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City of Murfreesboro- Roadway (cont.)

Roadway Surface Inventory Worksheet												
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)
SR 96	Franklin Hwy	BEGIN	Veterans Pkwy	1D	No	6.023	8.98	15612.96	84		0.00	145720.96
SR 96	Old Fort Pkwy	CHANGE	W of I-24	1D	No	8.98	9.182	1066.56	91		0.00	10784.11
SR 96	Old Fort Pkwy	CHANGE	At I-24	1C	No	9.182	9.445	1388.64	88		0.00	13577.81
SR 96	Old Fort Pkwy	CHANGE	E of I-24	1C	No	9.445	9.66	1135.2	96		0.00	12108.80
SR 96	Old Fort Pkwy	CHANGE	W of Market Pl	1G	No	9.66	9.858	1045.44	130	32	3717.12	11383.68
SR 96	Old Fort Pkwy	CHANGE	E of Market Pl	1C	No	9.858	10.089	1219.68	108		0.00	14636.16
SR 96	Old Fort Pkwy	CHANGE	E of Bridge Ave	1G	No	10.089	10.17	427.68	126	32	1520.64	4466.88
SR 96	Old Fort Pkwy	CHANGE	E of Bridge Ave	1G	No	10.17	10.35	950.4	142	32	3379.20	11616.00
SR 96	Old Fort Pkwy	CHANGE	W of Stones River Mall Blvd	1G	No	10.35	10.478	675.84	124	32	2402.99	6908.59
SR 96	Old Fort Pkwy	CHANGE	E of Stones River Mall Blvd	1G	No	10.478	10.96	2544.96	120	32	9048.75	24884.05
SR 96	Old Fort Pkwy	CHANGE	E of New Salem Road	1F	No	10.96	11.121	850.08	132	32	3022.51	9445.33
SR 96	Old Fort Pkwy	SHIFT	Bridge Over Broad St.	1E	No	11.121	11.515	2080.32	92		0.00	21265.49
SR 96	E Clark Blvd	SHIFT	SR 10 (US 231, Memorial Blvd.)	1D	No	11.505	12.85	7101.6	60		0.00	47344.00
SR 96	Lascassas Pike	CHANGE	E of E Clark Blvd	1C	No	12.85	13.918	5639.04	40		0.00	25062.40
SR 96	Lascassas Pike	CHANGE	Twin Oaks Drive	1C	No	13.918	14.657	3901.92	58		0.00	25145.71
SR 96	Lascassas Pike	END	North of DeJarnette Lane	1C	No	14.657	15.45	4187.04	48		0.00	22330.88

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the current roadway surface area to the nearest whole square yard which will be routinely maintained, swept, or flushed by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for street maintenance, excluding machine mowing and litter removal, not to exceed the calculated maximum reimbursement below.

City of Murfreesboro- Roadway (cont.)

Roadway Surface Inventory Worksheet												
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)
SR 99	Salem Pike	BEGIN	W of Clearidge Drive	1C	No	12.69	14.575	9952.8	42		0.00	46446.40
SR 99	Salem Pike	CHANGE	E of Armstrong Valley	1C	No	14.575	15.011	2302.08	52		0.00	13300.91
SR 99	New Salem Road	CHANGE	E of St. Andrews Dr	1C	No	15.011	15.503	2597.76	64		0.00	18472.96
SR 99	New Salem Road	CHANGE	Cason Ln	1C	No	15.503	15.97	2465.76	42		0.00	11506.88
SR 99	New Salem Road	CHANGE	Cason Ln to Middle Tn Blvd	1C	No	15.97	18.58	13780.8	84		0.00	128620.80
SR 99	New Salem Road	CHANGE	Middle Tennessee Blvd	1C	No	18.58	19.19	3220.8	44		0.00	15746.13
SR 99	New Salem Road	SHIFT	Bridge Ave	1C	No	19.19	19.47	1478.4	45		0.00	7392.00
SR 99	Bradyville Pike	SHIFT	N of New Salem rd.	1B	No	19.47	19.98	2692.8	22		0.00	6582.40
SR 99	Bradyville Pike	CHANGE	S of Middle TN Blvd	1B	No	19.98	20.148	887.04	30		0.00	2956.80
SR 99	Bradyville Pike	CHANGE	E of Toddington Drive	1C	No	20.148	20.228	422.4	32		0.00	1501.87
SR 99	Bradyville Pike	CHANGE	W of Lakeshore Dr	1C	No	20.228	20.664	2302.08	34		0.00	8696.75
SR 99	Bradyville Pike	CHANGE	E of Lakeshore Dr	1C	No	20.664	20.759	501.6	32		0.00	1783.47
SR 99	Bradyville Pike	CHANGE	Crossing Minerva Dr	1C	No	20.759	21.03	1430.88	40		0.00	6359.47
SR 99	Bradyville Pike	CHANGE	E of Rogers St	1C	No	21.03	21.163	702.24	32		0.00	2496.85
SR 99	Bradyville Pike	CHANGE	NW of and crossing Rutherford Blvd	1B	No	21.163	21.73	2993.76	40		0.00	13305.60
SR 99	Bradyville Pike	CHANGE	S of Medford Campbell Blvd	1B	No	21.73	21.855	660	32		0.00	2346.67
SR 99	Bradyville Pike	END	N of Millwood Dr	1B	No	21.855	22.184	1737.12	24		0.00	4632.32

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the current roadway surface area to the nearest whole square yard which will be routinely maintained, swept, or flushed by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for street maintenance, excluding machine mowing and litter removal, not to exceed the calculated maximum reimbursement below.

City of Murfreesboro- Roadway (cont.)

Roadway Surface Inventory Worksheet												
Route	Street Name	Action	Crossing Boundary Description	Rdwy. Profile Type	Access Control	Beg Log Mile	End Log Mile	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursible Area (yd.^2)
SR 268	N Thompson Ln	BEGIN	NE of SR 2 (Broad St)	1C	No	0	0.105	554.4	106		0.00	6529.60
SR 268	N Thompson Ln	CHANGE	NE of SR 2 (Broad St)	1C	No	0.105	0.278	913.44	70		0.00	7104.53
SR 268	N Thompson Ln	CHANGE	NE of SR 2 (Broad St)	1C	No	0.278	0.403	660	45		0.00	3300.00
SR 268	N Thompson Ln	CHANGE	NE of SR 2 (Broad St)	1C	No	0.403	0.513	580.8	57		0.00	3678.40
SR 268	N Thompson Ln	CHANGE	N of Royal Dr	1B	No	0.513	1.12	3204.96	45		0.00	16024.80
SR 268	N Thompson Ln	CHANGE	S of Haynes Dr	1C	No	1.12	1.206	454.08	67		0.00	3380.37
SR 268	N Thompson Ln	CHANGE	N of Haynes Dr	1C	No	1.206	1.311	554.4	57		0.00	3511.20
SR 268	N Thompson Ln	CHANGE	N of Riverbend Dr	1C	No	1.311	2.235	4878.72	41		0.00	22225.28
SR 268	N Thompson Ln	CHANGE	NE of E Primm Lane	1C	No	2.235	2.523	1520.64	43		0.00	7265.28
SR 268	N Thompson Ln	CHANGE	W of Northboro Ct	1C	No	2.523	3.097	3030.72	45		0.00	15153.60
SR 268	N Thompson Ln	CHANGE	E of Northboro Ct	1C	No	3.097	3.549	2386.56	56		0.00	14849.71
SR 268	N Thompson Ln	CHANGE	E of Northboro Ct	1C	No	3.549	3.73	955.68	60		0.00	6371.20
SR 268	N Thompson Ln	CHANGE	E of Northboro Ct	1C	No	3.73	3.787	300.96	71		0.00	2374.24
SR 268	N Thompson Ln	CHANGE	E of Northboro Ct	1C	No	3.787	4.095	1626.24	60		0.00	10841.60
SR 268	N Thompson Ln	CHANGE	W of Lebanon Pike	1D	No	4.095	4.347	1330.56	50		0.00	7392.00
SR 268	Compton Rd	CHANGE	E of Lebanon Pike	1C	No	4.347	5.079	3864.96	38		0.00	16318.72
SR 268	Compton Rd	CHANGE	E of Compton Grove	1C	No	5.079	5.228	786.72	52		0.00	4545.49
SR 268	Compton Rd	END	E of Westbrook Drive	1C	No	5.228	6.59	7191.36	44		0.00	35157.76

Total Length (mi.): 54.614 Total Roadway Surface: 1,978,869.00

INVENTORY OF ELIGIBLE MACHINE MOWING FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the eligible mowing area in acres which will be maintained by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for machine mowing, not to exceed the number of cycles and the price per acre as detailed below.

City Of Murfreesboro- Mowing

Approved Mowing Reimbursement Per Acre:	\$ 50.00
Calculated Maximum Annual Reimbursement (Mowing):	\$ 37,050.00
Total Maximum Reimbursement (Mowing):	\$ 74,100.00

Mowing Inventory Worksheet									
Route Number	Roadway Type	Begin Termini (LM)	End Termini(LM)	Median Area (acres)	Controlled Access Area (acres)	Segment Total Area (acres)	Number of Mowing Cycles	Contract Segment Total Area (acres)	
SR 1	1G	9.65	15.33	19.5		19.5	6	117.00	
SR 1	1G	15.395	15.748	1.28		1.28	6	7.68	
SR 1	1G	17.77	19.69	6.22	9.7	15.92	6	95.52	
SR 1	1G	19.71	20	0.79	5.27	6.06	6	36.36	
SR 2	1C	3.23	6	10.68		10.68	6	64.08	
SR 10	1G	8	9.23	4.741	4.171	8.912	6	53.472	
SR 10	1E	11.28	11.55	1.1		1.1	6	6.60	
SR 96	1G	9.17	11.15	7.71	19.23	26.94	6	161.64	
SR 96	1C	12.85	15.45	5.64		5.64	6	33.84	
SR 99	1C	12.69	14.575	13.25		13.25	6	79.50	
SR 268	1C	0	6.59	14.078		14.078	6	84.468	
<b>Total Contract Area (acres):</b>							<b>741.00</b>		



INVENTORY OF ELIGIBLE LITTER REMOVAL FOR THE MAINTENANCE  
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the eligible length of litter removal in linear miles which will be maintained by the Contractor under the terms of this contract. The State agrees to reimburse said Contractor in the amount actually expended for litter removal, not to exceed the number of cycles and the price per linear mile as detailed below.

City Of Murfreesboro- Litter

Approved Litter Reimbursement Per Mile:	\$ 60.00
Calculated Maximum Annual Reimbursement (Litter):	\$ 22,150.80
<b>Total Maximum Reimbursement (Litter):</b>	<b>\$ 44,301.60</b>

Litter Inventory Worksheet										
Route Number	Roadway Type	Beginning Termini (L-M)	Ending Termini (L-M)	Segment Length (mi.)	Litter Pass Miles Per Segment	Segment Total Litter (mi.)	Price per Litter Mile	Number of Litter Cycles	Contract Segment Total Litter (mi.)	Contract Segment Total Litter (\$)
SR 1	1G	9.65	15.77	6.12	1	6.12	\$60.00	12	73.44	4406.40
SR 1	1D	15.77	17.77	2	1	2	\$60.00	12	24	1440.00
SR 1	1G	17.77	19.14	1.37	1	1.37	\$60.00	12	16.44	986.40
SR 1	2A	19.14	20.01	0.87	1	0.87	\$60.00	12	10.44	626.40
SR 2	1C	0	6	6	1	6	\$60.00	12	72	4320.00
SR 10	1G	8	9.23	1.23	1	1.23	\$60.00	12	14.76	885.60
SR 10	1E	11.28	11.55	0.27	1	0.27	\$60.00	12	3.24	194.40
SR 96	1G	9.17	9.33	0.16	1	0.16	\$60.00	12	1.92	115.20
SR 96	1G	9.41	10.55	1.14	1	1.14	\$60.00	12	13.68	820.80
SR 96	1G	10.62	11.15	0.53	1	0.53	\$60.00	12	6.36	381.60
SR 96	1C	12.85	15.45	2.6	1	2.6	\$60.00	12	31.2	1872.00
SR 99	1C	12.69	14.575	1.885	1	1.885	\$60.00	12	22.62	1357.20
SR268	1C	0	6.59	6.59	1	6.59	\$60.00	12	79.08	4744.80
<b>Total Contract Litter (mi.):</b>									<b>369.18</b>	<b>\$ 22,150.80</b>

### CITY MAINTENANCE ROADWAY TYPICAL SECTIONS

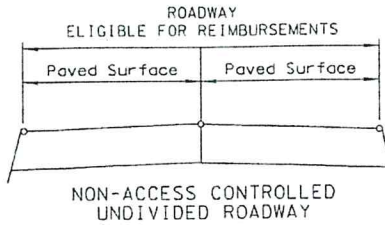


FIGURE 1A

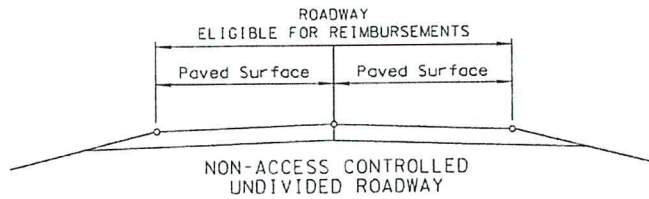


FIGURE 1B

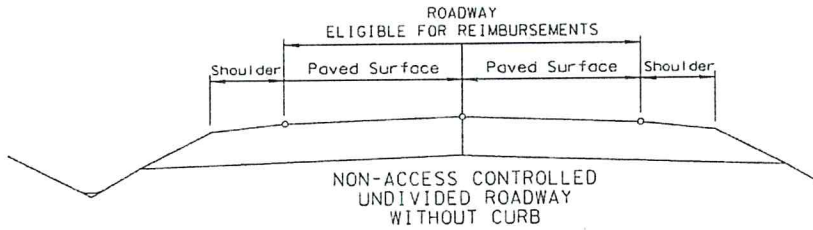


FIGURE 1C

NOTE: IN FIGURES 1A, 1B, AND 1C FOR NON-CONTROLLED ROUTES THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS.

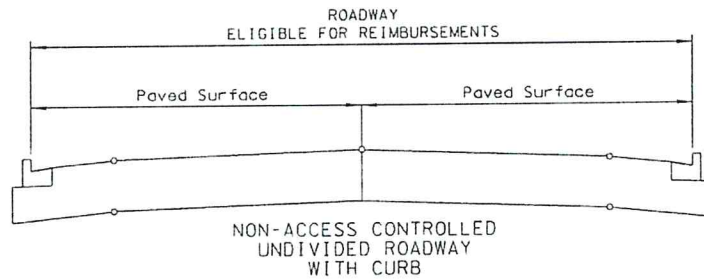


FIGURE 1D

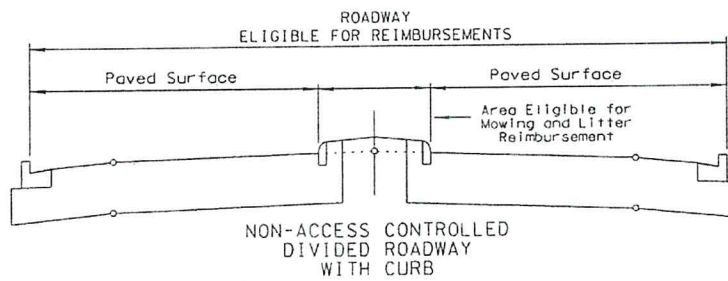


FIGURE 1E

CITY MAINTENANCE  
ROADWAY TYPICAL SECTIONS

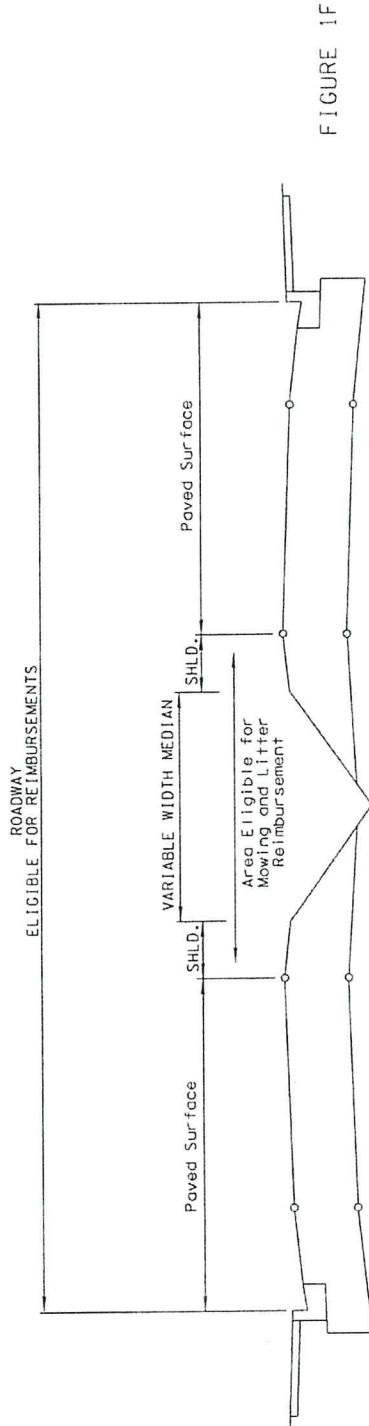


FIGURE 1F

NON-ACCESS CONTROLLED  
DIVIDED ROADWAY WITH CURB

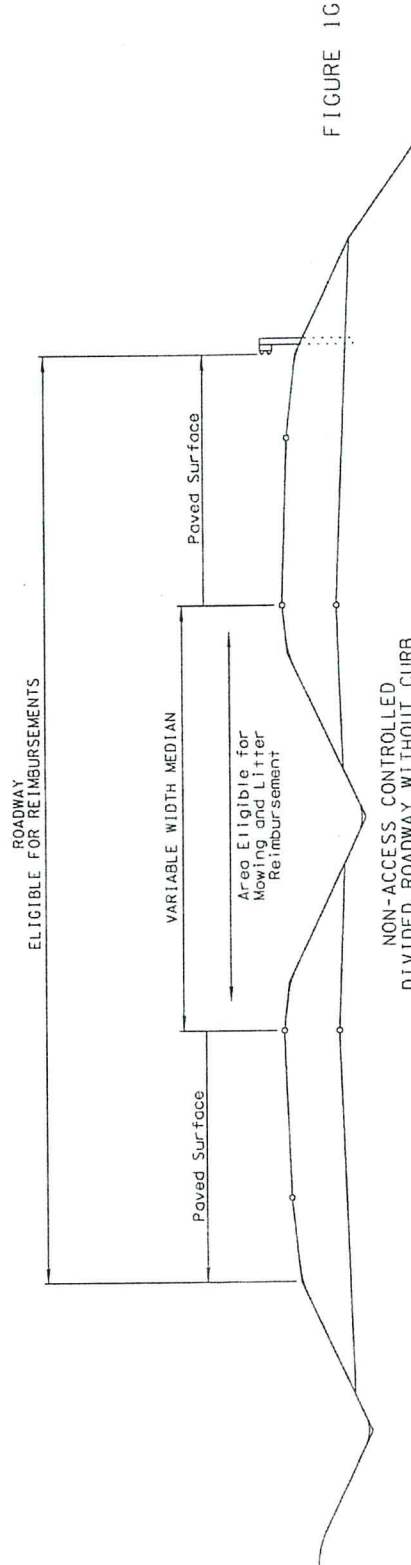


FIGURE 1G

NON-ACCESS CONTROLLED  
DIVIDED ROADWAY WITHOUT CURB

NOTE:  
IF FIGURES 1F AND 1G FOR NON-ACCESS CONTROLLED ROUTES  
THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS.

CITY MAINTENANCE  
ROADWAY TYPICAL SECTIONS

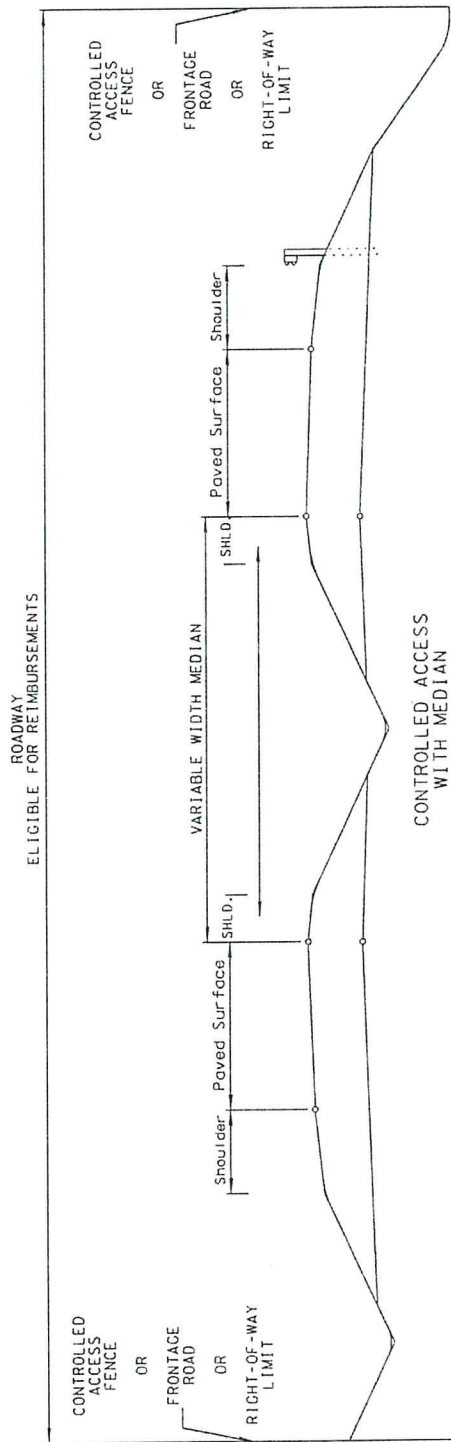


FIGURE 2A

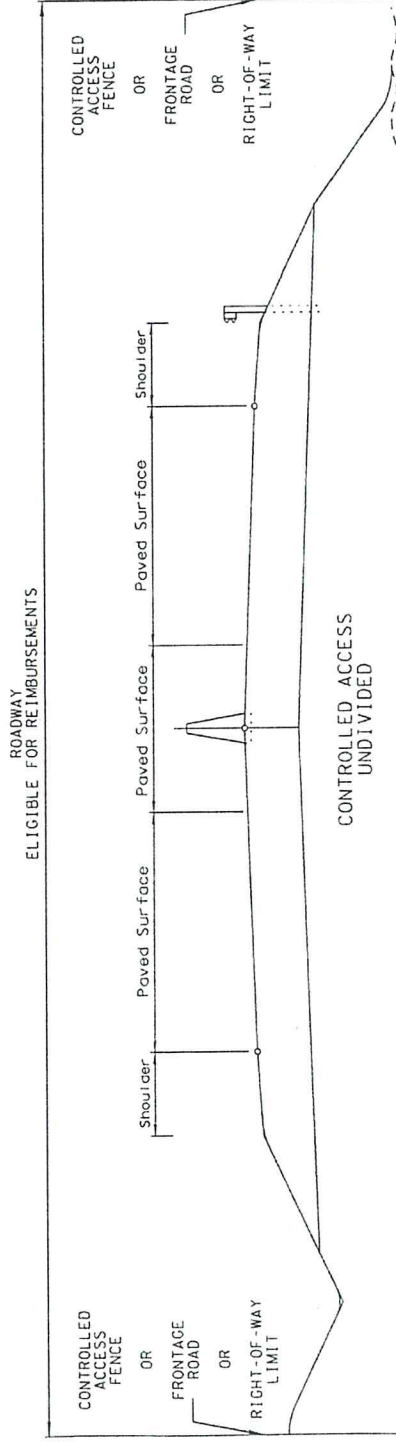


FIGURE 2B

**"EXHIBIT B"**  
**MAXIMUM ALLOWABLE EQUIPMENT RATES**  
**2023-2025 FISCAL YEAR**

ITEM NO.	DESCRIPTION OF EQUIPMENT	RATE	UNIT
1	SEDAN, POLICE OR FULL SIZE	12.00	HR
2	TRUCK, PICKUP	11.00	HR
3	TRUCK, ¾ TO 1 TON LIGHT DUTY	12.00	HR
4	TRUCK, ¾ TO 1 TON 4X4	13.00	HR
5	TRUCK, UTILITY/SERVICE BODY	14.00	HR
6	TRUCK, DUMP UP TO 15,000 GVWR	24.65	HR
7	TRUCK, DUMP OVER 15,000 UP TO 20,000 GVWR	28.12	HR
8	TRUCK, DUMP OVER 20,000 UP TO 40,000 GVWR	42.35	HR
9	TRUCK, DUMP TANDEM AXLE OVER 40,000 GVWR	68.00	HR
10	TRUCK, STAKE OR FLATBED UP TO 10,000 GVWR	17.45	HR
11	TRUCK, STAKE OR FLATBED OVER 10,000 UP TO 20,000 GVWR	26.10	HR
12	TRUCK, STAKE OR FLATBED OVER 20,000	42.00	HR
13	TRUCK, FLATBED OVER 32,500 GVWR	54.00	HR
14	TRUCK, TRACTOR SINGLE AXLE	37.00	HR
15	TRUCK, TRACTOR TANDEM AXLE	40.15	HR
16	TRUCK, SEWER/CULVERT/CATCH BASIN/ CLEANER (VAC-ALL)	82.20	HR
17	SWEEPER, TRUCK MOUNTED	55.89	HR
18	SWEEPER, SELF-PROPELLED	43.71	HR
19	TRUCK, W/STREET FLUSHER	70.16	HR
20	TRUCK, CRANE	28.28	HR
21	TRUCK, EXCAVATOR	64.73	HR
22	TRUCK, REFUSE COLLECTION	30.50	HR
23	TRACTOR, W/SWEEPER	32.68	HR
24	TRACTOR, W/DITCHER	62.12	HR
25	TRACTOR, WHEEL	48.22	HR
26	CHIPPER, BRUSH	36.81	HR
27	TRAILER, TILT	8.04	HR
28	TRAILER, PLATFORM OR GENERAL	10.12	HR
29	TRAILER, LOW BOY TANDEM	20.78	HR
30	JOINT & CRACK SEALING MACHINE	28.55	HR
31	ASPHALT RECLAIMER/RECYCLER MACHINE	135.78	HR
32	PAVER, ASPHALT SELF-PROPELLED	154.53	HR
33	PAVER, ASPHALT PULL TYPE	7.45	HR
34	DISTRIBUTOR, ASPHALT, PULL TYPE	27.37	HR
35	CHIP SPREADER MACHINE	57.42	HR
36	EXCAVATOR, TRACK TYPE (TRACKHOE)	87.31	HR

**"EXHIBIT B"**  
**MAXIMUM ALLOWABLE EQUIPMENT RATES**  
**2023-2025 FISCAL YEAR**

	DESCRIPTION OF EQUIPMENT	RATE	UNIT
37	DRAGLINES AND CRANES	75.99	HR
38	TRACTOR, CRAWLER (DOZER)	98.18	HR
39	MOTOR GRADER	65.30	HR
40	BACKHOE	37.90	HR
41	LOADER, FT END RUBBER TIRED (ARTICULATED) UP TO 1 CU. YD.	32.13	HR
42	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1 UP TO 1.5 CY	47.50	HR
43	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1.5 CU. YD.	59.71	HR
44	LOADER, FRONT END TRACK TYPE	71.50	HR
45	LOADER, SKID-STEER	58.46	HR
46	PROFILER, MILLING MACHINE	305.76	HR
47	ROLLER, WALK BEHIND	4.27	HR
48	ROLLER, STEEL WHEEL, 1 TO 5 TONS	88.84	HR
49	ROLLER, STEEL WHEEL, OVER 5 TONS	41.93	HR
50	GENERATOR, PORTABLE	8.30	HR
51	AIR COMPRESSOR, PORTABLE OR PULL TYPE	36.40	HR
52	WELDER, PORTABLE OR PULL TYPE	5.76	HR
53	CONCRETE MIXER, PORTABLE OR PULL TYPE	32.07	HR
54	CURBING MACHINE	65.74	HR
55	PAINT MACHINE, WALK BEHIND	31.57	HR
56	PAINT MACHINE, TRUCK MOUNTED (LARGE)	84.61	HR
57	THERMOPLASTIC MARKING MACHINE, WALK BEHIND	23.24	HR
58	TRAFFIC LINE REMOVER (WATER BLASTER)	43.68	HR
59	ARROW BOARD, TRAILER OR TRUCK MOUNTED	4.15	HR
60	MESSAGE SIGN, TRAILER MOUNTED	1.14	HR
61	LIGHT TOWER, TRAILER MOUNTED	24.18	HR
62	TRUCK MOUNTED ATTENUATOR	10.00	HR

**"EXHIBIT B"**

**CITY OF MURFREESBORO  
MAXIMUM ALLOWABLE LABOR RATES**

**(To be supplied by the City at this time)**

**Beginning July 1, 2023 and ending June 30, 2025**

<b>Job Title Classification</b>	<b>Low Rate</b>	<b>High Rate</b>

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

**Item Title:** 2023 Water Treatment Plant Chemical Contracts

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

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**Summary**

Purchase of chemical commodities for the Stones River Water Treatment Plant.

**Staff Recommendation**

Approve the contracts from the itemized chemical suppliers for water treatment chemicals listed in the table below as approved by the Water Resources Board.

**Background Information**

The water treatment plant uses most of the chemicals in the table below for treating the water and some for cleaning the microfiltration membranes. The contract period is for July 1, 2023, through June 30, 2024, with options to renew.

Company Name	Chemical	Unit Price	Estimated Annual Expense
Brenntag Mid-South, Inc	Sodium Carbonate	\$0.31/lb	\$14,000
Brenntag Mid-South, Inc	Sodium Chloride	\$0.21/lb	\$55,000
Brenntag Mid-South, Inc	Sodium Hydroxide	\$0.205/lb	\$6,000
Carmeuse Lime	Calcium Oxide	\$0.18639/lb	\$506,000
Chemtrade Chemical	Polyaluminum Hydroxychloride	\$0.3945/lb	\$50,000
Polydyne, Inc	Polyelectrolyte Coagulant Aid	\$1.27/lb	\$81,000
Univar Solutions USA, Inc	Citric Acid	\$1.20/lb	\$27,000
Univar Solutions USA, Inc	Fluorosilicic Acid	\$0.26/lb	\$24,000

**Council Priorities Served**

*Responsible budgeting*

Establishing annual chemical commodity contracts mitigates pricing fluctuations and allows for more predictable forecasting of expenses.

**Fiscal Impact**

The price of the chemicals is reflected in the table above. Funding from the FY24 Operating Budget with a contract price through June 30, 2024.

**Attachments**

2023 WTP Chemical Contracts



## **Agreement for Chemicals for Water Resources Department**

This Agreement is entered into and effective as of the \_\_\_\_\_ 2023, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Brenntag Mid-South, Inc.**, a corporation of the state of Kentucky and authorized to do business in Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-55-2023 – Chemicals for Water Resources (the "Solicitation");
- Contractor's Proposal, dated 05/10/2023 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 05/10/2023 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

### **1. Duties and Responsibilities of Contractor.**

Contractor shall provide and City shall purchase the materials based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-55-2023 – Chemicals for Water Resources."

- a. Sodium Carbonate (Soda Ash) \$.31/lb
- b. Sodium Chloride \$.21/lb
- c. Sodium Hydroxide \$.205/lb

### **2. Term.**

The term of this Agreement commences on the Effective Date and expires in one (1) year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Payment and Delivery.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal. Pricing shall be effective for one (1) year. Contractor shall submit price increases six weeks prior to the one year of this Agreement for approval and acceptance by the City. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Deliveries of items shall be made within fourteen (14) days of order to the Stones River Water Treatment Plant located at 5528 Sam Jared Drive, Murfreesboro, TN. Contact Person, Alan Cranford ([acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) (615) 848-3222 X 3301 must be notified of delivery date and time within two (2) days prior to delivery.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or this Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to this Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. Requirements Contract.** This Agreement is a "requirements" contract for the purchase of the product(s) referenced in Section 1, above. As such, Contractor represents and warrants that it will supply the entire quantity of such product(s) as the City may require during the term of this Agreement at the price(s) stated in Contractor's Price Proposal and Section 1, above, within the time for delivery specified in this Agreement or in a purchase order for the City; the City represents and warrants that it will purchase all required quantities of said product(s) from Contractor, subject to Contractor's representations and warranties herein. However, in the event Contractor is unwilling or unable to deliver to the City a required quantity of product(s) with the specified time for delivery at the firm price, then City may, at its option, seek delivery from an alternate buyer without being considered in default of this Agreement. Should Contractor's unwillingness and/or inability to deliver constitute a breach of this Agreement, then City may, in addition to seeking delivery from an alternate buyer, take any other action and/or seek any other remedy allowed by this Agreement or applicable law/equity.

**5. Product Inspection; Failure.** All material shall be available for inspection by the City at the point of destination before receiving approval to offload material. In the event any product fails to meet specifications, the supplier shall, at no expense to the City, remove the unused portion of the product and refund the purchase price of such unused portion to the City. Chemicals in dirty, broken, or damaged containers shall be deemed unacceptable and considered a failed product. Products that meet chemical specifications but fail to perform satisfactorily in actual plant conditions shall be deemed unacceptable and considered as failed product. Products that meet chemical specifications but fail to meet quality control check at the plant shall be deemed unacceptable and considered as a failed product.

**6. 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.

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

**8. Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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

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

I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise

this option until Contractor and the City have determined that each of the other options are impractical.

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

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

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

If to Contractor:  
Ray Sibbitt  
Brenntag Mid-South, Inc.  
Director of Mini Bulk/Municipal Development  
1405 Highway 136 West  
Henderson, KY 42419  
[rsibbitt@brenntag.com](mailto:rsibbitt@brenntag.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. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- 15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from

participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **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 \_\_\_\_\_, 2023 (the "Effective Date").

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**Brenntag Mid-South, Inc.**

DocuSigned by:  
By: *Ray Sibbitt* \_\_\_\_\_  
D2743343204F4AA...  
Ray Sibbitt, Director of Mini  
Bulk/Municipal Development

Approved as to form:

DocuSigned by:  
*Adam Tucker* \_\_\_\_\_  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

## Agreement for Chemicals for Water Resources Department

This Agreement is entered into and effective as of the \_\_\_\_\_ 2023, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Carmeuse Lime & Stone, Inc.**, a corporation of the state of Delaware and authorized to do business in the state of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-55-2023 – Chemicals for Water Resources (the "Solicitation");
- Contractor's Proposal, dated 05/10/2023 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 05/10/2023 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

### 1. Duties and Responsibilities of Contractor.

Contractor shall provide and City shall purchase the materials based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-55-2023 – Chemicals for Water Resources."

- a. Calcium Oxide \$.18639/lb

### 2. Term.

The term of this Agreement commences on the Effective Date and expires in one (1) year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Payment and Delivery.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal. Pricing shall be effective for one (1) year. Contractor shall submit price increases six weeks prior to the one year of this Agreement for approval and acceptance by the City. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Deliveries of items shall be made within fourteen (14) days of order to the Stones River Water Treatment Plant located at 5528 Sam Jared Drive, Murfreesboro, TN. Contact Person, Alan Cranford ([acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) (615) 848-3222 X 3301 must be notified of delivery date and time within two (2) days prior to delivery.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or this Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to this Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. Requirements Contract.** This Agreement is a "requirements" contract for the purchase of the product(s) referenced in Section 1, above. As such, Contractor represents and warrants that it will supply the entire quantity of such product(s) as the City may require during the term of this Agreement at the price(s) stated in Contractor's Price Proposal and Section 1, above, within the time for delivery specified in this Agreement or in a purchase order for the City; the City represents and warrants that it will purchase all required quantities of said product(s) from Contractor, subject to Contractor's representations and warranties herein. However, in the event Contractor is unwilling or unable to deliver to the City a required quantity of product(s) with the specified time for delivery at the firm price, then City may, at its option, seek delivery from an alternate buyer without being considered in default of this Agreement. Should Contractor's unwillingness and/or inability to deliver constitute a breach of this Agreement, then City may, in addition to seeking delivery from an alternate buyer, take any other action and/or seek any other remedy allowed by this Agreement or applicable law/equity.

**5. Product Inspection; Failure.** All material shall be available for inspection by the City at the point of destination before receiving approval to offload material. In the event any product fails to meet specifications, the supplier shall, at no expense to the City, remove the unused portion of the product and refund the purchase price of such unused portion to the City. Chemicals in dirty, broken, or damaged containers shall be deemed unacceptable and considered a failed product. Products that meet chemical specifications but fail to perform satisfactorily in actual plant conditions shall be deemed unacceptable and considered as failed product. Products that meet chemical specifications but fail to meet quality control check at the plant shall be deemed unacceptable and considered as a failed product.

**6. 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.

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

**8. Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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

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

I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise

this option until Contractor and the City have determined that each of the other options are impractical.

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

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

If to the City of Murfreesboro:	If to Contractor:
City Manager	Inside Sales
City of Murfreesboro	Lime & Stone, Inc.
111 West Vine Street	11 Stanwix St. 21 <sup>st</sup> FL
Murfreesboro, TN 37130	Pittsburgh, PA 15222

- 10. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
- 11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
- 12. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
- 13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- 15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or

be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **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 \_\_\_\_\_, 2023 (the "Effective Date").

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**Carmeuse Line & Stone, Inc.**

DocuSigned by:  
By: *Jonathan Bright*  
B8C8F92457F5485...  
Jose Voisin, Group CIO

Approved as to form:

DocuSigned by:  
*Adam Tucker*  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

## Agreement for Chemicals for Water Resources Department

This Agreement is entered into and effective as of the \_\_\_\_\_ 2023, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Chemtrade Chemical US LLC**, a corporation of the state of Delaware and authorized to do business in the state of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-55-2023 – Chemicals for Water Resources (the "Solicitation");
- Contractor's Proposal, dated 05/10/2023 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 05/10/2023 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

### 1. Duties and Responsibilities of Contractor.

Contractor shall provide and City shall purchase the materials based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-55-2023 – Chemicals for Water Resources."

- a. Polyaluminum Hydroxychloride \$.3945/lb

### 2. Term.

The term of this Agreement commences on the Effective Date and expires in one (1) year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Payment and Delivery.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal. Pricing shall be effective for one (1) year. Contractor shall submit price increases six weeks prior to the one (1) year of this Agreement for approval and acceptance by the City. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Deliveries of items shall be made within fourteen (14) days of order to the Stones River Water Treatment Plant located at 5528 Sam Jared Drive, Murfreesboro, TN. Contact Person, Alan Cranford ([acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) (615) 848-3222 X 3301 must be notified of delivery date and time within two (2) days prior to delivery.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to this Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. Requirements Contract.** This Agreement is a "requirements" contract for the purchase of the product(s) referenced in Section 1, above. As such, Contractor represents and warrants that it will supply the entire quantity of such product(s) as the City may require during the term of this Agreement at the price(s) stated in Contractor's Price Proposal and Section 1, above, within the time for delivery specified in this Agreement or in a purchase order for the City; the City represents and warrants that it will purchase all required quantities of said product(s) from Contractor, subject to Contractor's representations and warranties herein. However, in the event Contractor is unwilling or unable to deliver to the City a required quantity of product(s) with the specified time for delivery at the firm price, then City may, at its option, seek delivery from an alternate buyer without being considered in default of this Agreement. Should Contractor's unwillingness and/or inability to deliver constitute a breach of this Agreement, then City may, in addition to seeking delivery from an alternate buyer, take any other action and/or seek any other remedy allowed by this Agreement or applicable law/equity.

**5. Product Inspection; Failure.** All material shall be available for inspection by the City at the point of destination before receiving approval to offload material. In the event any product fails to meet specifications, the supplier shall, at no expense to the City, remove the unused portion of the product and refund the purchase price of such unused portion to the City. Chemicals in dirty, broken, or damaged containers shall be deemed unacceptable and considered a failed product. Products that meet chemical specifications but fail to perform satisfactorily in actual plant conditions shall be deemed unacceptable and considered as failed product. Products that meet chemical specifications but fail to meet quality control check at the plant shall be deemed unacceptable and considered as a failed product.

**6. 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.

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

**8. Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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

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

I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise

this option until Contractor and the City have determined that each of the other options are impractical.

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

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

If to the City of Murfreesboro:	If to Contractor:
City Manager	Parul Kachhia-Patel
City of Murfreesboro	Chemtrade Chemical US LLC
111 West Vine Street	90 East Halset Road, Ste 200
Murfreesboro, TN 37130	Parsippany, NJ 07054

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

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

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

- 13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

- 14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

- 15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national



origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **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 \_\_\_\_\_, 2023 (the "Effective Date").

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**Chemtrade Chemical US LLC**

DocuSigned by:  
By: PARUL KACHHIA-PATEL  
035DF5E5DAAB41A...  
Parul Kachhia-Patel, Marketing Specialist

Approved as to form:

DocuSigned by:  
Adam Tucker  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

## Agreement for Chemicals for Water Resources Department

This Agreement is entered into and effective as of the \_\_\_\_\_ 2023, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Polydyne, Inc.**, a corporation of the state of Delaware ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-55-2023 – Chemicals for Water Resources (the "Solicitation");
- Contractor's Proposal, dated 05/10/2023 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 05/10/2023 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

### 1. Duties and Responsibilities of Contractor.

Contractor shall provide and City shall purchase the materials based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-55-2023 – Chemicals for Water Resources."

- a. Polyelectrolyte Coagulant Aid \$1.27/lb

### 2. Term.

The term of this Agreement commences on the Effective Date and expires in one (1) year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

### 3. Payment and Delivery.

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal. Pricing shall be effective for one (1) year. Contractor shall submit

price increases six weeks prior to the one year of this Agreement for approval and acceptance by the City. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.

- b. Deliveries of items shall be made within fourteen (14) days of order to the Stones River Water Treatment Plant located at 5528 Sam Jared Drive, Murfreesboro, TN. Contact Person, Alan Cranford ([acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) (615) 848-3222 X 3301 must be notified of delivery date and time within two (2) days prior to delivery.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or this Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to this Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

4. **Requirements Contract.** This Agreement is a "requirements" contract for the purchase of the product(s) referenced in Section 1, above. As such, Contractor represents and warrants that it will supply the entire quantity of such product(s) as the City may require during the term of this Agreement at the price(s) stated in Contractor's Price Proposal and Section 1, above, within the time for delivery specified in this Agreement or in a purchase order for the City; the City represents and warrants that it will purchase all required quantities of said product(s) from Contractor, subject to Contractor's representations and warranties herein. However, in the event Contractor is unwilling or unable to deliver to the City a required quantity of product(s) with the specified time for delivery at the firm price, then City may, at its option, seek delivery from an alternate buyer without being considered in default of this Agreement. Should Contractor's unwillingness and/or inability to deliver constitute a breach of this Agreement, then City may, in addition to seeking delivery from an alternate buyer, take any other action and/or seek any other remedy allowed by this Agreement or applicable law/equity.
5. **Product Inspection; Failure.** All material shall be available for inspection by the City at the point of destination before receiving approval to offload material. In the event any product fails to meet specifications, the supplier shall, at no expense to the City, remove the unused portion of the product and refund the purchase price of such unused portion to the City. Chemicals in dirty, broken, or damaged containers shall be deemed unacceptable and considered a failed product. Products that meet chemical specifications but fail to perform satisfactorily in actual plant conditions shall be deemed unacceptable and considered as failed product. Products that meet chemical specifications but fail to meet quality control check at the plant shall be deemed unacceptable and considered as a failed product.
6. **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.

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

8. **Indemnification.**

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

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

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

If to the City of Murfreesboro:	If to Contractor:
City Manager	Boyd Stanley
City of Murfreesboro	Polydyne, Inc.
111 West Vine Street	1 Chemical Plant Road
Murfreesboro, TN 37130	Riceboro, GA 31323
	<a href="mailto:bids@polydyneinc.com">bids@polydyneinc.com</a>

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

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

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

13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or

statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

**23. 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 \_\_\_\_\_, 2023 (the "Effective Date").

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**Polydyne, Inc.**

DocuSigned by:  
By: Boyd Stanley  
B7481AD4161847B...  
Boyd Stanley, Sr. Vice President

Approved as to form:

DocuSigned by:  
Adam Tucker  
43A2035E51F9401...  
Adam F. Tucker, City Attorney



## Agreement for Chemicals for Water Resources Department

This Agreement is entered into and effective as of the \_\_\_\_\_ 2023, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Univar Solutions USA, Inc.**, a corporation of the state of Washington ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-55-2023 – Chemicals for Water Resources (the "Solicitation");
- Contractor's Proposal, dated 05/10/2023 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 05/10/2023 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

### 1. Duties and Responsibilities of Contractor.

Contractor shall provide and City shall purchase the materials based on Contractor's Proposal and Price Proposal and the specifications set forth in "ITB-55-2023 – Chemicals for Water Resources."

- a. Citric Acid \$1.20/lb
- b. Fluorosilicic Acid \$.26/lb

### 2. Term.

The term of this Agreement commences on the Effective Date and expires in one (1) year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate this Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate this Agreement immediately upon written notice to Contractor.

**3. Payment and Delivery.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal. Pricing shall be effective for one (1) year. Contractor shall submit price increases six weeks prior to the one year of the contract for approval and acceptance by the City. Any compensation due Contractor under this Agreement shall be made upon submittal of an invoice after performance of the portion of the 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 this Agreement 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 items shall be made within fourteen (14) days of order to the Stones River Water Treatment Plant located at 5528 Sam Jared Drive, Murfreesboro, TN. Contact Person, Alan Cranford ([acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) (615) 848-3222 X 3301 must be notified of delivery date and time within two (2) days prior to delivery.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the ITB.
- e. All deliveries made pursuant to this Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. Requirements Contract.** This Agreement is a "requirements" contract for the purchase of the product(s) referenced in Section 1, above. As such, Contractor represents and warrants that it will supply the entire quantity of such product(s) as the City may require during the term of this Agreement at the price(s) stated in Contractor's Price Proposal and Section 1, above, within the time for delivery specified in this Agreement or in a purchase order for the City; the City represents and warrants that it will purchase all required quantities of said product(s) from Contractor, subject to Contractor's representations and warranties herein. However, in the event Contractor is unwilling or unable to deliver to the City a required quantity of product(s) with the specified time for delivery at the firm price, then City may, at its option, seek delivery from an alternate buyer without being considered in default of this Agreement. Should Contractor's unwillingness and/or inability to deliver constitute a breach of this Agreement, then City may, in addition to seeking delivery from an alternate buyer, take any other action and/or seek any other remedy allowed by this Agreement or applicable law/equity.

**5. Product Inspection; Failure.** All material shall be available for inspection by the City at the point of destination before receiving approval to offload material. In the event any product fails to meet specifications, the supplier shall, at no expense to the City, remove the unused portion of the product and refund the purchase price of such unused portion to the City. Chemicals in dirty, broken, or damaged containers shall be deemed unacceptable and considered a failed product. Products that meet chemical specifications but fail to perform satisfactorily in actual plant conditions shall be deemed unacceptable and considered as failed product. Products that meet chemical specifications but fail to meet quality control check at the plant shall be deemed unacceptable and considered as a failed product.

**6. 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.

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

**8. Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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

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

I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise

this option until Contractor and the City have determined that each of the other options are impractical.

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

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

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

If to Contractor:  
Univar Solutions USA, Inc.  
Attn: Muni Team  
8201 S. 212<sup>th</sup> St.  
Kent, WA 98032  
Muniteam-  
west@univarsolutions.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. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- 15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from

participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of this Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **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 \_\_\_\_\_, 2023 (the "Effective Date").

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**Univar Solutions USA, Inc.**

DocuSigned by:  
BY: Shawnasey McCarthy  
864642577D48461...  
Shawnasey McCarthy, Municipal Commercial Manager

Approved as to form:

DocuSigned by:  
Adam Tucker  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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

**Requested Council Action:**

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

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**Summary**

Report of asphalt purchases.

**Staff Recommendation**

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

**Background Information**

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

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

**Council Priorities Served**

*Responsible budgeting*

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

*Maintain public safety*

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

**Fiscal Impacts**

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

**Attachments**

Asphalt Purchases Report





## MWRD OPERATIONS & MAINTENANCE

### Asphalt Purchases FY 2022

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



# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Memorandum of Understanding with MTSU for Renewal of Stormwater Permit

**Department:** Water Resources

**Presented by:** Darren Gore, Assistant City Manager

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Extension of MOU with MTSU for public education related to the prevention of stormwater pollution and protection of surface water quality.

**Staff Recommendation**

Approve renewal MOU with MTSU for the FY24.

**Background Information**

Since 2012, the City and MTSU’s MOU allows MTSU to assist the City in educating and involving the community in stormwater pollution-prevention and surface water quality.

Public education and outreach are a core requirement of the City’s stormwater discharge permit. The State audited the City’s stormwater program in 2019 and looked closely at records of education and outreach. The MOU with MTSU, therefore, has been instrumental in assuring the City’s stormwater program remains in compliance.

Each year the City and MTSU plan a set of stormwater-related educational projects and events. Such as stream clean-ups, tree-planting events; classroom teaching; direct mail to business operations (e.g., automobile-related, restaurants); and staffing outreach events (Earth Day, school field days, etc.).

**Council Priorities Served**

*Expand Infrastructure*

Increasing the knowledge of residents, students, and employees of local businesses in in the storm water infrastructure projects (e.g., stream clean-ups, tree plantings, and pollution-prevention control measures) provides long-term benefits to the system.

**Fiscal Impacts**

The expenses, \$52,000, is funded by the FY24 Stormwater Utility Fund.

**Attachments**

1. Copy of 1<sup>st</sup> MOU renewal amendment for 2023-24
2. Copy of re-established MOU from 2022

**First Amendment to Memorandum of Understanding  
between  
the City of Murfreesboro, Tennessee  
and  
Middle Tennessee State University**

This Amendment to the Memorandum of Understanding (MOU), MTSU Contract Number C23--0005 between the City of Murfreesboro, Tennessee and Middle Tennessee State University shall be effective July 1, 2023 through June 30, 2024.

The Amendment serves to renew the Memorandum of Understanding for the term stated above; all other terms and conditions of the MOU remain unchanged and are hereby ratified and affirmed.

**City of Murfreesboro**

**Middle Tennessee State University**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: \_\_\_\_\_  
Alan Thomas  
Vice President,  
Business and Finance

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:  
*Adam Tucker*  
\_\_\_\_\_  
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Adam Tucker  
City Attorney

### Memorandum of Understanding

**WHEREAS**, Middle Tennessee State University (“MTSU”) and the City of Murfreesboro, Tennessee (“City”) entered into a Memorandum of Agreement (April 26, 2011) to be co-permittees for the NPDES General Permit for Phase II municipal separate storm sewer systems (MS4s); and

**WHEREAS**, said Memorandum of Agreement provides that MTSU will offer the support of its resources in managing the minimum control measures for the Stormwater Management Program pursuant to the NPDES MS4 permit; and

**WHEREAS**, MTSU and the City entered a Memorandum of Understanding, effective July 1, 2012, that has served for ten years as a framework for MTSU to provide assistance to the City on projects of education and outreach and public participation and involvement for advancing MTSU’s and the City’s stormwater programs and fulfilling requirements of the NPDES MS4 permit; and

**WHEREAS**, the ten-year term of the Memorandum of Understanding expires June 30, 2022, and MTSU and the City would like to replace the Memorandum of Understanding with an updated Memorandum of Understanding (this “MOU”):

**NOW THEREFORE MTSU AND THE CITY HEREBY ENTER INTO THIS MOU AND AGREE AS FOLLOWS:**

1. MTSU will provide annual assistance to the City on programs of Education and Outreach on stormwater impacts, and of Public Involvement and Participation, such as are generally described in the NPDES MS4 permit under which MTSU and the City are regulated.
2. As required by the NPDES permit, the City will maintain a Public Information and Education (PIE) plan, that staff, with the assistance of MTSU, will update annually with a plan of activities designed to meet objectives of public information and outreach; with a schedule of events for the year; and where practicable with a methodology to evaluate the effectiveness of the education and outreach.
3. The programs have the following objectives:
  - a. to reduce or eliminate behaviors and practices that cause or contribute to the impacts of stormwater discharges on water bodies and the steps that the audiences can take to reduce pollutants in stormwater runoff to the maximum extent practicable; and

- b. to promote, publicize, and facilitate citizen's participation in the development and implementation of the stormwater management program in order to reduce the discharge of pollutants to the maximum extent practicable.
4. The audiences for the programs include:
  - a. the public, including but not limited to, schools, homeowners associations, local elected officials, professional chemical applicators, and other commercial and professional stakeholders;
  - b. the engineering and development community, including but not limited to, engineers, landscape architects, developers, builders, and other professional stakeholders;
  - c. owners and operators of commercial and industrial properties, including but not limited to, restaurants, businesses, industries, professional chemical applicators, and other professional stakeholders; and
  - d. public employees, whether municipal, county, educational (college or university), or military, and dependent on job function and duty location.
5. The assistance by MTSU is expected to include, though not be restricted to, activities such as:
  - Communicating and partnering with other community and water-quality advocacy groups
  - Developing and forwarding public service announcements
  - Developing content for print, radio, TV, and internet
  - Various NPDES permit assistance, such as:
    - Advising on developing the Public Information and Education (PIE) plan
    - Documenting activities and keeping track of records for purposes of evaluation and reporting
    - Evaluating outreach and educational activities for effectiveness and need for change and improvement
    - Pollutant source tracking
  - Outreach targeting stormwater priority areas (areas of City known to be greater sources of pollution in stormwater; or types of activities showing greater risk of contaminating stormwater runoff).

- Watershed-based outreach; namely, outreach that addresses the sources and causes of pollutants in a particular watershed, and/or that promotes awareness, solicits participation, and helps create a sense of personal pride/ownership of water resources among the residents in a watershed.
- Organizing or participating and assisting the City with educational events such as:
  - Annual Trees for Streams Day and/or other planting events
  - Annual Earth Day
  - Organization/business fairs (Master Gardeners, etc.)
  - Annual or periodic clean-ups of streams and stream habitat (National Parks Day, Public Lands Day)
  - Annual Boat Day
  - Waterfest

The specific assistance and services to be provided by MTSU may vary from year to year by further agreement between MTSU and the City.

6. The term of the MOU shall be one year. The MOU shall automatically renew for additional annual terms for up to ten years, at which time the parties may agree to continue the MOU. Either party may terminate the MOU upon 90 days prior written notice.
7. MTSU shall invoice the City \$13,000 per quarter, for a total annual amount of \$52,000. Upon approval by the City, MTSU may add to the total out-of-pocket expenses (for printing services, promotional items, display materials and the like) up to a maximum of \$5,000 per year.

Invoices will be emailed to:

Laura Gammon, Accounts Payable  
Murfreesboro Water Resources Department  
[apmwrд@murфreesborotn.gov](mailto:apmwrд@murфreesborotn.gov)

Payments will be sent to:

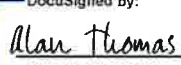
MTSU  
Facilities Services Box 32  
1301 East Main St  
Murfreesboro, TN 37132

- 8. The City warrants that no fee or compensation has been paid directly or indirectly to an employee or official of the State as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, contractor to the City in connection with any work contemplated or performed relative to this agreement. Notwithstanding anything to the contrary in the foregoing, nothing in this paragraph shall be construed to prevent MTSU from paying any of its employees working in conjunction with this MOU from funds received from the City.
- 9. It is the policy of the City and MTSU not to discriminate on the basis of age, race, sex, color, national origin, disability or veteran status 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 MOU, the parties certify that they will comply with this policy.
- 10. The parties shall comply with the applicable federal and Tennessee laws and regulations in the performance of this MOU.
- 11. Effective July 1, 2022, this MOU shall replace in its entirety the Memorandum of Understanding with an effective date of July 1, 2012, which shall then be of no further force or effect. This MOU is not intended, and shall not be construed, to modify any of the terms and conditions of the Memorandum of Agreement between the parties or their NPDES General Permit.

**City of Murfreesboro**

**Middle Tennessee State University**

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 By:   
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DocuSigned by:  
 By:   
 089CF0CC9A25447...

Title: Mayor

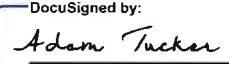
Title: Alan Thomas  
Vice President

Date: 6/24/2022

Date: 6/23/2022

Approved as to form:

Attest:

DocuSigned by:  
  
 Adam Tucker, City Attorney

DocuSigned by:  
  
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# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** G20 Technologies Amendment No. 1

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

G20 Technologies is asking for a price adjustment for polyaluminium hydroxichloride due to raw material and transportation cost.

**Staff Recommendation**

Approval of Change Order No. 1 to the contract as approved by the Water Resources Board.

**Background Information**

The water treatment plant uses polyaluminum hydroxichloride as its coagulant for removing particles from the water during the treatment process. The Department currently has a contract with G20 Technologies, LLC. G20 Technologies has requested an update to their current contract pricing due to significant increases in raw materials and transportation costs. Commodity contracts help to mitigate prices fluctuations and marginal adjustments resulting from global economic conditions are a reasonable means of maintaining longer term business relationships that are beneficial when more impactful economic conditions effect the market. The range of the new extension is requested to be from February 24, 2023, until February 24, 2024.

**Counsel Priorities Served**

*Responsible budgeting*

Chemical commodity contracts mitigate pricing fluctuations and allow for reasonable budgeting of costs.

**Fiscal Impact**

The price of the chemicals will be reflected in the FY24 Operating Budget. The contract price will be good through February 24, 2024.

Current:	Poyaluminum Hydroxichloride	\$0.2520/lb	\$25,500
Proposed:	Poyaluminum Hydroxichloride	\$0.3050/lb	\$30,500

**Attachments**

G20 Technologies Amendment No. 1

**FIRST AMENDMENT  
TO THE AGREEMENT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
G20 TECHNOLOGIES, LLC.  
FOR CHEMICALS FOR WATER RESOURCES**

This First Amendment ("First Amendment") to the Agreement, entered into May 6, 2022 ("Agreement"), is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and G20 Technologies, LLC., ("Contractor"), a Limited Liability Company of the State of Delaware.

**RECITALS**

WHEREAS, on May 6, 2022, the City entered into the Agreement with Contractor for Chemicals for Water Resources at \$.2520 per pound or \$2.7526 per gallon; and,

WHEREAS, the City and Contractor wish to extend the Agreement term pursuant to Section 2 of the original Agreement for an additional one (1) year; and,

WHEREAS, the City is allowing the Contractor a price adjustment to \$.3050 per pound or \$3.3184 per gallon delivered per Section 11 of the original Agreement:

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

1. **Extension:** The term of the current Agreement is hereby extended for a period of one (1) year from February 24, 2023, until February 24, 2024.
2. **Cost Adjustment:** The price in Section 1 of the Agreement is hereby amended to \$.3050 per pound or \$3.3184 per gallon delivered.
3. **No Other Amendment or Modification:** Except as provided herein, the parties make no other modifications or amendments, and all other terms of the Agreement shall continue in full force and effect.

ENTERED this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF MURFREESBORO**

**G20 Technologies, LLC.**

By: \_\_\_\_\_  
Shane McFarland, Mayor

DocuSigned by:  
By: *Terry Waldo*  
2632F043A1DA4AC  
Terry Waldo, Chief Commercial Officer

**Approved as to form:**

DocuSigned by:  
*Adam F. Tucker*  
4372D25551E344F  
Adam F. Tucker, City Attorney



February 3, 2023

Jackie McKee  
Administrative Aide II  
Stones River Water Treatment Plant

Subject: G2O Technologies LLC/USALCO Pricing Adjustment/ Contract Extension ITB-39-2022 Chemicals for Water Resources / Polyaluminum Hydroxychloride (GPAC 2350)

Ms. McKee,

G2O Technologies LLC/USALCO would like to extend our current contract with a price increase. Your price will be \$0.3050/lb. delivered to Murfreesboro, TN, FOB destination for 45,000 lbs. Pricing will remain firm through the contract term. Terms of sale are Net 30 days.

Stones River Water Treatment Plant is currently purchasing GPAC 2350 from G2O Technologies LLC/USALCO. Due to significant increases in raw material and transportation costs, USALCO had to initiate updated pricing for the upcoming contract extension.

There are several raw materials that go into making USALCO products of which are a few: Hydrochloric Acid (HCl), and Sodium Hydroxide (Caustic). Hydrochloric acid has experienced a 39 % increase in price from November 2021 thru November 2022. Caustic has experienced a 42% increase in price from November 2021 thru November 2022. I have added graphs below to demonstrate the increase in caustic and Hydrochloric prices.

Transportation costs are also a factor to consider. This includes inbound and outbound freight. This includes such items as: fuel, driver cost, insurance, and maintenance for truck, rail, and barge applications.

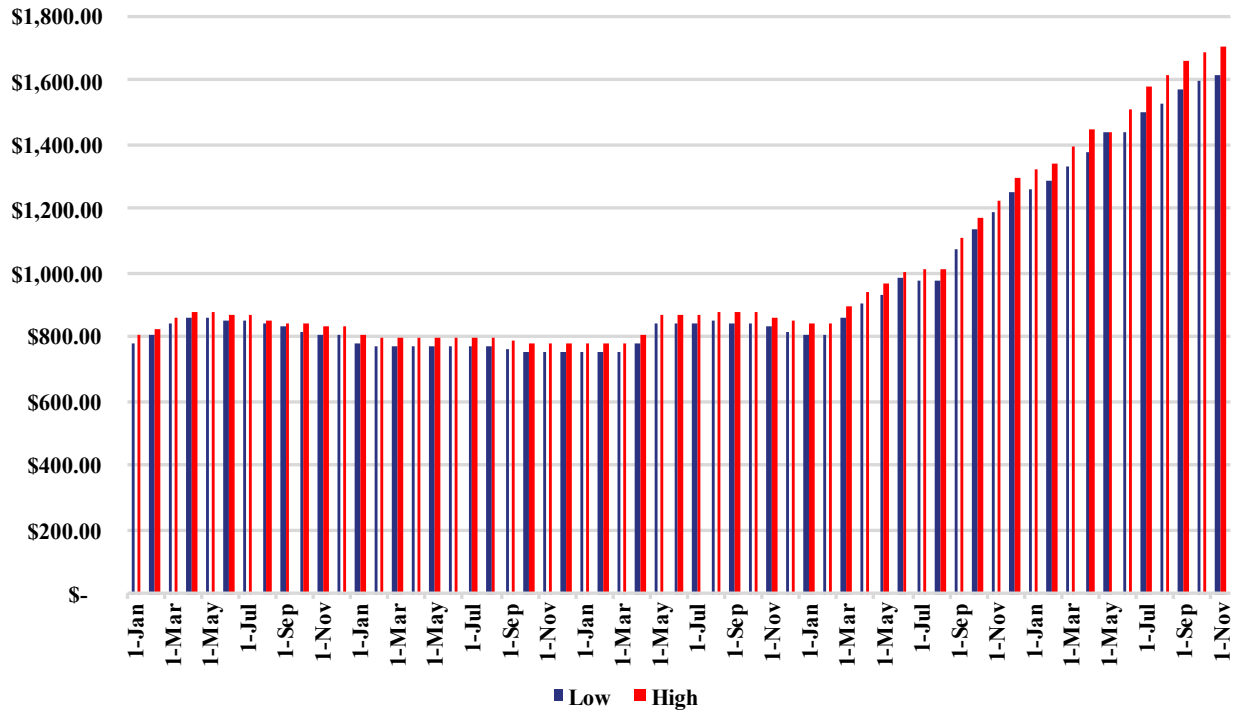
These are some of the factors that contribute to the cost of producing our products.

If you have any questions, please contact me at any time.

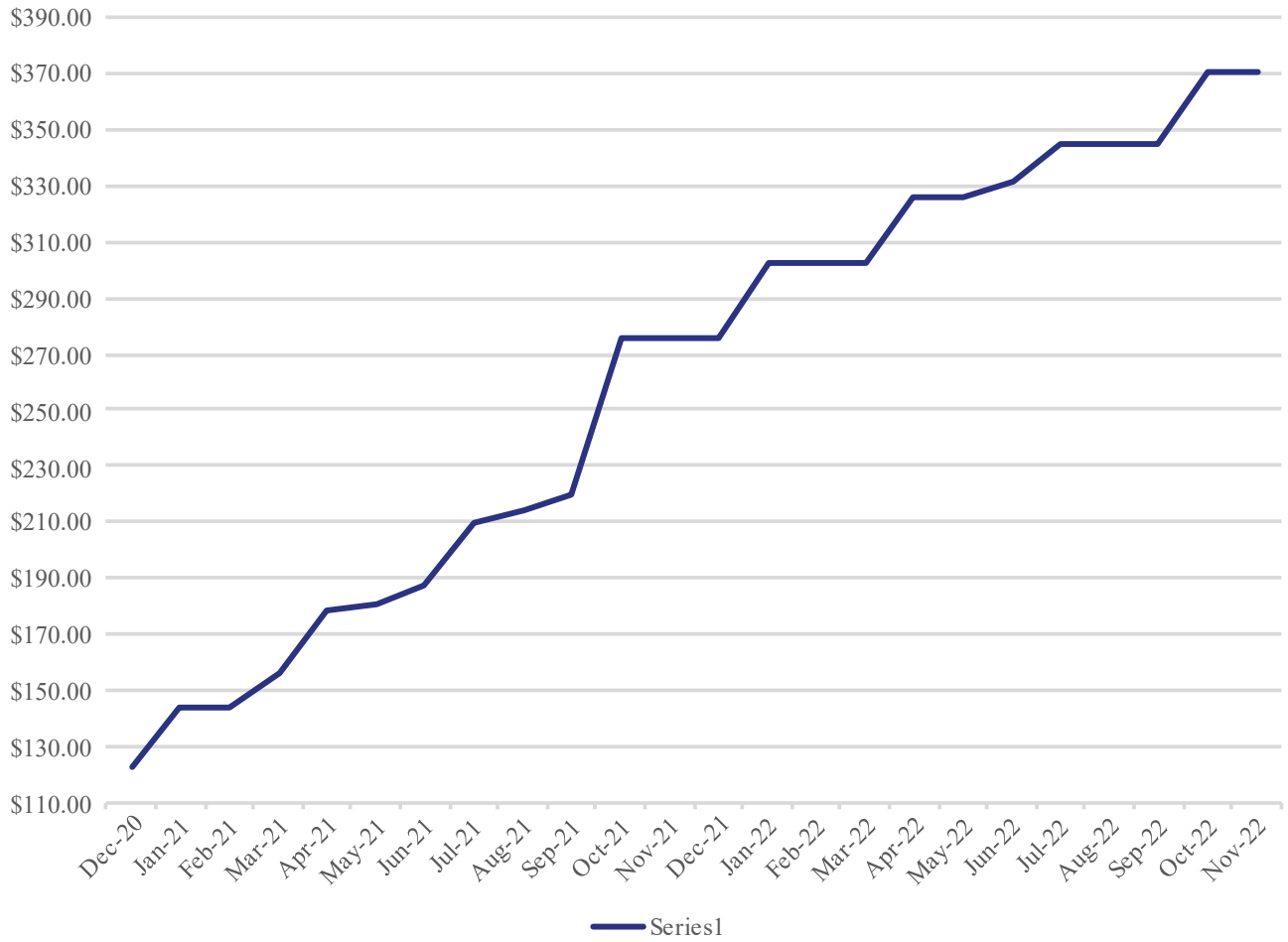
Sincerely,

Chad Frazier  
Regional Sales Manager – Southeast  
USALCO, LLC  
423-213-0772  
cfrazier@usalco.com

### Sodium Hydroxide (Caustic) IHS NE Pricing 2018 - 2022



### IHS Dec 2020 - Nov 2022 HCL Avg Market Pricing



## COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Ordinance 23-O-21 - Impact Fee Schedule  
(Second Reading)

**Department:** Administration

**Presented by:** Craig Tindall, City Manager

**Requested Council Action:**

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

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**Summary**

Adopt Fee Schedule on Second Reading for Murfreesboro Impact Fee

**Staff Recommendation**

Adopt Ordinance 23-O-21 Impact Fee Schedule on Second Reading as amended.

**Background Information**

Council discussed and adopted on First Reading. The City Attorney converted the rates to square footage and the proposed revisions are attached. The proposed effective date is July 1, 2023.

**Council Priorities Served**

*Responsible budgeting*

The fee provides capital funding for future projects needed for growth.

*Expand infrastructure*

The capital revenue will fund roads, public safety, parks, and school facilities.

*Maintain public safety*

Public safety capital funding will be enhanced for future projects needed for growth.

**Fiscal Impact**

Based recent building permit activity, the impact fee is predicted to generate revenue annually for the following categories of capital expenses:

Roads and Streets	\$3,500,000 (Residential estimate \$1,500,000)
Parks and Recreation	\$1,750,000 (100% Residential)
Public Safety	\$1,750,000 (Residential estimate \$750,000)
Schools	\$1,750,000 (100% Residential)

**Attachments** Ordinance 23-O-21 Impact Fee Schedule as Amended

**ORDINANCE 23-O-21** setting Impact Fees pursuant to the Murfreesboro Impact Fee Ordinance.

**WHEREAS**, on April 20, 2023, the Murfreesboro City Council adopted the City of Murfreesboro Impact Fee Ordinance, which is codified as Chapter 16 of the Murfreesboro City Code and which sets forth a regulatory procedure for assessing and collecting fees on new development within the City of Murfreesboro; and

**WHEREAS**, the Impact Fee Ordinance authorizes City Council to adopt an impact fee schedule that sets the development impact fees to be imposed on new development to offset the cost of public capital improvements in four areas: roads, parks, public safety, and schools; and

**WHEREAS**, the City Council finds it to be in the City's best interest to adopt an impact fee schedule; and

**WHEREAS**, the City Council also finds it to be in the City's best interest to make certain amendments to Murfreesboro Impact Fee Ordinance to assist with the administration of such ordinance.

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

**SECTION 1.** Beginning on the effective date of this Ordinance, a developer shall be required pay to the City the impact fees set forth in Exhibit A applicable to the proposed land use of the development, in accordance with and except as exempted by the Murfreesboro Impact Fee Ordinance. City Council shall review the impact fee schedule as part of the FY2025 and FY2026 budget process and may adjust the schedule in accordance with the Impact Fee Ordinance and as deemed by City Council to be in the best interest of the City.

**SECTION 2.** Section 16-9 of the Murfreesboro City Code is hereby amended deleting the section in its entirety and in lieu thereof adopting the following:

- (A) Except as set forth in subsections (B) and (C) below, the impact fees for a Developments shall be calculated following final inspection based on the gross floor area reflected in most recent plans submitted to and approved by the City's Building and Codes Department and shall be paid to the City prior to the issuance of a certificate of occupancy for that Structure.
- (B) The impact fees for a single-family dwelling or related accessory structure shall be calculated following final inspection based on the gross floor area set forth in the Structure's building permit and shall be paid to the City prior to the issuance of a certificate of occupancy for that Structure. Notwithstanding the foregoing, where an impact fee is due in connection with a proposed addition to an existing single-family dwelling or related accessory structure, the amount of such fee shall be calculated based on the gross floor area of the proposed addition and paid prior to the issuance of a building permit for the proposed work.
- (C) If a Development does not require a Building Permit or certificate of occupancy, the impact fees shall be calculated and collected prior to or at the time of approval of the development plan.

- (D) Upon request by a Developer, the City will provide a Developer with an estimate of the impact fees that will apply to a Development at the time the Developer applies for a Building Permit.
- (E) The Building and Codes Department shall transmit to the Finance Department all fees collected and a copy of all related fee transaction documents for recordation. The Finance Department shall be responsible for depositing all collected fees in the appropriate fund accounts.
- (F) A monthly summary of all fee collection transactions, by service area and type of use, shall be prepared by the Finance Department and transmitted to the City Manager, the Executive Director for Development Services, and the Administrator.

**SECTION 3.** This Ordinance shall take effect on July 1, 2023, following its passage upon second and final reading, the public welfare and the welfare of the City requiring it. Notwithstanding the foregoing, no impact fee will be assessed for a single-family residential development if the City has received a building permit application for that development on or before June 30, 2023.

Passed:

\_\_\_\_\_  
Shane McFarland, Mayor

1<sup>st</sup> reading \_\_\_\_\_

2<sup>nd</sup> reading \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Brown  
City Recorder

DocuSigned by:  
*Adam F. Tucker*  
\_\_\_\_\_  
43A2035E51F8401...  
Adam F. Tucker  
City Attorney

SEAL



**EXHIBIT A****Impact Fee Schedule for New Development in the City of Murfreesboro  
(adopted pursuant to Ordinance 23-O-21; effective July 1, 2023)**

Land Use Type	Total Impact Fee Assessed	Distribution of Total Impact Fee			
		Road Fee	Park Fee	Public Safety Fee	School Fee
<b>Single-Family Residential<sup>1</sup></b>	\$1,500 per sq. ft. of gross floor area with total fee not to exceed \$10,952 per dwelling unit	21.868%	35.436%	11.231%	31.465%
<b>Multi-Family Residential<sup>2</sup></b>	\$7,624 per dwelling unit	24.357%	37.474%	11.884%	26.285%
<b>Retail/Commercial</b>	\$5.030 per sq. ft. of gross floor area	66.024%	0%	33.976%	0%
<b>Office</b>	\$1.932 per sq. ft. of gross floor area	65.424%	0%	34.576%	0%
<b>Public/Institutional</b>	\$3.872 per sq. ft. of gross floor area	65.418%	0%	34.582%	0%
<b>Industrial</b>	\$0.984 per sq. ft. of gross floor area	65.447%	0%	34.553%	0%

Notes: <sup>1</sup> Single-family residential includes detached units, attached units (i.e., “townhouse”), and mobile home units.

<sup>2</sup> Multi-family residential includes duplexes, condominiums, and apartment buildings with two or more units.

## Impact Fee Schedule for New Development in the City of Murfreesboro (adopted pursuant to Ordinance 23-O-21; effective July 1, 2024)

Land Use Type	Total Impact Fee Assessed	Distribution of Total Impact Fee			
		Road Fee	Park Fee	Public Safety Fee	School Fee
<b>Single-Family Residential<sup>1</sup></b>	\$2.000 per sq. ft. of gross floor area with total fee not to exceed \$10,952 per dwelling unit	21.868%	35.436%	11.231%	31.465%
<b>Multi-Family Residential<sup>2</sup></b>	\$7,624 per dwelling unit	24.357%	37.474%	11.884%	26.285%
<b>Retail/Commercial</b>	\$5.030 per sq. ft. of gross floor area	66.024%	0%	33.976%	0%
<b>Office</b>	\$1.932 per sq. ft. of gross floor area	65.424%	0%	34.576%	0%
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Notes: <sup>1</sup> Single-family residential includes detached units, attached units (i.e., “townhouse”), and mobile home units.

<sup>2</sup> Multi-family residential includes duplexes, condominiums, and apartment buildings with two or more units.

## Impact Fee Schedule for New Development in the City of Murfreesboro (adopted pursuant to Ordinance 23-O-21; effective July 1, 2025)

Land Use Type	Total Impact Fee Assessed	Distribution of Total Impact Fee			
		Road Fee	Park Fee	Public Safety Fee	School Fee
<b>Single-Family Residential<sup>1</sup></b>	\$2.500 per sq. ft. of gross floor area with total fee not to exceed \$10,952 per dwelling unit	21.868%	35.436%	11.231%	31.465%
<b>Multi-Family Residential<sup>2</sup></b>	\$7,624 per dwelling unit	24.357%	37.474%	11.884%	26.285%
<b>Retail/Commercial</b>	\$5.030 per sq. ft. of gross floor area	66.024%	0%	33.976%	0%
<b>Office</b>	\$1.932 per sq. ft. of gross floor area	65.424%	0%	34.576%	0%
<b>Public/Institutional</b>	\$3.872 per sq. ft. of gross floor area	65.418%	0%	34.582%	0%
<b>Industrial</b>	\$0.984 per sq. ft. of gross floor area	65.447%	0%	34.553%	0%

Notes: <sup>1</sup> Single-family residential includes detached units, attached units (i.e., “townhouse”), and mobile home units.

<sup>2</sup> Multi-family residential includes duplexes, condominiums, and apartment buildings with two or more units.

**COUNCIL COMMUNICATION**  
**Meeting Date: 06/15/2023**

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**Item Title:** 23-O-22 Community Decency Standards Ordinance  
[Second Reading]

**Department:** Council

**Presented by:** Mayor McFarland

**Requested Council Action:**

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

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**Summary**

Ordinance establishing standards of community decency in public places.

**Background Information**

Ordinance 23-O-22 promotes public decency, maintains family-friendly environments in public places, and protects against harm to minors from public expressions appealing to prurient interests or that are offensive to prevailing community standards.

The Ordinance supplement existing civil and criminal sanctions for indecent behavior, barring persons who engage in prohibited conduct from sponsoring events on a public space for two years and increasing to five years where the prohibited conduct occurs in the presence of minors.

**Fiscal Impact**

None.

**Attachments**

ORDINANCE 23-O-22 amending the Murfreesboro City Code, Chapter 21 Offenses and Miscellaneous Provisions, Article I, Section 22, regarding community decency standards.

**ORDINANCE 23-O-22 amending the Murfreesboro City Code, Chapter 21 Offenses and Miscellaneous Provisions, Article I, Section 22, regarding community decency standards.**

**WHEREAS**, in order to promote health, safety, and the general welfare of the community, the City Council may regulate conduct on City property;

**WHEREAS**, communities have the right to establish and preserve contemporary community standards and to define appropriate and acceptable conduct that is consistent with those standards and which may be openly displayed within the community or conducted in a public space;

**WHEREAS**, under Tennessee law, the City Council, collectively as elected officials representing the community, may establish rules with respect to community decency that regulate activities and conduct in public spaces, including parks, streets, public squares, sidewalks, other areas open to the public, and public buildings, including establishing penalties for conduct that violates these rules; and

**WHEREAS**, rules governing community decency should reflect generally accepted standards of behavior and conduct, as judged by an average member of the community, and should encourage and promote respectful and considerate behavior that is neither harmful nor demeaning towards others; and

**WHEREAS**, under and consistent with the First Amendment to the U.S. Constitution, rules governing community decency can include provisions that define and restrict nudity, public indecency, and lewd and sexually explicit conduct, as well as any behavior that violates state law; and

**WHEREAS**, the City also has a sacred trust of surpassing importance and therefore a compelling governmental interest in the protection of children by safeguarding them from behavior, material, and events that predominantly appeal to prurient interest, are patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and, when taken as a whole, lack serious literary, artistic, political, or scientific value; and

**WHEREAS**, the interest in protecting and safeguarding children from conduct and material deemed harmful to minors is especially heightened in shared public spaces where children are commonly present; and

**WHEREAS**, the City Council believes in its considered legislative judgment that it is in the best interests of the City to require persons utilizing City property pursuant to a special event permit, use agreement, or otherwise abide by certain standards with respect to community decency.

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

**SECTION 1.** Chapter 21 of the Murfreesboro City Code is hereby amended by creating the following new section:

**“Section 21-22 Community Decency Standards.**

*A. Purpose and Interpretation.*

- (1) By setting forth in ordinance contemporary decency standards, City Council intends to fulfill its responsibility to promote the health, safety, rights, prosperity, and general welfare of the citizens of Murfreesboro by providing a measure to assist in the determination of conduct, materials, and events that may be judged as obscene or harmful to minors in accordance with the social morals of the community.
- (2) This ordinance shall be implemented and interpreted to promote public decency and maintain a family-friendly environment in public places and protect against potential harm to minors from public expressions that appeal to prurient interests and are patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

*B. Definitions.* For purposes of this section, the following terms shall have the meanings ascribed to them below:

- (1) *Indecent behavior* means indecent exposure, public indecency, lewd behavior, nudity or sexual conduct as defined in Section 21-71 of the Murfreesboro City Code, breach of the peace, and any other conduct that violates Tennessee Code, Title 39, Chapter 13, Part 5, Chapter 17, Parts 3, 4, 9, 10, or 11 or Murfreesboro City Code, Section 21-72 or 21-73; provided, however, indecent behavior does not include the exposure of the breast by a nursing mother or to the nudity of individuals in locker rooms or other designated spaces while they are changing clothes or showering.
- (2) *Indecent materials or events* means printed materials, broadcasts, shows, parades, or other such displays that suggest, advertise, or display indecent behavior or that is harmful to minors.
- (3) *Person* means a natural person, an unincorporated group or association of natural persons, a partnership, a limited liability company, a corporation, or any other organization or club.
- (4) *Public space* includes, for purposes of this section: (a) any real property owned or controlled by the City that is open to the general public, including but not limited to parks, streets, sidewalks, plazas, or other public areas or facilities; (b) public transportation vehicles; and (c) any real property utilized by another local government entity that receives funding or in-kind assistance from the City.

*C. Prohibited Conduct.*

- (1) No person shall knowingly while in a public space engage in indecent behavior, display, distribute, or broadcast indecent material, conduct indecent events, or facilitate any of the foregoing prohibited acts, or otherwise subject minors to a prurient interest or to behaviors, materials, or events that are patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.
- (2) No funds appropriated by City Council shall be knowingly: (a) used to facilitate indecent behavior, the display, distribution, or broadcast of indecent materials, or the conducting of indecent events; or (b) used to expose or subject minors in any other manner to behavior, materials, or events that predominantly appeals to the prurient interest of minors and that is patently offensive to prevailing standards in the

adult community as a whole with respect to what is suitable material for minors.

- (3) The prohibition on the use of City funds in subsection (2) does not apply: (a) to the identification, removal, and disposal of materials that violate subsection (2); or (b) to materials, performances, or exhibitions that, when taken as a whole, expresses matters of serious literary, artistic, scientific, or political value.

*D. Enforcement*

- (1) The Chief of Police shall be responsible for administering and enforcing the provisions of this Article. The City Manager may authorize other City departments to assist the Chief of Police in enforcing this Article.
- (2) Any Murfreesboro Police Officer shall have the authority to investigate suspected violations of this section.
- (3) Any action prohibited under this section shall constitute disorderly conduct, and any Murfreesboro Police Officer, upon probable cause, may order a person to cease any conduct reasonably believed to violate this section. Failure to comply with such order shall be addressed in accordance with applicable state law.

*E. Penalties; Forfeiture of Use*

- (1) Any person who knowingly engages in conduct prohibited by this section, whether pursuant to a permit, use agreement, or otherwise, shall be barred from sponsoring an event held in a public space pursuant to a permit issued by or use agreement with the City, and from performing, selling goods or services, or exhibiting materials at any such event, for two (2) years from when notice of such violation is issued by the City. In addition, any application for a permit or use agreement to use public space for any reason by an entity controlled by that person shall be denied for two (2) years from when notice of such violation is issued by the City.
- (2) Any person who knowingly engages in conduct prohibited by this section in the presence of minors and that thereby subjects minors to indecent behavior, materials, or an event while in a public space, whether pursuant to a permit, use agreement, or otherwise, in lieu of the penalty under subsection (1), shall be barred from sponsoring an event held on a public space pursuant to a permit issued by or use agreement with the City and from performing, selling goods or services, or exhibiting materials at any such event for five (5) years from when notice of such violation is issued by the City. In addition, any application for a permit or use agreement to use for any reason by an entity controlled by that person shall be denied for five (5) years from when notice of such violation is issued by the City.
- (3) Upon receiving credible evidence that a person has knowingly engaged in conduct prohibited by this section, the Chief of Police or the Director of Code Enforcement shall issue and serve such person with a written notice of violation that sets forth the evidence that the person engaged in the prohibited conduct and orders the person to show cause why the person should not forfeit the right to use City property as provided in subsections (E)(1) or (2).
- (4) A person served with a notice of violation and order to show cause may within thirty (30) days of service file a written response to the order contesting the allegations set forth in the notice of violation and requesting a show cause hearing before the City Manager. Failure to file a written request for a hearing within thirty (30) days of service shall result in a waiver of the right to a hearing and shall issue a final written order imposing the penalties set forth in subsections (E)(1) or (2).
- (5) The City Manager, or such other employee designated by the City Manager, shall conduct a show cause hearing within fifteen (15) days

of the City's receipt of the written request for a hearing, unless the parties agree to extend the time for such hearing in writing. If the respondent should request to extend the time for the hearing, the respondent shall agree to forfeit the right to sponsor an event held in a public space pursuant to a permit issued by, or use agreement with, the City, and from performing, selling goods or services, or exhibiting materials at any such event during the pendency of the proceeding.

- (6) At the show cause hearing, the respondent may be represented by legal counsel, and both the City and the person responding to the notice of violation shall have the opportunity to present evidence and testimony with respect to the allegations and to cross-examine the other party's witnesses. For purposes of this section, the standard of proof for determining whether a person engaged in prohibited conduct shall be the preponderance of the evidence, including, but not limited to, evidence that a person acts knowingly with respect to a minor's age if the person has general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of the minor's age; provided however, the person has made a reasonable attempt to ascertain the true age of such minor and that attempt produced reasonably bona fide evidence of that the person is an adult.
- (7) The City Manager or the City Manager's designee shall issue a written final decision on the matter within fifteen (15) days of the hearing.
- (7) No penalty set forth herein is intended to supplement and not diminish the sanctions or penalties of City ordinance or state law for the same conduct.
- (8) Any person who utilizes funds in violation of this section may be subject to additional civil or criminal penalties for the misappropriation of public funds.

*F. Severability.* If any provision, sentence, or clause of this section is for any reason found to be unconstitutional, illegal, or invalid, that finding shall not affect or impair any of the remaining provisions, sentences, or clauses of this section. It is hereby declared by the City that this section would have been adopted had such unconstitutional, illegal, or invalid provision, sentence, or clause not been included herein.”

**SECTION 2.** This Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City so requiring.

**Passed:**

1<sup>st</sup> reading \_\_\_\_\_

2<sup>nd</sup> reading \_\_\_\_\_

\_\_\_\_\_  
Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Jennifer Brown  
City Recorder

\_\_\_\_\_  
Adam F. Tucker  
City Attorney

SEAL



# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Termination of Osborne Lane Special Sanitary Sewer Assessment District – Ordinance 23-O-23  
[First Reading]

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Termination of the Osborne Lane Special Sanitary Sewer Assessment District (SSSAD).

**Staff Recommendation**

Approval of Ordinance 23-O-23 amending City Code Chapter 33, Water Resources.

**Background Information**

The City adopted Ordinance 01-O-68, which was codified as City Code § 33-208, which established the Osborne Lane SSSAD. This SSSAD secured repayment of MWRD’s costs to construct new infrastructure serving the area east of Memorial Boulevard between Brentmeade Dr. and Osborne Lane. Ordinance 15-O-17 amended the original Osborne Lane SSSAD so that the special assessment would be charged and collected only until the date these expenses were repaid.

The Osborne Lane SSAD has recouped 100% of the cost of its development per the May 2023 review. Therefore, termination by repeal of City Code sec. 33-208, which will be reserved for future use.

**Council Priorities Served**

*Improve economic development*

Initial funding by MWRD open areas for development and spurred significant economic growth in the area.

*Responsible budgeting*

Recovery from direct users of costs associated with new infrastructure is one method of prudent budget management and equitable rate allocation.

**Attachments**

Ordinance 23-O-23

**ORDINANCE 23-O-23** amending the Murfreesboro City Code, Chapter 33 – Water and Sewers, Section 33-208, regarding the Osborne Lane Sanitary Sewer District.

**WHEREAS**, the Water and Sewer Department incurred considerable expense to build the sewers serving the Osborne Lane Sanitary Sewer District; and,

**WHEREAS**, the City adopted Ordinances 01-O-68, 10-O-10, 15-O-16, and 18-O-47 establishing and amending a special sanitary sewer assessment district for the repayment of these expenses and specifying the assessment would be charged and collected only until such date as the City shall determine and declare that it has been repaid for all development costs for said improvement; and,

**WHEREAS**, the Osborne Lane Sanitary Sewer District has recouped 100% of the cost of its development per the May 2023 review.

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

SECTION 1. Section 33-208, Osborne Lane Sanitary Sewer District, of the Murfreesboro City Code is amended by deleting the section and title in its entirety and marking it as “RESERVED”.

SECTION 2. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1<sup>st</sup> reading \_\_\_\_\_

2<sup>nd</sup> reading \_\_\_\_\_

\_\_\_\_\_  
Shane McFarland, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Brown  
City Recorder

APPROVED AS TO FORM:

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Ratify Private Chapter 24 to Authorize Creation of a Municipal Solid Waste Authority – Resolution 23-R-22

**Department:** Administration

**Presented by:** Craig Tindall, City Manager

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Ratify Chapter 24 of the Private Acts of 2023 passed by the General Assembly to amend the City Charter to authorize the creation of a municipal solid waste authority.

**Staff Recommendation**

Pass Resolution 23-R-22 ratifying the Private Acts law.

**Background Information**

The Tennessee Solid Waste Authority Act allows counties or solid waste regional boards to form a solid waste authority. Such an authority is a stand-alone legal entity and may issue bonds, incur debts, and contract on its own behalf. Bonds may be issued solely upon the financial strength of the authority. That financial strength relies on fees, contracts, and other revenue of the authority. Members of this type of solid waste authority may, but are not required, to pledging their general taxing authority or other revenue.

The Council requested the General Assembly amend the City’s private act via resolution 23-R-07 in March that allows the City the same type of authority.

The General Assembly passed House Bill No. 1568 and Governor Bill Lee signed this bill into law as Chapter 24 of the Private Acts of 2023 (“Private Charter No. 62”). In order to amend the City Charter, the Council must ratify the law by 2/3 vote. Ratifying this private act does not commit the City to creating a solid waste authority but allows Council to decide in the future if an authority is beneficial.

**Council Priorities Served**

*Responsible budgeting*

Utility operations have the ability to be self-sustaining through fee income, a financially prudent operational model, and segregating such operations from general fund assistance with effective and efficient operational and financial decisions.

*Expand Infrastructure*

Proving the financial means to address solid waste collection and disposal operations given the impending closure of Middle Point Landfill is a critical infrastructure requirement.

**Fiscal Impact**

None

**Attachments**

Resolution 23-R-22

**RESOLUTION 23-R-22** ratifying Chapter 24 of the Private Acts of 2023 enacted by the 113<sup>th</sup> Session of the Tennessee General Assembly.

**WHEREAS**, on March 16, 2023, the Murfreesboro City Council passed Resolution 23-R-07, requesting the Tennessee General Assembly to pass a Private Act amending the Murfreesboro City Charter to authorize the creation of a municipal solid waste authority as a public instrumentality of the City; and

**WHEREAS**, on April 13, 2023, the 113<sup>th</sup> Session of the Tennessee General Assembly passed House Bill No. 1568, the intent of which is to amend the Murfreesboro City Charter as requested by the Murfreesboro City Council in Resolution 23-R-07; and

**WHEREAS**, on April 28, 2023, Governor Bill Lee signed House Bill No. 1568 into law as Chapter 24 of the Private Acts of 2023 (“Private Chapter No. 62”), a true copy of which is attached hereto as Exhibit A; and

**WHEREAS**, Section 2 of Private Chapter 24 provides the act shall have no effect—and, thus, will not amend the Murfreesboro City Charter—unless the act is approved by a two-thirds (2/3) vote of the Murfreesboro City Council; and

**WHEREAS**, the Murfreesboro City Council desires to amend the Murfreesboro City Charter as set forth in Private Chapter No. 24.

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

SECTION 1. The Murfreesboro City Council ratifies and approves Public Chapter No. 24 as required by Section 2 of Private Chapter 24.

SECTION 2. Upon passage, the Mayor is authorized and directed to certify City Council’s ratification and approval of Public Chapter No 24 to the Secretary of State in accordance with Tenn. Code Ann. §8-3-202.

SECTION 3. This Resolution shall be effective immediately upon its passage and adoption by a two-thirds (2/3) vote of the legislative body of the City of Murfreesboro, the public welfare and the welfare of the City requiring it.

Passed: \_\_\_\_\_

\_\_\_\_\_  
Shane McFarland, Mayor

ATTEST:

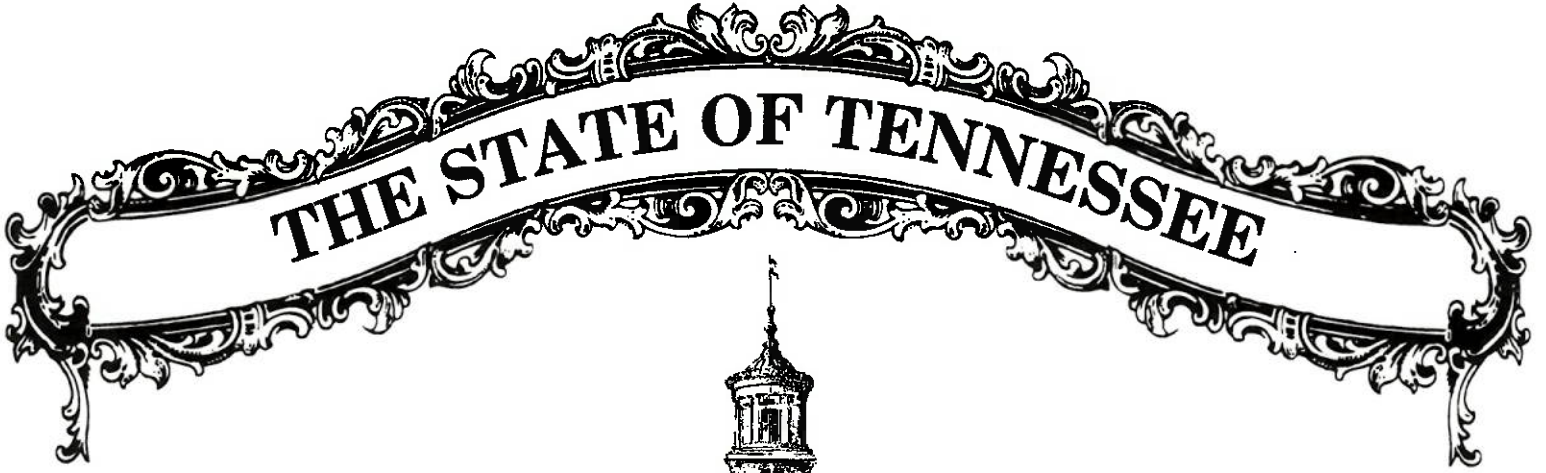
APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Brown  
City Recorder

DocuSigned by:  
*Adam F. Tucker*  
\_\_\_\_\_  
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Adam F. Tucker,  
City Attorney

**EXHIBIT A**

Chapter 24 of the Tennessee Private Acts of 2023



*To all to whom these Presents shall come, Greeting:*

*I, Tre Hargett, Secretary of State of the State of Tennessee,  
do hereby certify that the annexed is a true copy of*

Private Chapter No. 24  
House Bill No. 1568  
Senate Bill No. 1556  
113th General Assembly



*the original of which is now on file and a matter  
of record in this office. In Testimony Whereof,  
I have hereunto subscribed my official signature  
and by order of the Governor affixed the Great  
Seal of Tennessee at the Department  
in the City of Nashville,  
this 10th day of May, A.D. 2023.*

*Tre Hargett, Secretary of State*



## State of Tennessee

### PRIVATE CHAPTER NO. 24

HOUSE BILL NO. 1568

By Representative Terry

Substituted for: Senate Bill No. 1556

By Senators Reeves, White

AN ACT to amend Chapter 429 of the Private Acts of 1931; and any other acts amendatory thereto, relative to the Murfreesboro Solid Waste Authority.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 429 of the Private Acts of 1931, and any other acts amendatory thereto, is amended by adding the following as a new Article XXI:

#### **Section 108 – Short Title.**

This article shall be known and may be cited as the Murfreesboro Solid Waste Authority Law.

#### **Section 109 – Definitions.**

As used in this act, unless the context otherwise requires:

(a) "Authority" or "solid waste authority" means any public instrumentality organized pursuant to this act;

(b) "Bonds" or "revenue bonds" means bonds, notes, interim certificates or other obligations of an authority issued pursuant to this act, or pursuant to any other law, as supplemented by, or in conjunction with, this act;

(c) "City Council" means the duly elected and seated City Council of the City of Murfreesboro;

(d) "Contracting party" or "other contracting party" means a party to a sale contract or loan agreement except the authority;

(e) "Person" means any and all persons, natural or artificial, including an individual, firm or association, and municipal or private corporation organized or existing under the laws of this state or another state, and a governmental agency or county of this state and a department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;

(f) "Project" means a solid waste disposal facility or resource recovery facility, or a combination thereof;

(g) "Resource recovery facility" means land, rights in land, buildings, facilities, and equipment suitable or necessary for the recovery or production of energy or energy producing materials in any form resulting from the controlled processing or disposal of solid waste or the systematic separation, extraction, and recovery of recyclable materials from the solid waste stream, including facilities or systems for the storage, conversion, or transportation thereof;

(h) "Revenue" means all rents, fees, and other charges received by the authority for use of its projects, facilities, and services, including, without limitation, all amounts received for the collection, transportation, disposal, or processing of solid waste, the operation of any project, or the sale, storage, distribution, or transportation of energy, energy producing materials, or other materials or commodities by the authority;



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(i) "Solid waste" means:

(1) Garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal;

(2) "Solid waste" does not include:

(A) Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342;

(B) Steel slag or mill scale that is an intended output or intended result of the use of an electric arc furnace to make steel; provided, that such steel slag or mill scale is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal; or

(C) Except to the extent inconsistent with applicable federal law, soil is not discarded material constituting waste as long as the soil is intended for use or reuse as soil;

(j) "Solid waste facility" means land, rights in land, buildings, facilities and equipment suitable or necessary for collecting, receiving, transferring, placing, confining, compacting, treating, or covering solid waste or for processing solid waste by, without limitation, incinerating, composting, separating, grinding, shredding, reducing, or otherwise modifying the characteristics or properties thereof, including all property, real and personal, appurtenant thereto or connected with such work; and

(k) "State of Tennessee" means the state of Tennessee and, unless otherwise indicated by the context, an agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof now or hereafter existing.

**Section 110 – Creation; resolutions.**

(a) The City may create a solid waste authority by resolution; provided, that the public shall have the opportunity to comment on such resolution. The resolution creating the authority may be amended by the City Council to dissolve the authority. The creating resolution shall give the authority a name which shall identify it as a separate public entity. This name shall be used by the authority unless the name is amended by resolution approved by the City Council. Resolutions creating, amending, or dissolving an authority shall be certified by the city recorder and sent to the secretary of state and the commissioner of environment and conservation.

(b) The authority shall replace the City as a member of the Central Tennessee Municipal Solid Waste Region and shall designate a person or persons to represent the authority on the region's board.

(c) Should Rutherford County form a county authority pursuant to the Solid Waste Authority Act of 1991, the authority created under this section may:

(1) Continue the operation of the city-created authority by retaining the same board of directors appointed to the authority, joining the newly formed county authority, and designating a person or persons to represent the authority on the county-formed authority; or

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(2) Provided the county-formed authority agrees to assume all responsibilities and obligations of the city-formed authority created by the city, dissolve the city-formed authority, and join the county-formed authority.

**Section 111 – Board of directors.**

(a) A resolution creating, or amending the resolution creating, an authority shall provide for the establishment of a board of directors to administer the activities of the authority. The board of directors shall consist of an odd number, not less than five (5) nor more than seven (7) members. The members of the board shall be nominated by the mayor and approved by the City Council. The members of the board shall serve for terms of six (6) years or until their successors are elected and are qualified by taking an oath of office, except that the initial board shall have approximately one-third (1/3) of the members with terms of two (2) years and approximately one-third (1/3) of the members with terms of four (4) years, so as to stagger the terms of office.

(b) City Council members and municipal officers may serve as directors, but the board of directors is not required to include such members.

(c) Directors may receive compensation if provided for by the resolution approved by the City Council. The resolution establishing the compensation may differentiate council members, city officials, and department heads so as to compensate only those directors who are not officials or employees of the City, except for reimbursement for actual expenses incurred in connection with the director's official duties.

**Section 112 – Board of directors; officers; vacancy; removal.**

(a) The directors shall meet and organize as a board and shall elect one (1) of its members as chair, one (1) as vice chair, one (1) as secretary, and one (1) as treasurer, and such officers shall annually be elected thereafter in like manner. The duties of the secretary and treasurer may be performed by the same director. In the absence of the chair, vice chair, secretary, or treasurer, another member may be elected to fill the vacancy for the anticipated term thereof. An action taken by the directors may be authorized by resolution at a regular or special meeting, and such resolution shall take effect immediately and need not be published or posted. A majority of the board of directors shall constitute a quorum for the transaction of business. The concurring vote of a majority of all the directors shall be necessary for the exercise of any of the powers of the authority.

(b) Any vacancy on the board shall be filled for the unexpired term by the City Council. Any member appointed to the board may, for reasonable cause, be removed by the City Council; provided, that such removal shall be preceded by a full hearing before the remaining members of the board after adequate notice of such hearing, and a report of such hearing shall be forwarded to the City Council. "Reasonable cause" includes, but shall not be limited to, misconduct in office, failure to perform duties prescribed by this act, the Solid Waste Management Act of 1991, or other applicable law, or failure to diligently pursue the objectives for which the authority was created.

**Section 113 – Public instrumentalities; powers and duties.**

(a) A solid waste authority created pursuant to this act shall be a public instrumentality of the City. The authority shall have the following powers, together with all powers incidental thereto or necessary for the performance of such powers, to:

- (1) Have succession by the name given in the resolution or resolutions creating the authority, unless dissolved as provided in this act;
- (2) Sue and be sued and prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- (3) Have and use a corporate seal and alter the same at pleasure;

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(4) Plan, establish, acquire, whether by purchase, exchange, gift, devise, lease, or otherwise, and construct, equip, furnish, improve, repair, extend, maintain, and operate one (1) or more projects, which projects shall be situated within the city boundaries, including all real and personal property, facilities, and appurtenances which the board of directors of the authority may deem necessary in connection therewith and regardless of whether or not any such project shall then be in existence;

(5) Acquire, whether by purchase, exchange, gift, devise, lease, or otherwise, any and all types of property, whether real, personal or mixed, tangible, or intangible, and whether or not subject to mortgages, liens, charges, or other encumbrances and hold, sell, lease, exchange, donate, or convey any or all of its properties, facilities, or services, whenever the board of directors of the authority shall find such action to be in furtherance of the purposes for which the authority is created;

(6) Remove, receive, transport, collect, purchase, transfer, or otherwise obtain solid waste for disposal or processing from any municipality, county, the state of Tennessee, the United States government, or any agency thereof, the Tennessee Valley authority, or any person, and enter into contracts, agreements, or other arrangements in connection therewith;

(7) Sell, transfer, distribute, or otherwise dispose of electricity, steam, gas, fuels, or other forms of power. Energy, or energy-producing material, or any other material, product, or commodity resulting from the operation of any project, facility, or service of the authority to any municipality, county, the state of Tennessee, the United States or any agency thereof, the Tennessee Valley authority or any person, and enter into contracts, agreements, or other arrangements in connection therewith;

(8) Make and enter into all contracts, trust instruments, agreements, and other instruments with any municipality, the state of Tennessee, the United States government, or any agency thereof, the Tennessee Valley authority, or any person, including, without limitation, bonds and other forms of indebtedness and contracts for the management and operation of any project, facility, or service of the authority or the treatment, processing, storage, transfer, or disposal of solid waste;

(9) Incur debts, borrow money, issue bonds, and provide for the rights of the holders of such bonds;

(10) Pledge all or any part of the revenues and receipts of the authority to the payment of any indebtedness of the authority, and make covenants in connection with the issuance of bonds or other indebtedness or to secure the payment of such bonds or other indebtedness;

(11) Have control of its projects, facilities, and services with the right and duty to establish and charge fees, rentals, rates, and other charges for the use of the facilities and services of the authority, and the sale of materials or commodities by the authority, and collect revenues and receipts therefrom, not inconsistent with the rights of holders of its bonds;

(12) Apply for and accept donations, contributions, loans, guaranties, financial assistance, capital grants, or gifts from any municipality, county, the state of Tennessee, the United States government or any agency thereof, the Tennessee Valley authority, or any person for or in aid of the purposes of the authority and enter into agreements in connection therewith;

(13) Operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of any project undertaken, and make rules and regulations with regard to such operation, maintenance, and management;

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(14) Exercise all powers expressly given in this act and in the creation and amendment of resolutions and establish bylaws and make all rules and regulations not inconsistent with the creation and amendment of resolutions or this act, deemed expedient for the management of the affairs of the authority;

(15) Enter onto any lands, waters, and premises for the purpose of making surveys, soundings, and examinations in and for the furtherance of the purposes authorized by this act and the Solid Waste Management Act of 1991 at reasonable times and with written notice to property owners;

(16) Employ and pay compensation to such employees and agents, including attorneys, accountants, engineers, architects and financial advisors, as the board of directors shall deem necessary for the business of the authority;

(17) Use in the performance of its functions the officers, agents, employees, services, property, facilities, records, equipment, rights, and powers of the City, with the consent of the City and subject to such terms and conditions as may be agreed upon; and

(18) Exercise all powers expressly given to it and establish and make rules and regulations not inconsistent with this act and the Solid Waste Management Act of 1991, deemed expedient for the management of the authority's affairs.

(b) Except as otherwise provided in this act, an authority, with the concurrence by ordinance of the City Council, may exercise exclusive jurisdiction and exclusive right to control the collection of solid waste within its boundaries, and to control the disposition of solid waste collected within its boundaries.

(c) The power granted to an authority by this section shall not prevent a manufacturing firm which holds a permit from the state of Tennessee to dispose of or utilize its own solid wastes on the property of the manufacturing firm.

**Section 114 – Exclusion of waste originating outside region.**

The authority may restrict access to its solid waste disposal facilities and may regulate the flow of all municipal solid waste within the City by requiring the disposal of any transported waste at a specific solid waste disposal facility.

**Section 115 – Assignment or loan of employees.**

For the purpose of aiding the authority, the City may assign or loan any of its employees, including its engineering staff and facilities, and may provide necessary office space, equipment or other facilities for the use of such authority.

**Section 116 – Bonds.**

(a) The authority has the power to issue bonds from time to time in order to accomplish its purposes. Except as otherwise expressly provided in this act, all bonds issued by the authority shall be payable solely out of the revenue and receipts derived from the authority's projects or of any portion thereof as may be designated in the proceedings of the board of directors under which the bonds shall be authorized to be issued, including debt obligations of the lessee or contracting party obtained from or in connection with the financing of a project. Such bonds may be issued in one (1) or more series, may be executed and delivered by the authority at any time and from time to time, may be in such form and denomination and of such terms and maturities, may be subject to redemption prior to maturity either with or without premium, may be in fully registered form or in bearer form registerable either as to principal or interest, or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without the state of Tennessee, may bear interest at such rate or rates payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith,

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all as shall be provided in the proceedings of the board of directors whereunder the bonds shall be authorized to be issued.

(b) Bonds of the authority shall be executed in the name of the authority by such officers of the authority and in such manner as the board of directors may direct and shall be sealed with the corporate seal of the authority. If so provided in the proceedings authorizing the bonds, the facsimile signature of any of the officers of the authority may appear on such bonds, and a facsimile of the corporate seal of the authority may appear on the bonds in lieu of the manual signature of such officer and the manual impress of such seal; provided, that at least one (1) of the signatures appearing on such bonds shall be a manual signature. Interest coupons attached to such bonds shall be executed with the facsimile signatures of the officers who shall execute the bonds, who shall adopt as and for their own signatures their respective facsimile signatures appearing on such coupons. Bonds issued under this act, and the coupons appurtenant thereto, bearing the signature of any officer in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof such person shall have ceased to be an officer of the authority.

(c) Any bonds of the authority may be sold at public or private sale for such price and in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all expenses and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof.

(d) All bonds of the authority and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments.

(e) Interim certificates or notes or other temporary obligations issued by the authority pending the issuance of its revenue bonds shall be payable out of revenues and receipts in like manner as such revenue bonds, and shall be retired from the proceeds of such bonds upon the issuance thereof, and shall be in such form and contain such terms, conditions and provisions consistent with this act and the Solid Waste Management Act of 1991 as the board of directors may determine.

(f)

(1) Any bonds or notes of the authority at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding the sum of the following:

(A) The principal amount of the obligations being refinanced;

(B) Applicable redemption premiums thereon;

(C)

(i) Unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds;

(ii) In the event the proceeds from the sale of the refunding bonds are to be deposited in trust as hereinafter provided, interest is to accrue on such obligations from the date of delivery to the first or any subsequent available redemption date or dates selected, in its discretion, by the board of directors, or to the date or dates of maturity, whichever shall be determined by the board of directors to be most advantageous or necessary to the authority;

(D) A reasonable reserve for the payment of principal of and interest on such bonds and/or a renewal and replacement reserve;

(E) If the project to be constructed from the proceeds of the obligations being refinanced has not been completed, an amount

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sufficient to meet the interest charges on the refunding bonds during the construction of such project, and for two (2) years after the estimated date of completion, but only to the extent that interest charges have not been capitalized from the proceeds of the obligations being refinanced; and

(F) Expenses of the authority, including bond discount, deemed by the board of directors to be necessary for the issuance of the refunding bonds.

(2) A determination by the board of directors that any refinancing is advantageous or necessary to the authority, or that any of the amounts provided in (f)(1)(F) should be included in such refinancing, or that any of the obligations to be refinanced should be called for redemption on the first or any subsequent available redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive; provided, that prior to the adoption by the board of directors of the resolution authorizing the issuance of refunding bonds under this section, the plan for refunding shall be submitted to the comptroller of the treasury or the comptroller's designee for review, and the comptroller of the treasury or the comptroller's designee may report thereon to the board of directors within fifteen (15) days from the date the plan is received by the comptroller of the treasury or the comptroller's designee, and the comptroller of the treasury or the comptroller's designee shall immediately acknowledge receipt in writing of the proposed refunding plan. After receiving the report of the comptroller of the treasury or the comptroller's designee or after the expiration of fifteen (15) days from the date the refunding plan is received by the comptroller of the treasury or the comptroller's designee, whichever date is earlier, the board of directors may take such action with reference to such proposed refunding plan as it deems advisable.

(g) Any such refunding may be effected, whether the obligations to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations to be refunded thereby, or by the exchange of the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, and regardless of whether or not the obligations to be refunded were issued in connection with the same projects or separate projects, and regardless of whether or not the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

(h) Unless the obligations to be refunded are to be retired at the time of delivery of the refunding bonds, the board of directors shall, prior to the issuance of the refunding bonds, cause notice of its intention to issue the refunding bonds to be given to the holders of the outstanding obligations by publication of an appropriate notice one (1) time each in a newspaper of general circulation in a municipality with respect to which the corporation was organized, and in a financial newspaper published in New York, New York, and having national circulation. Such notice shall identify the obligations proposed to be refunded and set forth the estimated date of delivery of the refunding bonds. As soon as practicable after the delivery of the refunding bonds, and whether or not any of the obligations to be refunded are to be called for redemption, the board of directors shall cause notice of the issuance of the refunding bonds to be given in the manner provided in this subsection (h). If any of the obligations to be refunded are to be called for redemption, the board of directors shall cause notice of redemption to be given in the manner required by the resolution or ordinance authorizing such outstanding obligations.

(i) The principal proceeds from the sale of any refunding bonds shall be applied, only as follows, to either:

(1) The immediate payment and retirement of the obligations being refunded; or

(2) To the extent not required for the immediate payment of the obligations being refunded, then such proceeds shall be deposited in trust and together with any investment income thereon to provide for the payment and

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retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and application of any surplus for any purposes of the authority, including, without limitation, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds or other obligations of the authority. Money in any such trust fund may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States government, or obligations of any agency or instrumentality of the United States government, or in certificates of deposit issued by a bank or trust company located in the state of Tennessee, if such certificates shall be secured by a pledge of any of the obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

**Section 117 – Bonds; security; guarantees.**

(a) The principal of and interest on any bonds issued by the authority shall be secured by a pledge of such revenues and receipts out of which the same may be made payable. The proceedings under which the bonds are authorized to be issued may contain any agreements and provisions respecting the maintenance of the projects or other facilities covered thereby, the fixing and collection of rents, fees, or payments with respect to any projects, facilities, or systems or portions thereof covered by such proceedings, the creation and maintenance of special funds from such revenues and from the proceeds of such bonds, and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with this act or the Solid Waste Management Act of 1991. To the extent provided in the proceedings authorizing any bonds of the authority, each pledge and agreement made for the benefit or security of any of the bonds of the authority shall continue to be in effect until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid, or adequate provision for the payment thereof shall have been made by the authority. In the event of default in such payment or in any agreements of the authority made as a part of the proceedings under which the bonds were issued, such payment or agreement may be enforced by suit, mandamus, or the appointment of a receiver in equity, or any one (1) or more of such remedies, all as provided in the proceedings under which the bonds are issued.

(b) The City may guarantee or otherwise secure the payment of bonds, notes, or similar obligations of the authority by resolution of the City Council. The City may pledge any discretionary revenues and/or may pledge the full taxing powers of the City. Prior to any meeting of the City Council considering action to guarantee or secure the payment of any bond, note, or similar obligation of an authority, reasonable public notice shall be published describing the matter to be considered and containing an estimate of the dollar amount of any contingent liability that may be authorized. Any resolution or ordinance of the City approving of a guarantee or otherwise providing security for the payment of an authority's bonds, notes or similar obligations shall specify the officer or officers of the City authorized to execute documents necessary to implement the City Council's action.

**Section 118 – City Obligation.**

The City shall not be liable for the payment of the principal or interest on any bonds, notes, or other instruments evidencing indebtedness of the authority except as provided in this act. Neither shall the City be liable for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever that may be undertaken by the authority except as provided in this act.

**Section 119 – Authority revenues or income; directors or employees.**

No part of the revenues or income of the authority shall inure to the benefit of any director or employee of the authority except as expressly authorized by this act.

**HB1568****Section 120 – Public instrumentality; tax exemptions.**

(a) The authority is declared to be performing a public function on behalf of the City and to be a public instrumentality of the City. Accordingly, the authority and all properties at any time owned by it and the income therefrom and all bonds issued by it and the income therefrom shall be exempt from all taxation in the state of Tennessee.

(b) For purposes of the Tennessee Securities Act of 1980, compiled in Tennessee Code Annotated, Title 48, Chapter 1, Part 1, bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

**Section 121 – Audits and auditors.**

Except as otherwise approved by the comptroller of the treasury, an authority created pursuant to this act has the power and shall cause to be made an annual audit of the accounts and records of the authority. The audit shall include all funds of the authority, whether held by the authority or pursuant to trust indentures. The comptroller of the treasury shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards and determining if the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury. The audits may be prepared by certified public accountants, public accountants, or by the comptroller of the treasury. In the event the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department of audit to prepare the audit. The cost of such audit shall be paid by the authority. All such audits shall be completed as soon as practicable after the end of the authority's fiscal year. One (1) copy of the audit shall be furnished to each member of the board of directors, the chief executive officer of the City and the comptroller of the treasury. Copies of each audit shall also be made available to the public.

**Section 122 – Contracts; payment; taxation.**

(a) The state of Tennessee or any county or municipality is authorized, whenever the same shall be found desirable by the City Council, to enter into contracts, agreements, or other arrangements with the authority regarding any project, facility, or service of the authority, including, without limitation, the collection, transfer, storage, transportation, processing, or disposal of solid waste or the purchase, sale, lease, or other disposition of energy, energy-producing materials, gas, fuel, and other materials, commodities, or properties of the authority. Any such contract or agreement may extend for any period not exceeding forty (40) years from the date thereof.

(b) Any payments to be made to the authority pursuant to an agreement may be payable from general funds to the extent permitted by law, or from such limited source as may be agreed upon between the authority and such entity, and in the case of payments to be made from general funds, the annual tax sufficient to make such payments to the authority when the same become due. Such tax shall be assessed, levied, collected and paid in like manner as other taxes of such municipality and shall be in addition to all other taxes now or hereafter authorized to be levied by such municipality. Such tax shall not be included within any statutory or other limitation as to rate or amount for such municipality but shall be excluded therefrom and be in addition thereto and in excess thereof.

(c) No payments shall be construed to be an indebtedness of a municipality within the meaning of any constitutional or statutory provision.

**Section 123 – Cumulative and supplemental provisions; notice or approval.**

Neither this act nor anything herein contained shall be construed as a restriction or a limitation upon any powers which the authority might otherwise have under any laws of this state but shall be construed as cumulative of and supplemental to any such powers. No proceeding notice or approval shall be required with respect to the issuance



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of any bonds of the authority or any instrument as security therefor except as provided in this act, notwithstanding any law to the contrary; provided, that nothing herein shall be construed to deprive the state of Tennessee and its governmental subdivisions of their respective police powers over properties of the authority, or to impair any power of any official or agency of this state and its governmental subdivisions which may be otherwise provided by law.

**Section 124 – Powers and duties; appropriations; taxation.**

(a) The City has all necessary powers in order to further the purposes of this act, including, without limitation, the power to:

(1) Provide that any funds available to it for solid waste or resource recovery purposes shall be paid directly to the authority; and

(2) Sell, lease, dedicate, donate, or otherwise convey to the authority any of its interest in any existing solid waste disposal or resource recovery facility or other related property, or grant easements, licenses, or other rights or privileges therein to the authority.

(b) The City may appropriate general funds or unappropriated moneys from any other fund, to pay expenses of the authority or provide for the operation of any of the projects, facilities, and systems authorized by this act, levy a tax, in addition to all other taxes, upon all taxable property within the City, sufficient to pay such appropriation to the authority. Any such tax on property shall be collected in the same manner as other property taxes of the county or municipality are collected and, similarly, all laws for the enforcement of county and municipal tax liens shall apply.

(c) A person who willfully violates the ordinances or resolutions passed by the City with respect to which the authority was organized or willfully fails, neglects, or refuses to comply with such ordinances or resolutions is subject to the penalties provided in Tennessee Code Annotated, Section 68-211-918. Each day of continued violation constitutes a separate offense.

(d) In addition to the penalties provided herein, the City may enforce any ordinances, resolutions, or contracts issued or entered into to carry out this section by instituting legal proceedings to enjoin the violation of this section, in any court of competent jurisdiction, and such court may grant a temporary or permanent injunction restraining the violation of this section.

**Section 125 – Project sites; gifts, purchases, leases or condemnation.**

The City may acquire a project site by gift, purchase, lease, or condemnation, and may transfer a project site to the authority by sale, lease, or gift. Such transfer may be authorized by a resolution of the City Council without submission of the question to the voters, and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

**Section 126 – Taxation.**

Whenever, and as often as, a municipality or a county enters into a contract with the authority, the municipality or county shall provide by resolution for the levy and collection of a tax sufficient to pay when due the annual amount payable under such contract as and when it becomes due and payable, and to pay any expenses of maintaining and operating the project required to be paid by the municipality or county under the terms of such contract or by instrument collateral thereto and, furthermore, to pledge such tax and the full faith and credit of the municipality or county to such payments. Such tax shall be assessed, levied, collected, and paid in like manner as other taxes of the municipality or county. Such tax shall not be included within any statutory or other limitation of rate or amount of the municipality or county but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions, or requirements of any other law, whether public or private. There shall be set aside from such tax levy into a special fund an amount sufficient for the payment of the annual amount due under any such contract,

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and the money in such fund shall be used exclusively for such purpose and shall not be used for any other purpose until such annual amount has been paid in full. The foregoing shall not be construed to limit the power of the authority or other contracting party to enter into contracts with a municipality or county not having the power of taxation.

**Section 127 – Execution of leases, contracts, deeds of conveyance or instruments.**

Except as otherwise provided in this act, all leases, contracts, deeds of conveyance, or instruments in writing executed by the authority shall be executed in the name of the authority by the chair and secretary of the authority, or by such other officers as the board of directors, by resolution, may direct, and the seal of the authority shall be affixed thereto.

**Section 128 – Cumulative provisions; notice or approval.**

(a) Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which an authority, as a public corporation, might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers.

(b) No proceedings, notice or approval shall be required for the organization of the authority or the issuance of any bonds or any instrument as security therefor, except as herein provided, notwithstanding any other law to the contrary; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the authority, or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

(c) Projects may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this act for such purposes, notwithstanding that any other general, special, or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law.

**Section 129 – Dissolution.**

An authority may be dissolved by a resolution of the City Council. Upon dissolution, the assets of the authority shall accrue to the City to the extent the authority has assets in excess of liabilities. In the event that the authority has liabilities in excess of assets, the resolution of dissolution shall provide for the allocation of assets of the authority among the creditors of the authority by agreement between the creditors of the authority and the board of directors of the authority. In the event that such an agreement cannot be reached within ninety (90) days after the approval of the resolution to dissolve the insolvent authority, then the board of directors of the authority shall petition the chancery court for an equitable allocation of assets. The chancery court shall hear the cause and shall enter a decree for the allocation of the assets of the authority among the authority's creditors. After the final disposition of the assets of the authority, the board of directors of the authority shall notify, in writing, the City Council, the secretary of state, and the department of environment and conservation of these actions, whereupon the board of directors and the authority shall cease to exist.

**Section 130 – Construction of law.**

This act is remedial in nature and shall be liberally construed to effect its purpose of providing for a systematic and efficient means of solid waste disposal and encouraging the best utilization and conservation of energy and natural resources.

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the City of Murfreesboro. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

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SECTION 3. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 2.

HOUSE BILL NO. 1568

PASSED: April 13, 2023



CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES



RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 28<sup>th</sup> day of April 2023



BILL LEE, GOVERNOR

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Policy for Public Comment at Public Meetings

**Department:** Administration

**Presented by:** Craig Tindall, City Manager

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Resolution 23-R-23 establishes a policy governing public comment at all public meetings of City Council and other City boards, commissions, and committees consistent with requirements of Chapter 300 of the Tennessee Public Acts of 2023.

**Staff Recommendation**

Adopt Resolution 23-R-23.

**Background Information**

The General Assembly enacted a statute that requires as of a July 1, 2023 that requires municipal governing bodies reserve a period for public comment at each public meeting. Resolution 23-R-23 establishes the Council’s policy on public comment periods consistent with the statute.

The comment period provides the public an opportunity to comment on matters that appear on the Council Meeting’s agenda. The policy, consistent with statute, adopts reasonable restrictions on the time set for comments, how requests to comment are to be made, the number of speakers, and the time permitted each speaker. Restrictions must ensure that opposing viewpoints are fairly represented.

**Fiscal Impacts**

None.

**Attachments:**

Resolution 23-R-23

**RESOLUTION 23-R-23** establishing public comment policy for meetings.

**WHEREAS**, Chapter 300 of the Tennessee Public Acts of 2023 (“Chapter 300”), amends Tennessee Code Annotated, Title 8, Chapter 44, Part 1 by requiring a governing body to reserve a period for public comment, at each public meeting, where the public has the opportunity to comment on matters that are germane to the items on the agenda for the meeting; and

**WHEREAS**, Chapter 300, which is effective July 1, 2023, authorizes a governing body to adopt reasonable restrictions on the period for public comment, including restrictions related to the length of the public comment period, the number of individuals who can speak during the period, and the length of time each individual can speak, provided the governing body takes all practicable steps to ensure that opposing viewpoints are represented fairly; and

**WHEREAS**, Chapter 300 further authorizes a governing body to require an individual wishing to speak at a meeting to sign up to speak in advance of the meeting; and

**WHEREAS**, City Council finds it necessary and appropriate to adopt a policy governing public comment at the public meetings of City Council, as well as the public meetings of the City’s other commissions, boards, and committees.

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

SECTION 1. The following policy is hereby adopted and shall be known as the Public Comment at Public Meetings Policy of the City of Murfreesboro:

**PUBLIC COMMENT AT PUBLIC MEETINGS POLICY  
FOR THE CITY OF MURFREESBORO**

- (1) *Scope.* This policy shall apply to all public meetings of City Council and to the public meetings of the City’s other commissions, boards, and committees that are comprised of elected and/or appointed officials and subject to the Tennessee Open Meetings Act, Tenn. Code Ann. §§ 8-44-101 *et seq.*
- (2) *Definitions.* As provided in Tenn. Code Ann. § 8-44-102, the following terms shall have the following meanings for purposes of this policy:
  - (a) *Governing body* means the members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.
  - (b) *Meeting* means the convening of a governing body of a public body for

which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

(3) *Policy.*

(a) Any public meeting of a governing body with actionable items on the agenda shall have a period for public comment on those actionable items at the beginning of the meeting; provided, however, this requirement shall not apply to a meeting where the governing body is conducting a disciplinary hearing for a member of the governing body or a person whose profession or activities fall within the jurisdiction of the governing body.

(b) The public notice of every public meeting of a governing body with actionable items on the agenda shall include an email address and/or phone number that individuals wishing to speak at the meeting can use to communicate their desire to speak at the meeting.

(c) Individuals wishing to speak at a public meeting must sign up at least six hours prior to the meeting start time either by sending an email to the public comment email address or by calling the phone number set forth in the public notice of meeting. To ensure that opposing viewpoints are fairly represented during the public comment period, individuals registering to speak at a meeting should state the action item about which they wish to speak and whether they will be speaking in support of or in opposition to the item.

(d) The first fifteen minutes of public meetings shall be designated for public comment. The governing body shall not take up any action item on the agenda before the end of the public comment period; provided, however, the body's presiding officer may close the public comment period prior to the end of the fifteen-minute period if all the individuals who signed up to speak at the meeting have been afforded an opportunity to speak. The presiding officer shall have the discretion to extend the public comment period for no more than an additional fifteen minutes if additional time is reasonably necessary to ensure that opposing viewpoints are fairly represented during the public comment period. The presiding officer need not extend the public period beyond fifteen minutes merely because the fifteen-minute period expired before all of the individuals who registered to speak were able to speak.

(e) Individuals who have registered to speak at a meeting shall be called on in the order in which they have registered. Individuals will be allowed three minutes to speak with respect to an action item on the agenda. All comments are restricted to comments on action items on the agenda for the meeting. The presiding officer shall have the authority to declare an individual out of order, if after an initial warning, an individual continues to speak on a topic that is unrelated to an action item on the agenda.

(f) Where an individual wishes to speak during public comment intends to

speak on an action item that is scheduled to have a separate public hearing during the meeting, the presiding officer shall have the discretion, in the interest of affording others the opportunity to speak during the public comment period, to deny such individual's request to speak during the public comment period, provided the presiding officer then provides such individual an opportunity to speak at the beginning of the public hearing on the action item.

(4) *Exception.* This policy shall not apply to the public comment special meetings of City Council, which are generally held at 5:30 p.m. on the first Thursday of the month.

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

Passed: \_\_\_\_\_

\_\_\_\_\_  
Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Brown  
City Recorder

DocuSigned by:  
*Adam F. Tucker*  
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\_\_\_\_\_  
Adam F. Tucker  
City Attorney



## COUNCIL COMMUNICATION

**Meeting Date: 06/15/2023**

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**Item Title:** Titan Aviation Fuels Agreement  
**Department:** Airport  
**Presented by:** Chad L. Gehrke, Airport Director  
**Requested Council Action:**

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

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### **Summary**

Contract with Titan Aviation Fuels (Titan) to provide aviation fuel to the airport for resale, mobile equipment, and other associated items.

### **Staff Recommendation**

Approve the contract with Titan Aviation Fuels.

### **Background Information**

One of the revenue sources for the Murfreesboro Municipal Airport comes from the sale of aviation fuels to based and transient aircraft. The term of the current contract with Titan expires June 30, 2023. A competitive purchasing process required fuel providers, in addition or competitive pricing of fuel, provide pricing on the purchase and rental of aircraft refueling trucks, new fuel farm equipment, point of sale systems, quality control and safety training program, advertising programs, and other items.

Under the process, Titan was awarded a new contract. Titan is providing a zero-cost lease for a 1,000-gallon Avgas aircraft refueling truck and a 3,000-gallon Jet A refueling truck. This proposal saved the Airport at least \$3,000 per month in equipment rental. Titan Aviation Fuels agreed to cover the cost of all major maintenance items on those trucks as well. The proposed contract includes a term of three years with two one-year options and covers all of the items listed above except for the new fuel farm equipment. That equipment will be covered under a second contract forthcoming.

### **Council Priorities Served**

*Improve economic development*

The establishment of strong contractual relationships with product and service providers is essential for the Murfreesboro Municipal Airport and its ability to serve the public and provide economic development opportunities for the City of Murfreesboro.

**Fiscal Impact**

The expense of fuel purchases is unit based dependent on demand is offset by the sale of purchased fuel as a revenue source for the Airport.

**Attachments**

Agreement for Airport Fuel and Refueler Truck Lease with Titan Aviation

## **Agreement for Airport Fuel and Refueler Truck Lease**

This Agreement is entered into and effective as of \_\_\_\_\_ (the "Effective Date"), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Eastern Aviation Fuels, Inc. dba Titan Aviation Fuels**, a Corporation of the State of North Carolina ("Contractor").

This Agreement consists of the following documents:

- This document
- RFCSP-27-2023- Airport Fuel Farm Fuel and Equipment issued March 28, 2023 (the "Solicitation");
- Contractor's Proposal, dated April 20, 2023, revised May 15, 2023 ("Contractor's Proposal"); and,
- Any properly executed amendments to this Agreement.
- 

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

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

### **1. Duties and Responsibilities of Contractor.**

Contractor shall provide and City shall purchase Airport Fuel based on Contractor's Proposal and the specifications set forth in "RFCSP-27-2023 – Airport Fuel Farm Fuel and Equipment." Additionally, the City will lease Jet A and Avgas Fuel trucks as set forth in Contractor's Equipment Pricing Form provided with Contractor's Proposal. Contractor will provide all maintenance services for the leased vehicles for the term of the contract, as set forth in Contractor's Proposal.

### **2. Term.**

The term of this Agreement commences on the Effective Date listed above for a period of three years initially expiring on June 30, 2026, with two one-year renewal options, for a final expiration date no later than June 30, 2028, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- b. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

### **3. Payment and Delivery.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in Contractor's Proposal dated April 20, 2023, revised May 15, 2023. Jet A fuel market

prices shall be based on the Gulf Coast Pipeline 54 Platts. Avgas market prices shall be based on the Gulf Coast Waterborne 93 Octane Premium Unleaded Platts. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.

- b. All items must be available for delivery within 30 days from execution of this contract. Delivery shall be done Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. Forty-eight (48) hours advance notice should be given prior to delivery. The materials shall be delivered to the Murfreesboro Municipal Airport, 1930 Memorial Boulevard, Murfreesboro, TN 37129.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any items(s) received which fail to meet the specifications as stated in the RFCSP.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.
- f. Pricing may be adjusted if vendor supplies documentation to support any such price increase at least 30 days prior to the end of the term of the contract.

- 4. **Warranty.** Contractor shall provide all warranties as described in the RFCSP and Contractor's Proposal.
- 5. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
- 6. **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.
- 7. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City

as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

**8. Indemnification.**

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

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

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

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

If to Contractor:  
Titan Aviation Fuels  
P.O. Box 12327  
New Bern, NC 28561-2327  
sjohnson@titanfuels.aero

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

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

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

13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its

programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

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

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

**23. Product Price Adjustments.** The prices for fuel are exclusive of airport fees, freight or any applicable taxes. Jet A and AVGAS differential and freight may be adjusted for any third party increase beyond Contractor's control.

**24. Trademarks:** Contractor grants to City a nonexclusive, non-transferable right to use Contractor's brand and/or licensed trademarks owned or licensed by Contractor in connection with the sale of Aviation Fuel at City's FBO. The City shall have the right to display the brand names, but only for the purpose of properly identifying and advertising the branded products handled by the City. City shall not sell products other than the branded products under the brand names. To the extent permitted by law, City will conform to the branding rules of usage set forth by Contractor and nonconformance to these rules will result in the de-branding of the City FBO.

**25. Health, Safety, & Environment ("HS&E"):**

(a) Product Handling - City shall exercise extreme caution in the storing, handling, and dispensing of Aviation Fuel, including daily inspection of all storage and dispensing equipment to prevent or eliminate contamination in any form, including commingling with other fuels. City shall, immediately notify Contractor of any instance of Aviation Fuel contamination or commingling with other fuels.

(b) Environmental Compliance - City shall observe any and all federal, state, and municipal laws, ordinances, rules and regulations, user permits, and the like pertaining to the composition, handling, storage and dispensing of Aviation Fuel purchased hereunder including, without limitation, any and all laws, ordinances, rules and regulations pertaining to the volatility or vapor pressure of Aviation Fuel and the storage of same in aboveground or underground storage tanks. Buyer shall comply with any reasonable program instituted by Contractor to assure compliance with any such laws, ordinances, rules and regulations.

**26. Insurance to be Maintained by City:** City shall purchase and maintain at City's expense the following insurance coverage in order to be a branded FBO:

(a) Commercial General Liability Insurance, including premises and operations as well as products/completed operations liability for aviation products and refueling operations with minimum limits of one million dollars (\$1,000,000) without restrictive per person sub-limits for bodily injury and/or property damage.



(b) Name Contractor (Eastern Aviation Fuels, Inc. dba Titan Aviation Fuels), as an additional insured party with respect to liability arising from City's aviation operations. Operations including refueling, de-fueling and/or lubrication of aircraft.

Excess Aviation Refueling Liability Insurance in the amount of 50 million dollars (\$50,000,000) will be provided to City free of charge provided City secures and maintains said underlying insurance.

In the event City is able to secure said insurance, only with \$100,000 per-person sub-limits for bodily injury City will be permitted to be a branded FBO but will not be eligible for the \$50 million excess liability insurance program.

City may elect not to participate in the Excess Aviation refueling Liability Insurance program but will be required to maintain insurance meeting the above criteria to be a branded FBO.

**27. 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 first listed above.

**City of Murfreesboro, Tennessee**

**Titan Aviation Fuels**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: \_\_\_\_\_  
Robbie Stallings, President

Approved as to form:

\_\_\_\_\_  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** City Concrete and Storm Drainage Annual Contract Renewal

**Department:** Engineering

**Presented by:** Chris Griffith, Executive Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Renewal of the Annual City Concrete and Storm Drainage Contract.

**Staff Recommendation**

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

**Background Information**

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

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

**Council Priorities Served**

*Responsible Budgeting*

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

**Fiscal Impact**

The primary funding source for this contract is from State Street Aid, which is a local share of the State’s gasoline tax. Additional funding is also obtained through the Storm Water User Fee.

**Attachments**

1. 2023-2024 Renewal form of Concrete and Storm Drainage Contract.
2. 2019-2020 Concrete and Storm Drainage Contract.

**2023-2024 RENEWAL OF  
THE CONCRETE & STORM DRAINAGE CONTRACT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
ROLLINS EXCAVATING CO., LLC**

This 2023-2024 Renewal to the Concrete and Storm Drainage Contract entered into August 16, 2019 ("Contract"), is effective as of \_\_\_\_\_, 2023, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Rollins Excavating Co., LLC ("Contractor"), a Limited Liability Company of the State of Tennessee.

**RECITALS**

WHEREAS, on August 16, 2019, the City entered into the Contract with Contractor for concrete and storm drainage related services as described in the City's Advertisement for Bids for the 2019-2020 Concrete & Storm Drainage Concrete and Contractor's proposal in response thereto; and,

WHEREAS, the term of the contract between the City and Contractor currently runs through June 30, 2023, and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to Item No. 6 of the Special Conditions to the current Contract for an additional year,

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

1. **Extension:** The term of the current Contract is hereby extended for a period from July 1, 2023 until June 30, 2024.
2. **No Other Amendment or Modification:** Except as provided herein, the parties make no other modifications or amendments, and all other terms of the Contract shall continue in full force and effect.

ENTERED this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF MURFREESBORO**

**ROLLINS EXCAVATING CO., LLC**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: *Dela Rollins*  
Dela Rollins, Chief Manager

**Approved as to form:**

DocuSigned by:  
*Adam Tucker*  
43A2035E51F9401...  
Adam F. Tucker, City Attorney

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR  
THE  
**2019-2020 CONCRETE & STORM DRAINAGE  
CONTRACT**



ENGINEERING DEPARTMENT  
MURFREESBORO, TENNESSEE

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Special Provisions:	Special Provision No.	Revision Date
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Employing and Contracting with Illegal Immigrants.....	SP102I	10-10-16

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**Advertisement for Bids  
for the  
2019-2020 CONCRETE & STORM DRAINAGE CONTRACT**

Sealed proposals, invited by the City of Murfreesboro, will be received by the City Manager at the City of Murfreesboro City Hall, 111 West Vine Street, Murfreesboro, Tennessee, **until 2:00 p.m.** local time on **Tuesday, June 11, 2019**, at which time they will be opened and publicly read aloud, and the contract awarded as soon thereafter as practicable for the **2019-2020 Concrete & Storm Drainage Contract**.

The work will consist primarily of the installation and improvements to sidewalks, curb and gutters, curb ramps, storm drainage pipes, storm drainage ditches and other miscellaneous storm drainage and concrete related projects contained herein this contract.

The work shall also include other work necessary to complete the project as directed by the Owner's specifications and proposal sheets. Contract documents, including Information for Bidders, form of Bid proposal, form of Contract, forms of Bonds may be obtained without charge from the office of City Manager at City Hall, 111 West Vine Street, Murfreesboro, Tennessee, beginning Wednesday, **May 22, 2019** during the hours of 8:00 a.m. until 4:00 pm local time.

**A non-mandatory pre-bid conference will be held at 2:00 p.m. on Thursday, May 30, 2019 at the City of Murfreesboro City Hall Council Chambers, 111 West Vine Street, Murfreesboro, Tennessee. Representatives of OWNER shall be present to discuss the project.**

Each bid must be accompanied by a Bidder's Bond executed by the Bidder and Surety Company authorized to transact business in the State of Tennessee, or by a cashier's or certified check on a duly authorized bank payable to the City of Murfreesboro, Tennessee, or a letter of credit from a local bank in the sum of not less than five percent (5%) of the total amount of the Bid as a guarantee that if the Bid is accepted, the required Contract will be executed and the required Performance Bond and Payment Bond furnished. Said check or bond will be returned to the unsuccessful Bidder as soon as the Contract has been executed and the necessary bonds have been furnished, same have been approved, and the Contract has been executed by the City of Murfreesboro, Tennessee.

All bidders must be licensed contractors as required by the Contractors Licensing Act of 1976 of the General Assembly of the State of Tennessee and all acts amendatory thereof. Bidder's name, address, license number, expiration date, that part of the classification applying to the Bid, and the date and time of Bid opening shall appear on the sealed envelope containing the Bid, **and the envelope shall be plainly marked "2019-2020 CONCRETE AND STORM DRAINAGE CONTRACT."** All bids must be prepared on the proposal form supplied with the Contract Documents. No interlineations, additions, or deletions shall be made in the proposal form by the Bidder.

The City of Murfreesboro, Tennessee, reserves the right to waive any informalities or to reject any of all Bids, to evaluate Bids, and to accept any Bid which in its opinion may be for the best interest of the Owner. The City of Murfreesboro reserves the right to award all or any part of this Contract to one or more bidders. **This Contract is subject to four (4) 12-month extensions upon mutual agreement.** No Bids will be received or accepted after the above specified time for the opening of Bids. Bids submitted after the designated hour will be deemed invalid and returned unopened to the Bidder. No Bidder may withdraw his Bid within ninety (90) days after the actual date of the opening thereof.

/s/ \_\_\_\_\_  
Craig Tindall, City Manager



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## INFORMATION FOR BIDDERS

Bids will be received by the City of Murfreesboro, Tennessee (herein called the "Owner") by the City Manager, in his office at City Hall, 111 West Vine Street, Murfreesboro, Tennessee, 37133-1139 until 2:00 p.m. CDT on Thursday, June 7, 2018, and then at said office publicly opened and read aloud.

Each Bid must be submitted in a sealed envelope, addressed to the City Manager, City of Murfreesboro, Post Office Box 1139, Murfreesboro, Tennessee 37133-1139. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the Owner.

The Bid Form bound in the contract documents is to be used and all blank spaces for bid prices must be filled in, in ink or typewritten, and the Bid Form must be fully completed and executed when submitted.

All Bidders must be licensed contractors as required by the Contractors Licensing Act of 1976 of the General Assembly of the State of Tennessee and all acts amendatory thereof. Bidder's name, address, license number, expiration date, that part of the classification applying to the Bid, and the date and time of the Bid opening shall appear on the sealed envelope containing the Bid, and the envelope shall be plainly marked "2019-2020 CONCRETE & STORM DRAINAGE CONTRACT." No interlineations, additions, or deletions shall be made in the proposal by the Bidder.

Any Bid may be withdrawn prior to the above scheduled time for the opening of the Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid within ninety (90) days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder.

Bidders must satisfy themselves as to the accuracy of the estimated quantities in the Bid Schedule. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done.

The contract documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.

Every request for such information should be in writing addressed to the City of Murfreesboro, Tennessee, Engineering Dept. Director, Post Office Box 1139, Murfreesboro, Tennessee, 37133-1139, or faxed to 615-849-2606, and to be given consideration must be received prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed or faxed to all prospective Bidders (at the respective addresses furnished for such purposes) prior to the date fixed for the opening of bids. Failure of any Bidder to receive any such addendum or interpretation shall not relieve such Bidder from any obligation under his bid as submitted. All addenda so issued shall become a part of the contract documents.

All Bids must be signed in full by the Bidder or Bidders in his or their business name or style and must show her/his or their complete address. If the Bidder be a firm or a corporation, the signature shall be a duly authorized member of the firm or officer of the corporation stating his official title or position with such firm or corporation, with the corporate seal, attached, attested to by the proper officer. If the Bidder be a firm, the full

names and addresses of all members of the firm must be shown. If the Bidder be a corporation, the name of the state under the laws of which it is incorporated must be shown. If the Bid is signed in the name of an agent, legal evidence of his authority to bind his principals must accompany the papers.

Each Bid must be accompanied by a Bidder's Bond executed by the Bidder and a surety company authorized to transact business in the State of Tennessee, or by a cashier's or certified check on a duly authorized bank made payable to the City of Murfreesboro as a guarantee that if the Bid is accepted, the required contract will be executed and the required Performance Bond and Payment Bonds will be furnished. As soon as the Bid prices have been compared, the Owner will return the bonds of the remaining unsuccessful Bidders. The Bid Bond of the successful Bidder will be retained until the Payment Bond and Performance Bond have been executed and approved, after which the Bid Bond will be returned.

A Performance Bond and Payment Bond or a cashier's check or letter of credit in the total amount of the Bid, along with a corporate surety approved by the Owner, will be required for the faithful performance of the Contract.

Attorneys-in-fact who sign the Bid, Performance, and Payment Bonds must file with each bond a certified and effective dated copy of their Power of Attorney.

The party to whom the Contract is awarded will be required to execute the Agreement and obtain the Performance Bond and Payment Bond within fifteen (15) days from the date when notice of award is delivered to the Bidder. The notice of award shall be accompanied by the necessary agreement. In case of failure of the Bidder to execute the Agreement, the Owner may, at his option, consider the Bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the Owner. The Bidder will also furnish the Owner with a signed and notarized contractor's Affidavit for a Drug-Free Workplace prior to awarding the bid.

Within ninety (90) calendar days of receipt of acceptable Performance Bond, Payment Bond, and agreement signed by the party to whom the agreement was awarded, the Owner shall sign the agreement and return to such party and executed duplicate of the agreement. Should the Owner not execute the agreement within such period, the Bidder may by written notice withdraw his signed agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the agreement and to complete the work contemplated therein.

A conditional or qualified Bid will not be accepted.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout.

The City of Murfreesboro reserves the right to award all or any part of this Contract to one or more Bidder. The City further reserves the right to extend the Contract for a period of twelve (12) months no more than four (4) times, provided both the City and the Contractor agree to such extension.

Each Bidder is responsible for reading and being thoroughly familiar with the Contract documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid. Further, the Bidder agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the General Conditions and will be required to provide assurances under Title VI.

The Contractor shall maintain such insurance as will protect him and/or the City from liability claims and worker's compensation and will save harmless the City from all claims and damages which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the work.

The Contract will be awarded with reasonable promptness by written notice to the responsive and responsible Bidder whose Bid is determined to contain the lowest Bid price.

The City of Murfreesboro reserves the right to reject any and all Bids and to waive any informality in Bids received whenever such rejection or waiver is in the best interest of the City.

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To: City Manager  
 City of Murfreesboro, TN

Rollins Excavating Co., LLC hereby propose(s) to furnish all material, labor and appliances, and to perform all work required to complete the **2019-2020 Concrete & Storm Drainage Contract**, located in the City of Murfreesboro, Tennessee, in a workmanlike manner and in accordance with the plans of the Owner and specifications herewith attached.

Rollins Excavating Co., LLC  
Rollins Excavating Co., LLC further agree(s) that in case of failure on 's part to sign this within ten (10) days, the certified check or bid bond accompanying this proposal and the proceeds thereof shall be the property of the City of Murfreesboro.

ITEM	Description	Units	Quantity	Unit Price	Total Price
<b>General Concrete</b>					
1	Std Dwg St-12 concrete curb and gutter in place	LF	1,000	12.00	12,000.00
2	Std Dwg St-13 concrete rollover curb w/gutter in place	LF	500	12.00	6,000.00
3	Std Dwg St-14 Curb without Gutter in place	LF	500	12.00	6,000.00
4	Std Dwg DW-2 Driveway Ramp 6" thick in place	SF	6,000	<del>5.50</del> 6.00	<del>33,000.00</del> 36,000.00
5	Std Dwg DW-4 Driveway Ramp 8" thick in place	SF	4,000	<del>6.00</del> 6.50	<del>24,000.00</del> 26,000.00
6	Std Dwg TDOT RP-S-7 Concrete Sidewalk in place	SF	20,000	3.00	60,000.00
7	Water Table Replacement	SF	1,000	5.00	5,000.00
8	Concrete lined Ditch	SF	2,000	4.00	8,000.00
9	Handicap ramp in place	SF	2,000	<del>12.00</del> 10.00	<del>24,000.00</del> 20,000.00
10	Std Dwg TDOT D-PE-4 Straight Endwall Circular pipe in place	CY	100	300.00	30,000.00

11	Steel Bar Reinforcing Pipe End Walls	LBS	1,000	2.00	2000.00
12	<b>Precast Manhole in place</b>				
12A	0'-6' Deep	EACH	2	800.00	1600.00
12B	6'-8' Deep	EACH	2	900.00	1800.00
12C	8'-10' Deep	EACH	2	1200.00	2400.00
13	Rebuild Existing Manholes	EACH	5	200.00	1000.00
14	Rebuild Existing Catch Basin	EACH	5	200.00	1000.00
15	<b>Combination Manhole Inlet in Place</b>				
15A	0'-6' Deep	EACH	5	300.00	1500.00
15B	6'-8' Deep	EACH	5	300.00	1500.00
15C	8'-10' Deep	EACH	5	300.00	1500.00
16	<b>Std Dwg DR-1 or Single inlet Drain in place</b>				
16A	0'-6' Deep	EACH	5	700.00	3500.00
16B	6'-8' Deep	EACH	5	900.00	4500.00
16C	8'-10' Deep	EACH	2	1000.00	2000.00
17	<b>Std Dwg DR-3 or DR-4 Inlet Drain in place</b>				
17A	0'-6' Deep	EACH	2	1200.00	2400.00
17B	6'-8' Deep	EACH	2	1200.00	2400.00
17C	8'-10' Deep	EACH	1	1200.00	1200.00
18	<b>Std Dwg DR-5 or Dr-6 Single inlet Drain for rollover Curb and Gutter</b>				
18A	0'-6' Deep	EACH	2	1200.00	2400.00
18B	6'-8' Deep	EACH	2	1200.00	2400.00

18C	8'-10' Deep	EACH	1	1200.00	1200.00
19	Std Dwg DR-7 or DR-8 Double inlet Drain for rollover Curb and Gutter				
19A	0'-6' Deep	EACH	2	1500.00	3000.00
19B	6'-8' Deep	EACH	2	1500.00	3000.00
19C	8'-10' Deep	EACH	1	1500.00	1500.00
20	Std Dwg TDOT D-CB 42 Area Drain in place				
20A	0'-6' Deep	EACH	5	1200.00	6000.00
20B	6'-8' Deep	EACH	3	1200.00	3600.00
20C	8'-10' Deep	EACH	1	1500.00	1500.00
	<b>Pipe</b>				
21	15" RCP Class III in Place	LF	200	<del>20.00</del> 40.00	<del>4000.00</del> 8000.00
22	18" RCP Class III in Place	LF	200	<del>25.00</del> 40.00	<del>5000.00</del> 8000.00
23	24" RCP Class III in Place	LF	200	<del>35.00</del> 50.00	<del>7000.00</del> 10000.00
24	30" RCP Class III in Place	LF	200	<del>52.00</del> 60.00	<del>10,400.00</del> 12,000.00
25	36" RCP Class III in Place	LF	100	72.00	7200.00
26	12" High Density Polyethylene (HDPE) Corrugated Pipe	LF	200	4.00	800.00
27	15" High Density Polyethylene (HDPE) Corrugated Pipe	LF	500	5.00	2500.00
28	18" High Density Polyethylene (HDPE) Corrugated Pipe	LF	1,000	6.00	6000.00
29	24" High Density Polyethylene (HDPE) Corrugated Pipe	LF	1,500	6.00	9000.00
	<b>Paving</b>				
30	Pavement replacement E Mix in place (by Hand)	TON	500	<del>55.00</del> 85.00	<del>27,500.00</del> 42,500.00
31	Pavement replacement B Modified Mix in place (by Hand)	TON	500	85.00	42,500.00



32	Pavement replacement A Mix in place (Machine)	TON	500	95.00	47,500.00
33	Pavement replacement E Mix in place (Machine)	TON	2,000	10.00	20,000.00
34	Pavement replacement B Modified Mix in place (Machine)	TON	2,000	98.00	196,000.00
35	Pavement replacement D Mix in place (Machine)	TON	2,000	110.00	220,000.00
36	TDOT Spec. 70-22 Asphalt Polymer	TON	100	110.00	11,000.00
37	Parking Lot paving E Mix	TON	1,500	140.00	210,000.00
<b>General Earthwork / Grading</b>					
38	Mineral Aggregate, Type A Base, Grading D (in place)	TON	7,000	14.00	98,000.00
39	Mineral Aggregate (Size 57) (in place)	TON	2,000	<del>MR 24.00</del> 18.00	<del>48,000.00</del> 36,000.00
40	Place and Spread Topsoil	CY	1,000	3.00	3,000.00
41	Furnish and Spread Topsoil	CY	1,000	<del>MR 4.00</del> 7.00	<del>4,000.00</del> 7,000.00
42	Sod in place	SY	2,000	4.00	8,000.00
43	Seeding (with mulch) (in place)	UNIT	30	200.00	6,000.00
44	Fill material (in place)	CY	500	6.00	3,000.00
45	Rock excavation	CY	200	40.00	8,000.00
46	Drainage Excavation for new open ditch sections only	CY	1,000	2.00	2,000.00
47	Drainage Ditch Rip Rap 6" diameter (in place)	TON	500	15.00	7,500.00
48	Erosion Control Blanket (North American Green SC 150 or Equivalent) (in place) (EC-STR-34)	SY	1,000	3.00	3,000.00
49	Woven Filter Fabric (Mirafi 500X or equivalent)	SY	1,000	4.00	4,000.00
50	Non-Woven Filter Fabric (Mirafi 140N or equivalent)	SY	1,000	3.00	3,000.00
51	Silt Fence (without backing) (in place) (EC-STR-3B)	LF	200	5.00	1,000.00
52	12IN Sediment Tube (in place) (EC-STR-37)	LF	200	7.00	1,400.00

53	Selective tree removal					
53A	0-6" Diameter	EACH	2	50.00	100.00	
53B	6-12" Diameter	EACH	2	50.00	100.00	
53C	12-24" Diameter	EACH	2	50.00	100.00	
54	Casting Adjustments					
54A	Storm Drain	EACH	20	400.00	8000.00	
54B	Manholes (Riser)	EACH	10	200.00	2000.00	
54C	Water Valve boxes	EACH	60	300.00	18000.00	
54E	Manhole (Casting)	EACH	20	400.00	8,000.00	
54G	Area Drains	EACH	10	400.00	4,000.00	
	Traffic control in place					
55	Flagman	HR	250	35.00	8750.00	
56	Drums for Channelization (per placement)	EACH	500	40.00	<del>20,000.00</del> 20,000.00	
57	Signs (4' x 4' minimum)	SF	1,500	10.00	15000.00	
58	Warning lights (Type C)	P/DAY	10	5.00	50.00	
59	Cones (18" minimum)	P/DAY	50	5.00	250.00	
60	Interconnected Portable Barrier Rail	LF	100	<del>45.00</del> 70.00	<del>4500.00</del> 7,000.00	
61	Barricade (Type III)	EACH	5	100.00	500.00	
62	Arrow Board	EACH	15	800.00	12000.00	
63	Flag Truck	HOUR	50	65.00	3250.00	
	Equipment					
64	Backhoe w/Operator	HOUR	250	75.00	18750.00	

65	14 yds Dump Truck w/driver	HOUR	700	80.00	56000.00
66	Dozer w/driver	HOUR	200	90.00	18000.00
67	Compressor & Air Hand Tools w/operator	HOUR	25	100.00	2500.00
68	Grader w/Operator	HOUR	100	115.00	11,500.00
69	Box Scraper w/operator	HOUR	10	20.00	200.00
70	Skid steer w/Operator	HOUR	100	80.00	8000.00
71	Chain Saw w/Operator	HOUR	10	50.00	500.00
72	Asphalt Saw w/ Operator	HOUR	50	75.00	3750.00
73	Vibrating plate w/operator	HOUR	50	40.00	2000.00
74	6-8 ton roller w/operator	HOUR	50	80.00	4000.00
75	Water truck w/driver	HOUR	10	40.00	400.00
76	Broom Truck w/ Operator	HOUR	20	90.00	1800.00
77	Mini-Track hoe (<12,000 lbs.) w/Operator	HOUR	100	90.00	9000.00
78	Track hoe w/Operator (>12,000 lbs.) w/ Operator	HOUR	100	140.00	14000.00
79	Grade-All w/Operator	HOUR	100	5.00	500.00
<b>Personnel</b>					
80	Crew Leader, Regular Time	HOUR	100	45.00	4500.00
81	Crew Leader, Overtime	HOUR	50	<del>60.00</del> 10.00	<del>3000.00</del> 500.00
82	Laborer, Regular time	HOUR	500	<del>25.00</del> 35.00	<del>12500.00</del> 17,500.00
83	Driver, Overtime	HOUR	100	<del>40.00</del> 10.00	<del>4000.00</del> 1,000.00
84	Operator, Overtime	HOUR	100	<del>50.00</del> 10.00	<del>5000.00</del> 1,000.00
85	Laborer, Overtime	HOUR	100	<del>45.00</del> 10.00	<del>4500.00</del> 1,000.00

Materials					
86	Concrete, Dumped in place	CY	100	150.00	15000.00
Any materials used but not covered in the Unit Price List will be paid for at cost plus 10%					

*JBR* 1,587,700.00  
 TOTAL: \$ ~~1,608,800.00~~

*JBR* One Million Five Hundred Eighty Seven Thousand  $\frac{1}{4}$

TOTAL BID (in words and figures): One Million Six Hundred Eight Thousand

Eight Hundred and  $\frac{00}{100}$

*JBR* Seven Hundred and  $\frac{00}{100}$

In submitting this bid, it is understood that the right is reserved by the City of Murfreesboro to reject any and all bids. If written notice of the acceptance of this bid is mailed or delivered to the undersigned within thirty (30) days after the opening thereof, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond within ten (10) days after the contract is presented to him for signature.

*JBR* Seventy Nine Thousand Three Hundred Eighty Five

Security in the sum of Eighty Thousand Four Hundred Forty Dollars

(~~\$ 79,385.00~~ \$ 80,440.00) in the form of 5% Bid Bond is

submitted herewith in accordance with the specifications.

Bidder, by signing and making this bid, makes the following affirmative declaration and statement as of the date said bid is signed, to wit:

Bidder, after being first duly sworn, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

Bidder understands that it shall be a breach of ethical standards for an 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 of controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

A breach of ethical standards could result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under City contracts.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the project **2019-2020 Concrete and Storm Drainage Contract**. Bidder further agrees to pay liquidated damages, the sum of \$250.00 for each consecutive calendar day thereafter, as provided in the General Conditions.

Bidder acknowledges receipt of the following addenda:

None

\* Note "Addendum A" included in the Bid Book

The bidder is prepared to submit a financial and experience statement upon request.

Attached hereto is an affidavit in proof that the undersigned has not entered in to any collusion with any person in respect to this proposal or any other proposal.

Date: June 11, \_\_\_\_\_, 2019

Rollins Excavating Co., LLC  
NAME OF BIDDER

State License No. 28516

By [Signature]

Treasure No. 62-1586466  
Tax ID #

Title Chief Manager

Official Address (including zip code):

1468 Middle Tenn Blvd  
Murfreesboro, TN 37130  
(615) 890-0722

Incorporated under the laws of the State of:

Tennessee

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MURFREESBORO, TENNESSEE

2019-2020 Concrete & Storm Drainage Contract

THIS AGREEMENT made this 16<sup>th</sup> day of AUGUST, 2019, by and between ROLLINS EXCAVATING (a \_\_\_\_\_ organized and existing under the laws of the State of TENNESSEE) or (an individual trading as \_\_\_\_\_) hereinafter called the "Contractor," and the City of Murfreesboro, Tennessee, hereinafter called the Owner.

WITNESSETH:

That the Contractor and the Owner, for the considerations stated herein, mutually agree as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, and shall perform and complete all work required by Owner under the **2019-2020 CONCRETE & STORM DRAINAGE CONTRACT**, all in strict accordance with the Contract Documents including all addenda thereto, numbered \_\_\_\_\_ and dated \_\_\_\_\_, all as prepared by Owner. Owner and Contractor agree that it is Owner's intent that Contractor provide a variety of improvements which, depending upon circumstances, may include related items for which a specific unit description is not given or price specified. In such even Owner and Contractor shall agree on the unit and its price with a Change Order before the work is begun, but no such Change Order Shall exceed ten percent (10%) of the total estimated amount upon which the bid is awarded.

ARTICLE 2. The Contract Price. The Owner shall pay the Contractor for each item of work in accordance with the Bid Price list submitted with the bid Proposal, which bid Price list is incorporated by this reference into this **2019-2020 Concrete & Storm Drainage Contract**. The Owner shall pay the Contractor for the performance of the Contract in current funds, subject to additions and deductions as provided in Article 13 of the General Conditions.



ARTICLE 3. Contract. The executed Contract Documents shall consist of the following:

- |   |  |
|---|--|
| A. Advertisement for Bids   | G. Signed Statement of Compliance – Illegal Immigrants |
| B. Information for Bidders  | H. Signed Statement Iran Divestment Act                |
| C. Signed Copy of Bid Proposal                                    | I. General Conditions                                  |
| D. Signed Copy of Contract  | J. Supplementary Conditions [Part B]                   |
| E. Signed Non-Collusion Affidavit                                 | K. Special Conditions                                  |
| F. Signed Bidder Affidavit on Compliance with Drug-Free Workplace | L. Special Provisions                                  |

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms a Contract between the parties hereto. In the event any provision of any component part of this contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized agents or officials.

Rollins Excavating Co., LLC  
(Contractor) Gerald B. Rollins  
By Gerald B. Rollins  
Title Chief Manager

Business Address (including zip code):

1468 Middle Tenn Blvd  
M/boro TN 37130

**CITY OF MURFREESBORO**

Approved as to form:

City Attorney

By

Title

**NOTE:** Please indicate whether Contractor is Owner, Partnership, or Corporation. Print or type name beneath all signatures. A LLC

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Crichton Group 3011 Armory Drive Suite 250 Nashville, TN 37204	<b>CONTACT NAME:</b> Robbie Davis
	<b>PHONE (A/C, No, Ext):</b> 615 383-9761 <b>FAX (A/C, No):</b> 615 383-4628 <b>E-MAIL ADDRESS:</b> rdavis@thecrichtongroup.com
<b>INSURED</b> Rollins Excavating Company, LLC 1468 Middle Tennessee Blvd. Murfreesboro, TN 37130	<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b>
	<b>INSURER A :</b> Travelers Indemnity Company      25658
	<b>INSURER B :</b> Travelers Property Casualty Co of Amerl      25674
	<b>INSURER C :</b> Travelers Casualty & Surety Co      19038
	<b>INSURER D :</b> Travelers Indemnity Co of CT      25682
	<b>INSURER E :</b> <b>INSURER F :</b>

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:5,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CO1095A52418	12/31/2018	12/31/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
D	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			8101L65885118	12/31/2018	12/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			CUP7H44058618	12/31/2018	12/31/2019	EACH OCCURRENCE \$6,000,000 AGGREGATE \$6,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB8J6051081826G	12/31/2018	12/31/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	LEASED & RENTED EQUIPMENT			QT6601097C601TIL18	12/31/2018	12/31/2019	LIMIT: \$300,000 DEDUCTIBLE: \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**Project: 2019-2020 City Concrete and Storm Drainage Improvements Contract - Murfreesboro, TN.**  
 City of Murfreesboro is an additional insured with respect to General Liability when required by written contract. Additional Insured endorsement CGD604 08/13 is attached. Coverage afforded under the policies will not be canceled unless at least 30 days prior written notice has been given to owner.

<b>CERTIFICATE HOLDER</b> City of Murfreesboro 111 West Vine Street Murfreesboro, TN 37130-0000	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Phil Barnes</i>
--	--

## COMMENTS/REMARKS

Any person or organization that you agree in a written contract requiring insurance to include as an additional insured on your policy to the extent provided within the policy forms referenced below.

### GENERAL LIABILITY:

Blanket Additional Insured (Contractors) – (including Completed Operations and Primary Non-Contributory basis, where applicable) – Written Contract Requiring Insurance – CGD604 08/13

Designated Project(s) General Aggregate Limit – CGD211 01/04

Designated Project(s): Each “project” for which you have agreed, in a written contract which is in effect during this policy period, to provide a separate General Aggregate Limit, provided that the contract is signed and executed by you before the “bodily injury” or “property damage” occurs.

Contractors Xtend Endorsement – CGD316 11/11

- G. Blanket Additional Insured – Owners, Managers or Lessors of Premises
- H. Blanket Additional Insured – Lessors of Leased Equipment
- I. Blanket Additional Insured – States Or Political Subdivision – Permits
- L. Blanket Waiver of Subrogation

Designated Entity – Notice of Cancellation/Nonrenewal Provided By Us (30 days) – ILT400 12/09

### AUTOMOBILE LIABILITY:

Business Auto Extension Endorsement - CAT353 02/15

- Blanket Additional Insured
- Blanket Waiver of Subrogation

Blanket Additional Insured – Primary and Non-Contributory with Other Insurance – CAT474 08/17

Pollution Liability – Broadened Coverage for Covered Autos – Business Auto and Motor Carrier Coverage Form – CA9948 10/13

Designated Entity – Notice of Cancellation/Nonrenewal Provided By Us (30 days) – ILT400 12/09

### WORKERS COMPENSATION:

Waiver of Our Right to Recover From Others Endorsement – WC000313 4/84 – Any person or organization for which the named insured has agreed in a written contract executed prior to loss to provide this waiver.

Notice of Cancellation or Nonrenewal to Designated Persons or Organizations (30 days) – WC9906R4

### UMBRELLA LIABILITY:

The Excess/Umbrella Liability policy provides excess limits over the underlying General Liability, Automobile Liability, and Employers Liability coverages referenced herein.

Waiver Of Our Right To Recover From Others – UM0488 07/08

Designated Entity – Notice of Cancellation/Nonrenewal Provided By Us (30 days) – ILT400 12/09

Subject to all the terms, conditions, exclusions and definitions of the above-referenced policies, as issued by the carrier(s).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT (CONTRACTORS)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that:

- a. You agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part; and
- b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

is an insured, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:

(1) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the "written contract requiring insurance" applies;

- (2) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; or

- (3) If neither Paragraph (1) nor (2) above applies:

(a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; and

(b) The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

## COMMERCIAL GENERAL LIABILITY

2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured will be limited to such minimum required limits of liability. For the purposes of determining whether this limitation applies, the minimum limits of liability required by the "written contract requiring insurance" will be considered to include the minimum limits of liability of any Umbrella or Excess liability coverage required for the additional insured by that "written contract requiring insurance". This endorsement will not increase the limits of insurance described in Section III – Limits Of Insurance.
  - b. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
    - (2) Supervisory, inspection, architectural or engineering activities.
  - c. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured during the policy period.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured under which that person or organization qualifies as a named insured, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
4. As a condition of coverage provided to the additional insured by this endorsement:
  - a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
    - (1) How, when and where the "occurrence" or offense took place;
    - (2) The names and addresses of any injured persons and witnesses; and
    - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
  - b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
    - (1) Immediately record the specifics of the claim or "suit" and the date received; and
    - (2) Notify us as soon as practicable.The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
  - c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
  - d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to other insurance available to the additional insured which covers that person or organization as a named insured as described in Paragraph 3. above.
5. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or or-

COMMERCIAL GENERAL LIABILITY

organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed, during the policy period and:

- a. After the signing and execution of the contract or agreement by you; and
- b. While that part of the contract or agreement is in effect.

POLICY NUMBER: -

ISSUE DATE:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY****DESIGNATED PROJECT(S)  
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE****Designated Project(s):**

Each "project" for which you have agreed, in a written contract which is in effect during this policy period, to provide a separate General Aggregate Limit, provided that the contract is signed and executed by you before the "bodily injury" or "property damage" occurs.

**Designated Project  
General Aggregate(s):**

\$General Aggregate  
Limit shown on the  
Declarations.

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to operations at a single designated "project" shown in the Schedule above:
1. A separate Designated Project General Aggregate Limit applies to each designated "project", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations, unless separate **Designated Project General Aggregate(s)** are scheduled above.
  2. The Designated Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A.**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C.**, regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
3. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the Designated Project General Aggregate Limit for that designated "project". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project General Aggregate Limit for any other designated "project" shown in the Schedule above.
4. The limits shown in the Declarations for **Each Occurrence, Damage To Premises Rented To You and Medical Expense** continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C. (SECTION I)**, which cannot be attributed only to operations at a single designated "project" shown in the Schedule above:

COMMERCIAL GENERAL LIABILITY

1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Project General Aggregate Limit.
- C. Part 2. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:
2. The General Aggregate Limit is the most we will pay for the sum of:
    - a. Damages under **Coverage B**; and
    - b. Damages from "occurrences" under **COVERAGE A (SECTION I)** and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)** which cannot be attributed only to operations at a single designated "project" shown in the **SCHEDULE** above.
- D. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Project General Aggregate Limit.
- E. For the purposes of this endorsement the **Definitions Section** is amended by the addition of the following definition:
- "Project" means an area away from premises owned by or rented to you at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad shall be considered a single "project".
- F. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTORS XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>A. Aircraft Chartered With Pilot</li> <li>B. Damage To Premises Rented To You</li> <li>C. Increased Supplementary Payments</li> <li>D. Incidental Medical Malpractice</li> <li>E. Who Is An Insured – Newly Acquired Or Formed Organizations</li> <li>F. Who Is An Insured – Broadened Named Insured – Unnamed Subsidiaries</li> <li>G. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</li> </ul> | <ul style="list-style-type: none"> <li>H. Blanket Additional Insured – Lessors Of Leased Equipment</li> <li>I. Blanket Additional Insured – States Or Political Subdivisions – Permits</li> <li>J. Knowledge And Notice Of Occurrence Or Offense</li> <li>K. Unintentional Omission</li> <li>L. Blanket Waiver Of Subrogation</li> <li>M. Amended Bodily Injury Definition</li> <li>N. Contractual Liability – Railroads</li> </ul> |
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### **PROVISIONS**

#### **A. AIRCRAFT CHARTERED WITH PILOT**

The following is added to Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

#### **B. DAMAGE TO PREMISES RENTED TO YOU**

1. The first paragraph of the exceptions in Exclusion **j.**, **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A. BODILY**

### **INJURY AND PROPERTY DAMAGE LIABILITY:**

Exclusions **c.** and **g.** through **n.** do not apply to "premises damage". Exclusion **f.(1)(a)** does not apply to "premises damage" caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water;

unless Exclusion **f.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE:**

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

(b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

**C. INCREASED SUPPLEMENTARY PAYMENTS**

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGE:**

- b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES:**

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

**D. INCIDENTAL MEDICAL MALPRACTICE**

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

"Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraph (1)(d) above does not apply to "bodily injury" arising out of providing or failing to provide:

- (i) "Incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or
- (ii) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.



3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED**:

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**F. WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
  - (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

**H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
- b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.
- c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

**I. BLANKET ADDITIONAL INSURED – STATES OR POLITICAL SUBDIVISIONS – PERMITS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required



by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The insurance provided to such state or political subdivision does not apply to:

- a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

**J. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
  - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.
  - (2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
    - (a) Any individual who is:
      - (i) A partner or member of any partnership or joint venture;

- (ii) A manager of any limited liability company; or
  - (iii) An executive officer or director of any other organization;
- that is your partner, joint venture member or manager; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

**K. UNINTENTIONAL OMISSION**

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**L. BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of that contract or agreement.

**M. AMENDED BODILY INJURY DEFINITION**

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

- 3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

**N. CONTRACTUAL LIABILITY – RAILROADS**

- 1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
- 2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.



POLICY NUMBER:

ISSUE DATE:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED ENTITY – NOTICE OF  
CANCELLATION/NONRENEWAL PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION: Number of Days Notice of Cancellation: 30

NONRENEWAL: Number of Days Notice of Nonrenewal: 30

PERSON OR ORGANIZATION:

Any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured receives notice from us of the cancellation of this policy; and
2. We receive such written request at least 14 days before the beginning of the applicable number of days shown in this Schedule.

ADDRESS:

The address for that person or organization included in such written request from you to us.

PROVISIONS:

- A. If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.
- B. If we decide to not renew this policy for any statutorily permitted reason, and a number of days is shown for nonrenewal in the schedule above, we will mail notice of the nonrenewal to the person or organization shown in the schedule above. We will mail such notice to the address shown in the schedule above at least the number of days shown for nonrenewal in the schedule above before the expiration date.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><b>A. BROAD FORM NAMED INSURED</b></li> <li><b>B. BLANKET ADDITIONAL INSURED</b></li> <li><b>C. EMPLOYEE HIRED AUTO</b></li> <li><b>D. EMPLOYEES AS INSURED</b></li> <li><b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></li> <li><b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b></li> <li><b>G. WAIVER OF DEDUCTIBLE – GLASS</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b></li> <li><b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></li> <li><b>J. PERSONAL PROPERTY</b></li> <li><b>K. AIRBAGS</b></li> <li><b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b></li> <li><b>M. BLANKET WAIVER OF SUBROGATION</b></li> <li><b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b></li> </ul> |
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### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your



## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

**I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL PROPERTY**

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

**Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

**N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:  
**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

1. The following is added to Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph **a.** and paragraph **d.** of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS – BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. Covered Autos Liability Coverage** is changed as follows:

1. Paragraph **a.** of the **Pollution** Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph **A.1.** above, Exclusion **B.6. Care, Custody Or Control** does not apply.

**B. Changes In Definitions**

For the purposes of this endorsement, Paragraph **D.** of the **Definitions** Section is replaced by the following:

**D. "Covered pollution cost or expense"** means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dis-

persal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs **a.** and **b.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00)-01**

**POLICY NUMBER: UB8J6051081826G**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

ANY PERSON OR ORGANIZATION FOR WHICH THE NAMED INSURED HAS  
AGREED IN A WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO  
PROVIDE THIS WAIVER



**DATE OF ISSUE:**

**ST ASSIGN:**



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY  
ENDORSEMENT WC 99 06 R4 (00)**

POLICY NUMBER:

**NOTICE OF CANCELLATION OR NONRENEWAL  
TO DESIGNATED PERSONS OR ORGANIZATIONS**

The following is added to **PART SIX – CONDITIONS:**

**Notice Of Cancellation Or Nonrenewal To Designated Persons Or Organizations**

If we cancel or non-renew this policy for any reason other than non-payment of premium by you, we will provide notice of such cancellation or non-renewal to each person or organization designated in the Schedule below. We will mail or deliver such notice to each person or organization at its listed address at least the number of days shown for that person or organization before the cancellation or nonrenewal is to take effect.

You are responsible for providing us with the information necessary to accurately complete the Schedule below. If we cannot mail or deliver a notice of cancellation or nonrenewal to a designated person or organization because the name or address of such designated person or organization provided to us is not accurate or complete, we have no responsibility to mail, deliver or otherwise notify such designated person or organization of the cancellation or nonrenewal.

**SCHEDULE**

<b>Name and Address of Designated Persons or Organizations:</b>	<b>Number of Days Notice</b>
<b>ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OR NONRENEWAL OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:</b>	<b>30</b>
<ol style="list-style-type: none"> <li>1. YOU SEE TO IT THAT WE RECEIVE A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OR NONRENEWAL OF THIS POLICY; AND</li> <li>2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.</li> </ol>	

**ADDRESS:**

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS**

This endorsement modifies insurance provided under the following:

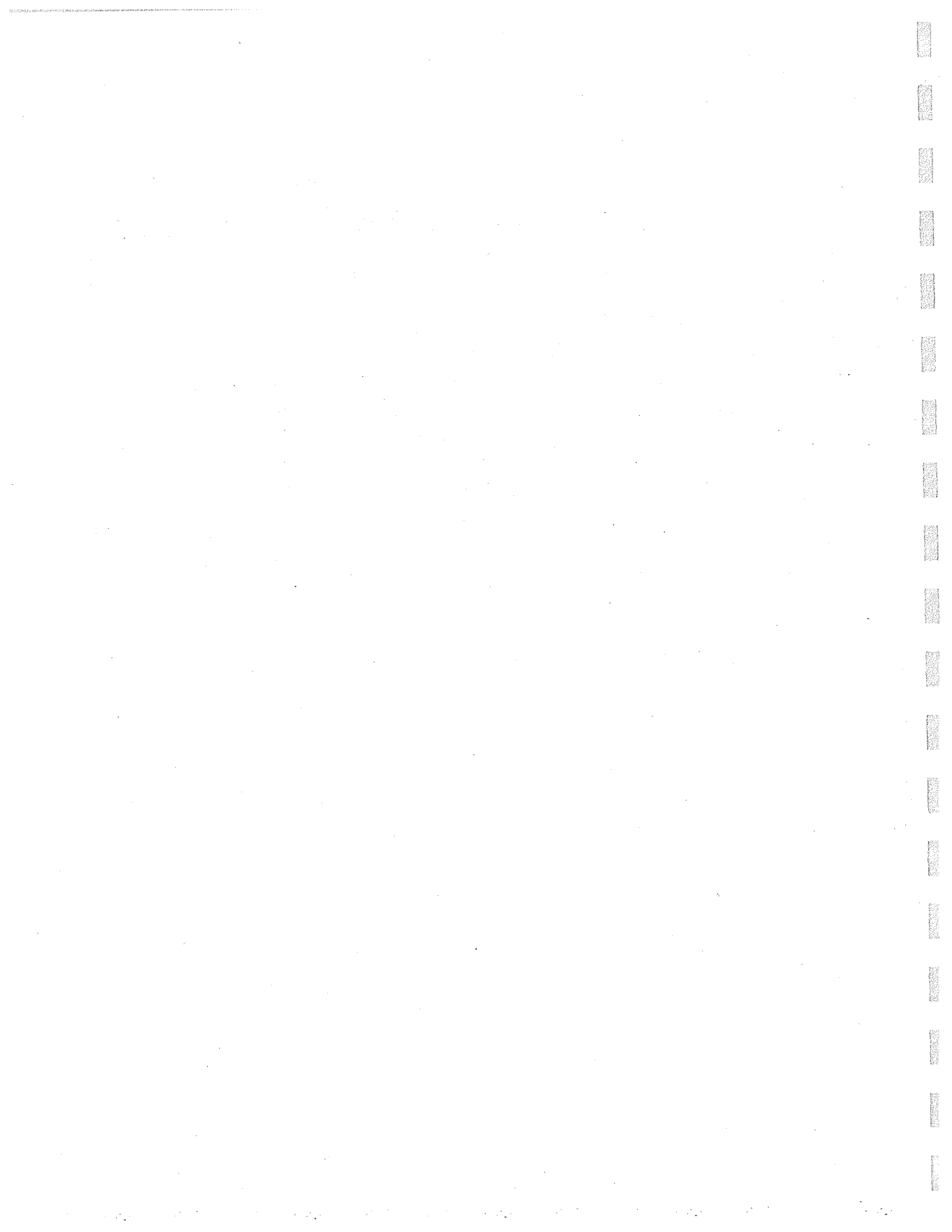
### **COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE**

The following is added to Paragraph 11., **OUR RIGHT TO RECOVER FROM OTHERS.**, of **SECTION IV - CONDITIONS.**

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
  - b. "Personal injury" or "advertising injury" caused by an "offense" that is committed;
- subsequent to the execution of the contract or agreement.







Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA. 19462-1644  
Ph. (610) 832-8240

## SUBCONTRACT PERFORMANCE BOND

Bond Number: 83B111793

KNOW ALL MEN BY THESE PRESENTS, that we Rollins Excavating Co., LLC

1468 Middle Tennessee Blvd. Murfreesboro, TN 37130, as principal, (the "Principal"),  
and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the  
"Surety"), are held and firmly bound unto City of Murfreesboro  
111 West Vine Street Murfreesboro, TN 37130, as obligee (the "Obligee"),  
in the penal sum of One Million Five Hundred Eighty Seven Thousand Seven Hundred and 00/100

Dollars (\$ 1,587,700.00 ),  
for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated the 16th day of August, 20 19,  
entered into a subcontract (the "Subcontract") with the Obligee for City of Murfreesboro  
2019-2020 Concrete & Storm Drainage Contract

in accordance with drawings and specifications prepared by City of Murfreesboro

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and  
faithfully perform said Subcontract, then this obligation shall be null and void; otherwise it shall remain in full force and  
effect.

PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

1. Whenever the Principal shall be, and be declared by the Obligee to be in default under the Subcontract, the  
Obligee having performed the Obligee's obligations thereunder, the Surety may promptly remedy the default,  
or shall promptly:
  - 1.1 Arrange for the Principal, with consent of the Obligee, to perform and complete the Subcontract; or
  - 1.2 Undertake to perform and complete the Subcontract itself, through its agents or through independent  
contractors; or
  - 1.3 Obtain a bid or bids from alternative contractors to complete the Subcontract in accordance with its terms  
and conditions, and upon determination by Surety of the lowest responsible bidder, or if the Obligee  
elects, upon determination by the Obligee and the Surety jointly of the lowest responsible bidder, arrange for  
a subcontract between such bidder and the Obligee, and make available as work progresses (even though  
there should be a default or a succession of defaults under the subcontract or subcontracts of completion  
arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the  
subcontract price; but not exceeding the amount set forth in the first paragraph of this bond. The term  
"balance of the subcontract price," as used in this paragraph, shall mean the total amount payable by the  
Obligee to the Principal under the subcontract and any amendments thereto, less the amount properly paid  
by the Obligee to the Principal; or
  - 1.4 Waive its right to perform and complete, arrange for completion, or obtain a new subcontractor and with  
reasonable promptness under the circumstances:
    - a. After investigation, determine the amount for which it may be liable to the Obligee and, as soon as  
practicable after the amount is determined, tender payment therefore to the Obligee; or
    - b. Deny liability in whole or in part and notify the Obligee citing reasons therefore.



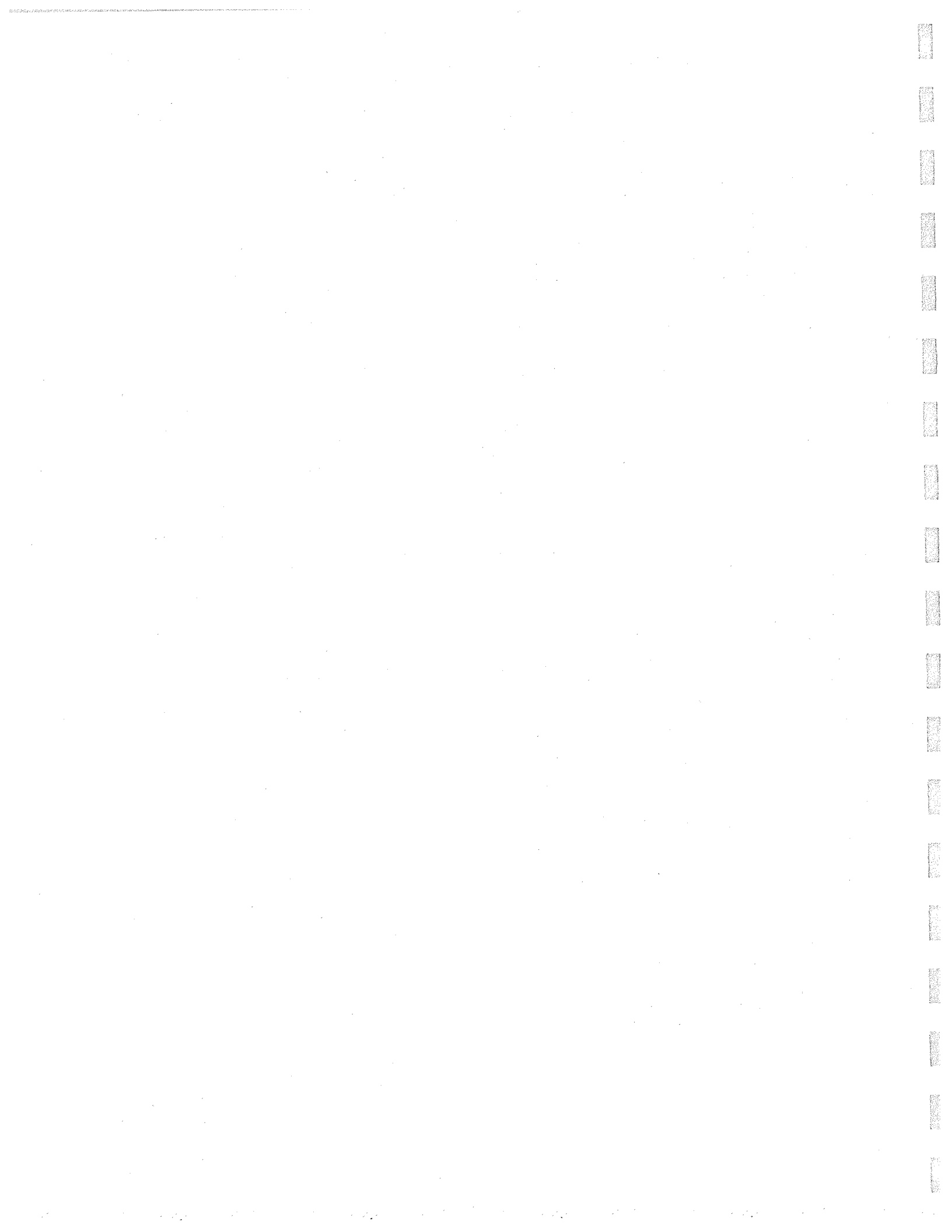
2. Notwithstanding any other provision of this bond or the Subcontract, or otherwise, the Surety is not responsible for and shall not be held liable to the Obligee for any hazardous waste removal and the Surety shall not be held liable to, or in any other respect be responsible to, the Obligee by way of indemnity, claims or otherwise, or to any public authority or to any other person, firm or corporation, for or on account of any fines or claims by any public authority or for bodily injuries or property damage to any person or thing, including, but not limited to, injury or damage due to the release or threat of release of hazardous substances of any kind or damage to real estate or to the environment or clean-up costs or other damages of whatever kind or nature arising out of any act of commission or omission by the Principal, the Principal's agents, servants, employees, subcontractors or suppliers or any other person in connection with the performance of the Subcontract. This limitation applies regardless of when any such fine is assessed, claim is made, or injury, damage, release or threat of release occurs and without regard to any term or condition of the Subcontract.
3. Any suit under this bond must be instituted before the expiration of one (1) year from the date on which the Principal ceased to work on the Subcontract (or such lesser or greater time period as otherwise permitted by relevant law). If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
5. Any claims must be presented in writing to Liberty Mutual Insurance Company, to the attention of The Surety Law Department at the above address.

DATED as of this 16th day of August, 2019.

WITNESS / ATTEST  
Paula R. Montgomery

Rollins Excavating Co., LLC  
 (Principal)  
 By: Gerald B. Rollins (Seal)  
 Name: Gerald B. Rollins  
 Title: Chief Manager

**LIBERTY MUTUAL INSURANCE COMPANY**  
 (Surety)  
 By: Thomas W. Powell, Jr. (Seal)  
 Attorney-in-Fact  
 Thomas W. Powell, Jr.





Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA. 19462-1644  
Ph. (610) 832-8240

## SUBCONTRACT PAYMENT BOND

Bond Number: 83B111793

KNOW ALL MEN BY THESE PRESENTS, that we Rollins Excavating Co., LLC  
1468 Middle Tennessee Blvd. Murfreesboro, TN 37130, as principal (the "Principal"),  
and Liberty Mutual Insurance Company, a Massachusetts stock insurance company, as surety (the "Surety"), are  
held and firmly bound unto City of Murfreesboro  
111 West Vine Street Murfreesboro, TN 37130, as obligee (the "Obligee"),  
in the penal sum of One Million Five Hundred Eighty Seven Thousand Seven Hundred and 00/100  
Dollars (\$ 1,587,700.00),  
for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

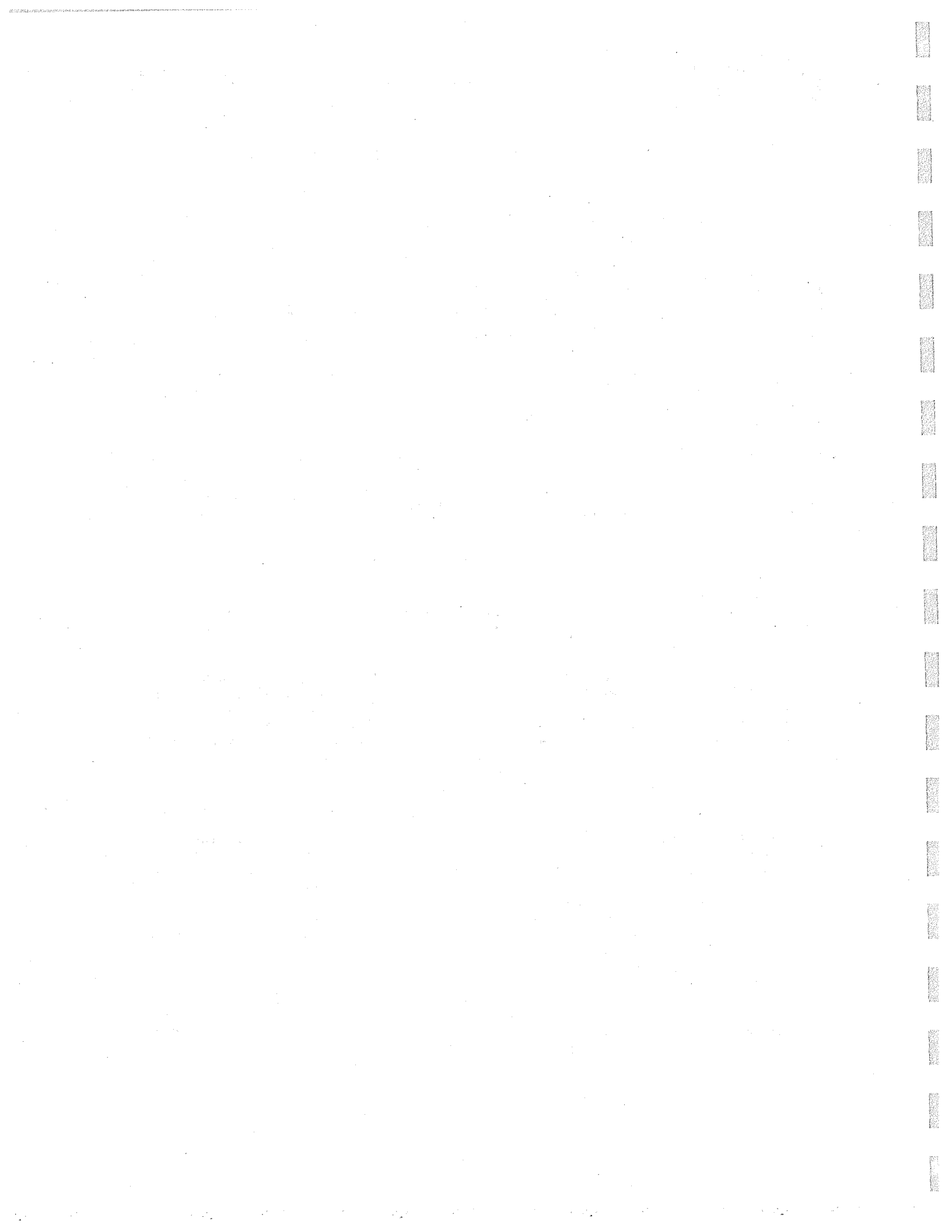
WHEREAS, the Principal has by written agreement dated August 16, 2019, entered into a  
subcontract (the "Subcontract") with the Obligee for City of Murfreesboro  
2019-2020 Concrete & Storm Drainage Contract

in accordance with drawings and specifications prepared by City of Murfreesboro

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly  
make payment to all Claimants, as hereinafter defined, for all labor and material used or reasonably required for  
use in the performance of the Subcontract, then this obligation shall be null and void; otherwise it shall remain in  
full force and effect.

PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

1. A "Claimant" is defined as one having a direct subcontract with the Principal or with a subcontractor of the  
Principal for labor, material, or both, used or reasonably required for use in the performance of the Subcontract,  
labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone  
service or rental of equipment directly applicable to the Subcontract.
2. The Principal and the Surety hereby jointly and severally agree with the Obligee that every Claimant, who has  
not been paid in full before the expiration of a period of ninety (90) days (or such lesser or greater time period  
as otherwise permitted by relevant law) after the date on which the last of such Claimant's work or labor was  
done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such  
Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have  
execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any Claimant:
  - (a) Unless Claimant, other than one having a direct subcontract with the Principal, shall have given written  
notice to the Principal and the Surety within ninety (90) days (or such lesser or greater time period as  
otherwise permitted by relevant law) after the date on which the last of the work or labor, or  
furnished the last of the materials for which said claim is made, stating with substantial accuracy the  
amount claimed and the name of the party to whom the materials were furnished, or for whom the work or  
labor was done or performed. Such notice shall be served by mailing the same by registered mail or  
certified mail, postage prepaid, in separate envelopes addressed to the Principal and Surety. The Principal  
may be served at any place where an office is regularly maintained for the transaction of business, or in  
any manner in which legal process may be served in the state in which the aforesaid project is located,  
save that such service need not be made by a public officer. The Surety may be served to the attention of  
The Surety Law Department at the address above.
  - (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the  
state in which the project, or any part thereof, is situated, or in the United States District Court for the  
district in which the project, or any part thereof, is situated, and not elsewhere.



- (c) After the expiration of one (1) year (or such lesser time period as otherwise permitted by relevant law) from the date on which the Principal ceased work on the Subcontract. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
4. Surety shall have no liability to any Claimant under this Bond for any amount unless it is due and owing to the Claimant by the Principal pursuant to the express terms of the contract between the Principal and Claimant. The Bond incorporates all of the Principal's contractual defenses, including but not limited to pay-if-paid provisions, whereby payment to the Claimant is subject to the condition precedent of the Obligee's payment to the Principal, and other limitations on amounts due under the contract between Principal and Claimant.
5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against such improvement, whether or not a claim for the amount of such lien be presented under and against this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 16th day of August, 2019.

WITNESS / ATTEST  
*Paula R. Montgomery*

Rollins Excavating Co., Inc.  
 (Principal)  
 By: *Gerald B. Rollins* (Seal)  
 Name: *Gerald B. Rollins*  
 Title: *Chief Manager*  
**LIBERTY MUTUAL INSURANCE COMPANY**  
 (Surety)  
 By: *Thomas W. Powell, Jr.* (Seal)  
 Attorney-in-Fact  
 Thomas W. Powell, Jr.







bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8201587-971318

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Daniel D. Hite; Robert B. Jackson; Cooper L. Jones; James P. McCain; Evers R. Miller; Thomas W. Powell, Jr.

all of the city of Nashville state of TN each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 18th day of July, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 18th day of July, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

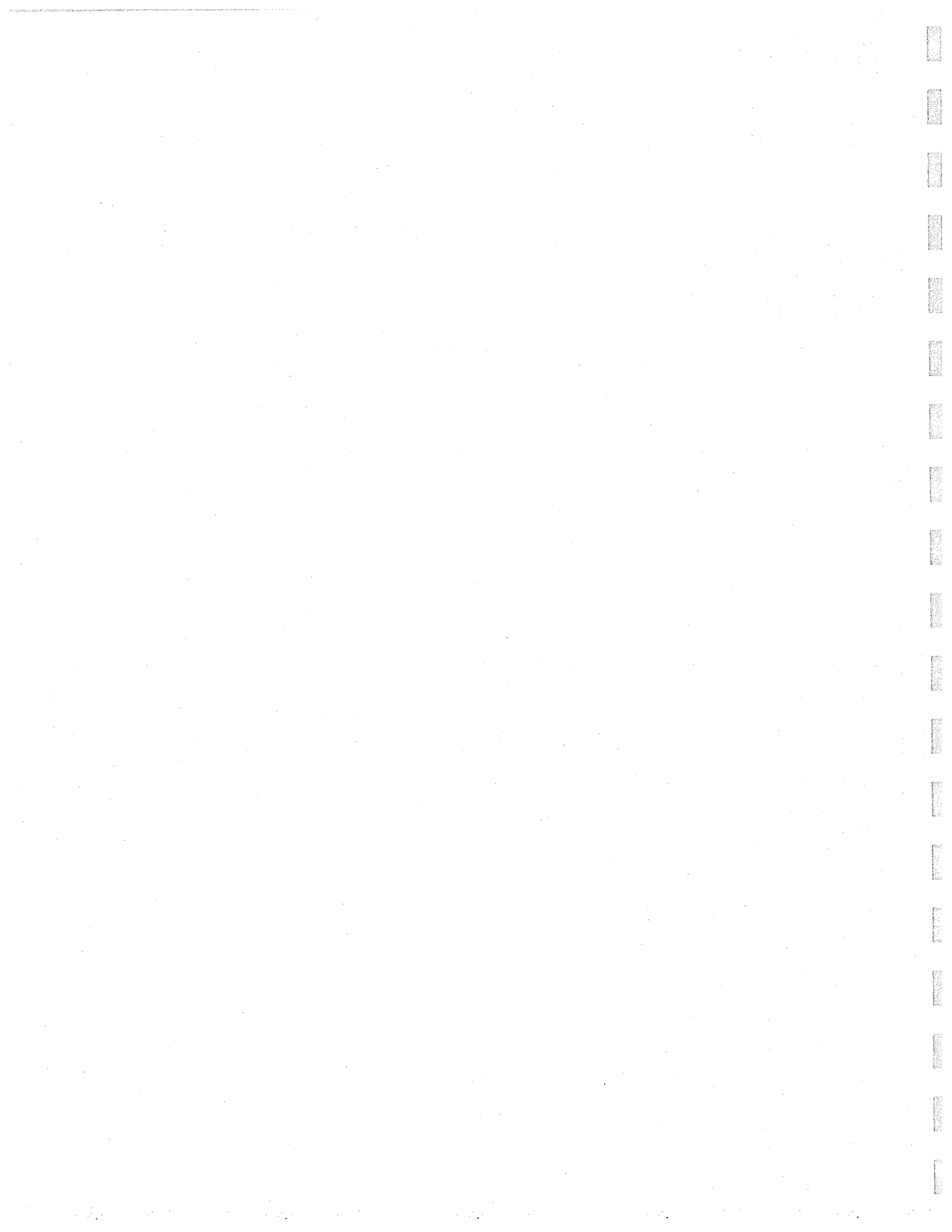
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this day of July, 2019.



By: Renee C. Llewellyn, Assistant Secretary

NOT VALID FOR PURCHASE, ISSUE, RENEWAL, REDIEMPTION, INTEREST RATE OR RESIDUAL VALUE GUARANTEES.

To confirm the validity of this Power of Attorney call 1-810-832-8240 between 9:00 am and 4:30 pm EST on any business day.



NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Tennessee

County of Rutherford

Gerald B. Rollins, being first duly sworn, deposes and says that;

- (1) The undersigned is the (owner, partner, officer, representative, or agent) of Rollins Excavating Co., LLC, the bidder submitting the attached bid.
- (2) Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder nor any of its officer, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way collude, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit an collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, or, to fix any overhead, profit, or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract.
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest including this affidavit.



Rollins Excavating Co., LLC  
Name of Bidder

Gerald B. Rollins - Chief Manager  
Printed Name and Title

Subscribed and sworn to before me,  
this 11<sup>th</sup> day of June, 20 19

Paula Montgomery  
My commission expires: 12/18/2022

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# Notice to Proceed/ Notice of Work Order

Date:

Project:	
Owner:	Contract No.:
Contractor:	Contractor's Mailing Address:
Contractor's Physical Address:	

This is to advise that the contract between \_\_\_\_\_ and \_\_\_\_\_ for the above project was accepted on \_\_\_\_\_ and the effective date of the contract is \_\_\_\_\_. In accordance with the Construction Contract, the following contract times apply:

All Work shall be completed and ready for final payment within \_\_\_\_\_ after the date when the Contract Times commence to run.

It is desired that your forces begin work on this project not later than the effective date unless you are hindered by some condition over which you have no control that affects the beginning of work. **TIME WILL BE CHARGED FROM THE EFFECTIVE DATE.**

CITY OF MURFREESBORO, TENNESSEE

Owner

Given by:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

Copy to Owner

\_\_\_\_\_  
Date

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**BIDDER AFFIDAVIT ON COMPLIANCE  
WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE**

State of Tennessee

County of Rutherford

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. It has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this affidavit; or
2. It operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005 and 3008 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the city.

Rollins Excavating Co., LLC

Name of Bidder

Gerald B. Rollins - Chief Mngr.

Printed Name and Title

Sworn to and subscribed before me a Notary Public for the above state and county, on this

11<sup>th</sup> day of June, 2019.

Paula R. Montgomery  
Notary Public

My Commission Expires 12/18/2022





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STATEMENT OF COMPLIANCE CERTIFICATE  
ILLEGAL IMMIGRANTS

EACH CONTRACTOR BIDDING SHALL FILL IN AND SIGN THE FOLLOWING:

This is to certify that Rollins Excavating Co., LLC have fully complied with all the requirements of Chapter No. 878 (House Bill No. 111 and Senate Bill No. 411) which serves to amend Tennessee Code Annotated Title 12, Chapter 4, Part I, attached herein for reference.

All Bidders for construction services on this project shall be required to submit an affidavit (by executing this compliance document) as part of their bid, attests that such Bidder shall comply with requirements of Chapter No. 878.

Signed

Gerald B. Rollins

State of Tennessee

County of Rutherford

Personally appeared before me, Paula Montgomery the undersigned Notary Public, Gerald B. Rollins, the within named bargainer, with whom I am personally acquainted, and known to me to be the President / Owner / Partner (as applicable) of the Rollins Excavating Co., LLC, Corporation / Partnership / Sole Proprietorship LLC (as applicable) and acknowledges to me that he executed the foregoing document for the purposes recited therein.

Witness my hand, at office, this 11 day of June, 2019.

Paula Montgomery  
Notary Public



My commission expires 12/18/2022

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Faint, illegible text or markings located in the lower-right quadrant of the page, possibly a signature or stamp.

## Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to T.C.A. §12-12-106.

Signature: Gerald B. Fellin

Date: June 11, 2019

Title: Chief Manager

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## GENERAL CONDITIONS

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ENGINEERS JOINT CONTRACT  
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## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
    - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### 2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during



performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

## ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

### 3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
  3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. *Resolving Discrepancies:*
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
    - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
    - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

**5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

**5.02 Use of Site and Other Areas**

**A. Limitation on Use of Site and Other Areas:**

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. **Removal of Debris During Performance of the Work:** During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish,

and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
  - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  - 2. is of such a nature as to require a change in the Drawings or Specifications; or
  - 3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and



contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing

of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not

rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an

agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a

deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
  - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  - 2. claims for damages insured by reasonably available personal injury liability coverage.
  - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of

professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
  1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this



Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.
13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.

- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

#### 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

**6.07** *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

**ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

**7.01** *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
    - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
    - 3) it has a proven record of performance and availability of responsive service; and
    - 4) it is not objectionable to Owner.
  - b. Contractor certifies that, if approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - a. shall certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design,
    - 2) be similar in substance to that specified, and
    - 3) be suited to the same use as that specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from that specified, and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.



- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

## 7.11 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

## 7.12 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance

with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or

Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
  - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
  2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided,

however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.



- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## ARTICLE 9 – OWNER'S RESPONSIBILITIES

### 9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### 9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

### 9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

### 9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for

Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

#### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### 10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

#### 10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

#### 10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### 10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

- B. An adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.

- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
  1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's

correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### ARTICLE 12 – CLAIMS

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.



- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;

2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

#### **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

##### **14.01 Access to Work**

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

##### **14.02 Tests, Inspections, and Approvals**

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

### 15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
  - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the



executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;

- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner

shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

##### A. *Application for Payment:*

- 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract

Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
    - d. a list of all disputes that Contractor believes are unsettled; and
    - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
  3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that:
    - (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and
    - (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Application and Acceptance:*
1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not

limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work

including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate For Convenience*

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

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract



Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### **18.03 *Cumulative Remedies***

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

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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## SUPPLEMENTARY CONDITIONS

### [Part B]

The Supplementary Conditions of this Part B modifies specific provisions the General Standard Conditions of the Construction Contract (EJCDC C-700 (2013)):

1. **Strike Paragraph 1.01.A.4 in its entirety and replace with the following:**
  4. *Bid*—The offer of a Bidder submitted on the prescribed form under a contract that solicits bids and provides a bid form, setting forth the prices for the Work to be performed.
2. **Strike Paragraph 1.01.A.7 in its entirety and replace with the following:**
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, bid bond or other Bid security, if any, the proscribed bid form, and the Bid with any attachments.
3. **Strike Paragraph 1.01.A.8 in its entirety and replace with the following:**
  8. *Change Order*—A document which is signed by Contractor and Owner, a requirement that cannot be waived by any subsequent action or agreement of the parties, and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
4. **Strike Paragraph 1.01.A.23 in its entirety and replace with the following:**
  23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having or purporting to have jurisdiction.
5. **Strike Paragraph 1.01.A.24 in its entirety and replace with the following:**
  24. *Liens*—Charges, security interests, or encumbrances, or legal actions to assert the same, upon Contract-related funds, real property, or personal property.
6. **Strike Paragraph 1.01.A.26 in its entirety and replace with the following:**
  26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid. The Notice of Award alone shall not create remedies for any Work performed under the Agreement or Contract Documents. Until Contractor receives a Notice to Proceed from Owner, Contractor shall not proceed with work and has no remedy against Owner for performing any Work related to the Project before receiving that Notice.
7. **Strike Paragraph 2.01.C in its entirety and replace with the following:**
  - C. [Intentionally omitted]
8. **Strike Paragraph 2.03.A.1 in its entirety and replace with the following:**
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract. The Progress Schedule, in detailed precedence-style critical path method (CPM) or primavera-type format satisfactory to Owner and Engineer, shall (i) provide a graphic representation of all activities and event that will occur during the performance of the Work:

(ii) identify each phase of the construction and occupancy; and (iii) set forth milestone dates that are significant to ensure the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

**9. Strike Paragraph 2.04.A in its entirety and replace with the following:**

A. Contractor shall arrange for, either at such time as Engineer shall specifically direct, of any, or otherwise, before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

**10. After Paragraph 2.04.B add the following:**

1. Generally, Contractor shall communicate with Engineer, or the Engineer's designated representative under Paragraph 9.02, concerning matters affecting Engineer or Owner. In the event that Contractor believes he cannot deliver necessary communications to Engineer or his representative, Contractor may transmit those communications to Owner's representative with a copy to Engineer, which communications will include a brief explanation of the need to communicate with Owner's Representative.

**11. Strike Paragraph 2.05.A in its entirety and replace with the following:**

A. Contractor shall arrange for, either at such time as Engineer shall specifically direct, of any, or otherwise, at least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times, in compliance with the requirements of Paragraph 2.03.A.1. Upon review and acceptance by Owner and Engineer, the Progress Schedule shall be deemed to be part of the Contract Documents. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor. If not accepted, the Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of Owner and Engineer and resubmitted.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work. The unit prices or lump sum amounts provided by the Contractor in the Bid Form shall serve as the basis for the Schedule of Values.

Additional subdivision of unit price or lump sum items shall be made as reasonably requested by the Engineer or as required to verify progress payments for Lump Sum or Unit Price work that will take place over several progress payment periods.

12. **Strike Paragraph 3.01.B in its entirety and replace with the following:**

- B. It is the intent of the parties that the Contract Documents describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom, practice, or trade usage as being required to produce the indicated result will be provided at no additional cost to Owner. The grades, elevations, dimensions, locations, and field measurements or any drawings or specification issued by Engineer, or the Work installed by other Contractors, are not guaranteed by Engineer or Owner. Contractor shall be responsible for verifying the accuracy of all grades, elevations, dimensions, locations, and field measurements. In all cases of the interconnection of its Work with existing or other Work, Contractor shall verify at the site all dimensions relating to such existing or other Work. Any errors due to Contractor's fault to verify shall be promptly rectified by Contractor without any additional costs to Owner or extensions of Contract Time.

13. **Strike Paragraph 3.03.A in its entirety and replace with the following:**

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall within two business days report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall within two business days report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof, or should have had such knowledge under the circumstances of the Contract.

14. **Strike Paragraph 3.04 in its entirety and replace with the following:**

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to Engineer all matters in question concerning the requirements of the Contract

Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder. However, should Owner choose to self-perform the duties and responsibilities of Engineer, or should Owner chooses to designate another party to fulfill these duties and responsibilities, (i) Contractor shall accept all actions and decisions of Owner or Owner's designated party as if and to the same extent it would were Engineer fulfilling these duties and responsibilities under the Contract; and (ii) Engineer shall have no liability for such actions or decisions.

- B. Engineer will, with reasonable timeliness based on the circumstances affected by the issue, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will within one business day of its determination give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

**15. Strike Paragraph 4.01.A in its entirety and replace with the following:**

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. Owners, with the concurrence of Engineer, will provide a Notice to Proceed after the effective date of the Agreement. In no event will Contractor have any remedies for Work performed on the Project until the Notice to Proceed is given of Contractor.

**16. Strike Paragraph 4.02.A in its entirety and replace with the following:**

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date. Contractor shall have no remedies for any Work Performed under the Agreement or Contract Documents until Owner issues the Notice to Proceed.

**17. Strike Paragraph 4.03.A in its entirety and replace with the following:**

- A. Engineer shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel, approved by Engineer, and licensed in the state where the

Project is located or working under direct supervision of a surveyor licensed in the state where the Project is located.

18. **Strike Paragraph 4.05.A in its entirety and replace with the following:**

A. If Owner or Engineer delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Notwithstanding any other provision of the Contract, Owner shall not be liable, as damages for delays under this section, for any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, directing suspension, rescheduling, or correction of the Work, or terminating this agreement for its convenience), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with Contractor's performance of the Work. If Contractor submits a progress report indicating, or otherwise expressing, an intention to achieve completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Times, Owner shall have no liability to Contractor for any failure of Contractor to so complete the Work according to that progress report.

19. **Strike Paragraph 4.05.F in its entirety and replace with the following:**

F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor, its subcontractors, suppliers, agents and representatives.

20. **Strike Paragraph 5.03.A in its entirety and replace with the following:**

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
3. Technical Data contained in such reports and drawings.

Such reports shall not excuse Contractor and each Subcontractor from the duty to independently evaluate and satisfy themselves as to the site conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the project site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor, supply, and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. Further, Owners assumes no responsibility or liability for the physical conditions or safety of the project site or any improvements located on the project site. Except as set forth in in Article 5, Contractor shall be solely response for providing a safe place for the performance of the Work. Owner shall not be required to make adjustments in either the Contract Price or Contract Times



arising from a failure by Contractor or any Subcontractor to independently evaluate and satisfy themselves as to the site conditions and limitations.

21. **Strike Paragraph 5.04.A in its entirety and replace with the following:**

- A. *Notice by Contractor.* If Contractor discovers or should have discovered that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, immediately or as soon as feasible, and in any event not more than 24 hours after the time Contractor discovers, and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

22. **Strike Paragraph 5.04.B in its entirety and replace with the following:**

- B. *Engineer's Review.* After receipt of written notice as required by the preceding paragraph, Engineer will immediately or as soon as feasible review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

23. **Strike Paragraph 5.04.D.3 in its entirety and replace with the following:**

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a written, duly authorized, and signed Change Order.

24. **Strike Paragraph 5.05.B in its entirety and replace with the following:**

- B. *Notice by Contractor.* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, immediately attempt to and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the

owner of such Underground Facility and by not later than the end of the next business day give written notice to that owner and to Owner and Engineer.

25. **Strike Paragraph 5.05.C in its entirety and replace with the following:**

- C. *Engineer's Review:* Engineer will as soon as feasible review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

26. **Strike Paragraph 5.05.E.2 in its entirety and replace with the following:**

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a written, duly authorized, and signed Change Order.

27. **Strike Paragraph 5.06.C in its entirety and replace with the following:**

- C. Contractor must make all reasonable efforts to discover and locate any Hazardous Environmental Conditions at the site that may present a danger to persons or property exposed thereto in connection with the Work at the site. Contractor is liable for any damages caused by any Hazardous Environmental Conditions that Contractor knew or, or by the exercise of reasonable efforts should have known of, and any damages caused by reason of any Hazardous Environmental Conditions created, known to, or encountered by Contractor, its Subcontractors, Supplier, or anyone else for whom Contractor is responsible. Within 24 hours of the time when Contractor discover any Hazardous Environmental Conditions, Contractor will follow the procedures set forth in Paragraph 5.06.E. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

28. **Strike Paragraph 5.06.G in its entirety and replace with the following:**

- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Nothing in this Paragraph obligates Owner or Contractor to indemnify the other from and against the consequences of the other's own negligence.

29. **Strike Paragraph 5.06.I in its entirety and replace with the following:**

- I. To the fullest extent permitted by Laws and Regulations, the party to this Contract who created or was responsible for the Hazardous Environmental Condition shall indemnify and hold harmless the other party to this Contract, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (i) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by the party(ies) to be indemnified hereunder or by anyone for whom party(ies) to be indemnified hereunder is responsible. Nothing in this Paragraph 5.06.I shall obligate the party to this Contract who created or was responsible for the Hazardous Environmental Condition to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

30. **Strike Paragraph 6.01.A in its entirety and replace with the following:**

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount of 100% of the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

31. **Strike Paragraph 6.01.D in its entirety and replace with the following:**

- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall immediately upon learning of the bankruptcy or insolvency notify Owner and Engineer and shall, within 10 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

32. **Strike Paragraph 6.02.A in its entirety and replace with the following:**

- A. Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions Addendum A.

33. **Modify Paragraph 6.02.B as follows:**

Strike the words "Owner or" in the first sentence.

34. **Strike Paragraph 6.02.D in its entirety and replace with the following:**

- D. [Intentionally omitted]

**35. Modify Paragraph 6.02.E as follows:**

Strike the words "or Contractor" in the first sentence.

**36. Strike Paragraph 6.02.F in its entirety and replace with the following:**

F. If Contractor does not purchase or maintain all of the insurance required of such party by the Contract, Owner shall notify Contractor in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

**37. Strike Paragraph 6.02.H in its entirety and replace with the following:**

H. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect to obtain equivalent insurance to protect Owner and Contractor's interests at the expense of Contractor and the Contract Price shall be adjusted in order for Owner to recover the full cost of the insurance so obtained.

**38. Strike Paragraph 6.06.B in its entirety and replace with the following:**

B. Owner waives all rights against Contractor and Subcontractors and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. [Intentionally left blank]
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06. This Paragraph applies solely to pre-completion insurance policies and Owner may claim subrogation to coverages provided for damages caused by Contractor and Subcontractors, or officers, directors, members, partners, employees, agents, consultants and subcontractors of each.

**39. Strike Paragraph 6.07.A in its entirety and replace with the following:**

A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 6.07.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

**40. Strike Paragraph 6.07.B in its entirety and replace with the following:**

B. Proceeds for such insured losses under the builder's risk and other policies of insurance required by Paragraph 6.05 shall be made payable by the insurer to Owner, or if paid to another Party to this Contract, shall be immediately signed over to the benefit of Owner. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to

Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers.

**41. Strike Paragraph 7.01 in its entirety and replace with the following:**

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, as provided under Paragraph 2.04.B., who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

**42. After Paragraph 7.02.B, add the following:**

- C. Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

**43. Strike Paragraph 7.03.B in its entirety and replace with the following:**

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. Contractor agrees to assign to Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work, and Contractor further agrees to perform the Work in such a manner as to preserve any and all manufacturer's warranties. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

**44. Strike Paragraph 7.05.B in its entirety and replace with the following:**

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed an average of seven days, or such other reasonable period of time as Owner determines is required to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts,

including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

**45. Strike Paragraph 7.06.A in its entirety and replace with the following:**

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. No later than 14 days after the execution of the Agreement by Contractor and Owner, Contractor shall furnish Owner and Engineer, in writing, with (1) the name, trade, and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor.

**46. Strike Paragraph 7.08.A in its entirety and replace with the following:**

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Contractor shall pay all charges of utility owners for connections for providing service to the Work, and Owner shall pay all charges of such utility owners for costs related to providing post-construction service to the Work.

**47. After Paragraph 7.09.A, add the following:**

- B. Should Owner be exempt from payment of sales and compensating use taxes of the State on all materials to be incorporated into the Work.
1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

**48. Strike Paragraph 7.10.B in its entirety and replace with the following:**

- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

**49. Strike Paragraph 7.12.D in its entirety and replace with the following:**

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must

comply while at the Site, to which Owner may interpose reasonable objections that are not beyond a general right to order, inspect, make suggestions, or prescribe alterations or deviations or in any way accept or cause liable for site safety to shift from the sole responsibility of Contractor to either Owner or Engineer to any degree.

**50. Strike Paragraph 7.15.A in its entirety and replace with the following:**

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof as soon as is feasible. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

**51. Strike Paragraph 7.17.A in its entirety and replace with the following:**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.

**52. Strike Paragraph 7.18.A in its entirety and replace with the following:**

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting in whole or in part from any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

**53. Strike Paragraph 8.03.D in its entirety and replace with the following:**

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) as soon as reasonably possible attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim as expediently as possible by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all

costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference. In no event shall Contractors actions as described in this Paragraph result in an increase in the Contract Price or Contract Times.

**54. Strike Paragraph 9.03.A in its entirety and replace with the following:**

- A. Owner shall furnish the data required of Owner in accordance with the Contract Documents.

**55. Strike Paragraph 10.03.A in its entirety and replace with the following:**

- A. If Owner and Engineer have agreed that Engineer will act as Owner's Project Representative, Engineer shall act as its Resident Project Representative and designate a specific person with Engineer's firm to serve as the Resident Project Representative to represent Owner at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority, which shall include the authority to transmit instructions, receive information, render decisions relative to the Contract Documents, and otherwise act in place of the Engineer, subject to the Supplementary Conditions providing otherwise and the limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions. In the event Owner designates a representative or agent other than Engineer or Engineer's agent, Engineer shall not be liable for decisions rendered by such Owner or Owner's Representative.

**56. Strike Paragraph 10.07.A in its entirety and replace with the following:**

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith. However, should Owner choose to self-perform the duties and responsibilities of Engineer, or should Owner chooses to designate another party to fulfill these duties and responsibilities, (i) Contractor shall accept all actions and decisions of Owner or Owner's designated party as if and to the same extent it would were the Engineer fulfilling these duties and responsibilities under the Contract; and (ii) Engineer shall not be liable for decision rendered by Owner or Owner's Representative

**57. Strike Paragraph 11.01.A.1.b in its entirety.**

**58. Strike Paragraph 11.01.A.3 in its entirety and replace with the following:**

- 3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the



Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order should instead, have been issued as a Change Order, because that Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein. Engineer will obtain not later than one week after issuing a given Field Order, and if possible before Contractor performs work under the Field Order, the signature of Contractor on each Field Order. This signature confirms that Contractor is not entitled to any change in the Contract Price or the Contract Times. Engineer should obtain the signature of Contractor on all Field Orders issued.

**59. Strike Paragraph 11.02.A in its entirety and replace with the following:**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall proceed with the Work involved; or, in the case of a deletion in the Work, cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

**60. Strike Paragraph 11.04.C.2.a in its entirety and replace with the following:**

- a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, Contractor's fee shall be 15%;

**61. Strike Paragraph 11.04.C.2.c in its entirety and replace with the following:**

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that Contractor's fee shall be based on: (i) a fee of 15% of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (ii) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27% of the costs incurred by the Subcontractor that actually performs the work;

**62. Strike Paragraph 11.05.A in its entirety and replace with the following:**

- A. The Contract Times may only be changed by agreement only through a written and executed Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.

63. **After Paragraph 11.05.B add the following:**
- C. All time limits stated in the Contract Documents are of the essence of the Agreement. Contractor acknowledges and understands that (i) Owner has a need for the completed Work, shortly after the date set forth in the Agreement by which substantial completion is to be achieved for the public good and to protect public funds; and (ii) failure by Contractor to complete the Work in accordance with the construction schedule will cause significant damages to Owner, including, without limitation, public health, safety, and welfare, as well as the undue diminishment of public funds.
64. **Strike Paragraph 11.01.A.1.B in its entirety.**
65. **Strike Paragraph 11.06.A.2 in its entirety and replace with the following:**
2. *Engineer's Action:* Engineer will review each Change Proposal and, within 60 days after receipt of the Contractor's supporting data, will recommend to the Owner that the Owner either deny or approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor and Funding Agency (if there is one). If Engineer does not take action on the Change Proposal within 60 days, then either Owner or Contractor may, at any time thereafter, submit a letter to the other party indicating that as a result of Engineer's inaction, the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
66. **Strike Paragraph 11.06.A.3 in its entirety and replace with the following:**
3. *Binding Decision:* Engineer's decision on issues other than changes in Contract Price or changes in Contract Times will be final and binding upon Contractor, unless Owner or Contractor appeals the decision by filing a claim under Article 12.
67. **In Paragraph 11.07.A delete the following:**
- "in accordance with a Work Change Directive"
68. **After Paragraph 11.07.B add the following:**
- C. An agreed Change Order that adjusts the Contract Price, or the Contract Time, or both, shall be accomplished only by a written and executed Change Order. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the contract documents or in any time period provided for in the Contract Documents, unless executed as a Change Order under Paragraph 10.03. Any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Times. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Order in applications for payments as if such Work were originally part of the Agreement. No individual employer, agent, or representative of Owner is authority to waive this requirement of compliance with the requirement of this Section.

**69. Strike Paragraph 12.01.B in its entirety and replace with the following:**

B. *Submittal of Claim.* The party submitting a Claim shall deliver it directly to the other party to the Contract as soon as practicable, and in no event more than 30 calendar days, after the start of the event giving rise thereto, and in the case of appeals regarding Change Proposals within 14 calendar days of the decision under appeal. The party submitting the Claim shall also furnish a copy to Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

**70. Strike Paragraph 13.01.B.1 in its entirety and replace with the following:**

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized in writing by Owner.

**71. Strike Paragraph 13.01.B.4 in its entirety and replace with the following:**

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work, but only to the extent authorized and approved in writing by Engineer.

**72. Strike Paragraph 13.01.B.5.c in its entirety and replace with the following:**

c. Construction Equipment and Machinery:

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the "The Rental Rate Blue Book for Construction Equipment" published by Equipment Watch, Prism Business Media. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading,

assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

**73. Strike Paragraph 13.03.E.1 in its entirety and replace with the following:**

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement (the quantity of an item will be deemed to differ materially and significantly, without limitation, if it exceeds or falls short of the estimated quantity by more than 25 percent);

**74. Strike Paragraph 14.02.F in its entirety and replace with the following:**

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted in a reasonable time, but in no case more than seven days.

**75. Strike Paragraph 14.03.D in its entirety and replace with the following:**

- D. *Correction, or Removal and Replacement.* Using best efforts and as soon as feasible, but in no event more than three days after receipt of written notice of defective Work, Contractor shall begin correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective, and shall continue to undertake corrections without delay or adjustment to Contract Price or Contract Times.

**76. Strike Paragraph 14.05.C.2 in its entirety and replace with the following:**

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction, unless Contractor fails to provide written notice as required in Paragraph 14.02.F. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

**77. After Paragraph 15.01.B.3 add the following:**

4. Each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:
  - a. In addition to the current Contractor's lien waiver, a duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into Subcontracts, the amount of each such Subcontract, the amount requested for each Subcontractor and Supplier who is to be paid any sum under the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;

- b. Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material Suppliers and lower-tier Subcontractors, establishing payment or satisfaction of payment of all amounts requested of the Contractor on behalf of such entities or persons in any previous application for payment; and
  - c. All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Engineer. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.
5. Contractor shall also comply with the following specific requirements:
- a. The aggregate cost of materials stored off site shall not exceed \$10,000 at any time without written approval of Owner.
  - b. Title to such materials shall be vested in Owner, as evidenced by documentation satisfactory in form and substance to Owner and Owner's construction lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
  - c. With each application for payment, Contractor shall submit to Owner a written list identifying each location where materials are stored off the project site and the value of materials at each location. Contractor shall procure insurance satisfactory to Owner for materials stored off the project site in an amount not less than the total value thereof.
  - d. The consent of any surety shall be obtained, to the extent required by the surety, or Owner prior to payment for any materials stored off the project site. e. Representatives of Owner and the lender shall have the right to make inspections of the storage areas for any materials stored off site at any time.
  - f. Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of Owner and lender; (2) specifically marked for use on the project; and (3) segregated from other materials at the storage facility.

**78. After Paragraph 15.01.C.6.e add the following:**

- f. Liability for liquidated damages has been incurred by Contractor
- g. Contractor has failed to pay for damages to existing underground utilities as required by the Tennessee One Call Law.

**79. After Paragraph 15.02.A add the following:**

- 1. Contractor further expressly undertakes to defend Owner and Engineer, at Contractor's sole expense, against any actions, lawsuits, or proceedings brought against Owner, Engineer, or any third party as a result of liens filed against the Work, the site of any of the Work, the project site and any improvements thereon, payments due Contractor, or any portion of the property of Owner, Engineer, or third party. Contractor hereby agrees to indemnify and hold Owner, Engineer, and third parties harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such action, lawsuit, or proceeding.

2. Owner shall release any payments withheld due to a lien or claim of lien, if Contractor obtains security acceptable to Owner or a lien bond that is (a) issued by a surety acceptable to Owner; (b) in form and substance satisfactory to Owner; and (c) in an amount not less than two hundred percent (200%) of such lien claim. Provided, however, Contractor shall not be relieved of any responsibilities or obligations under this paragraph, by obtaining a bond or other acceptable security, including, without limitation, the duty to defend and indemnify Owner and Engineer. The cost of any premiums incurred in connection with such bonds and securities shall be the responsibility of Contractor and shall not be part of, or cause any adjustment to, the Contract Price.
3. Contractor agrees to waive, to the fullest extent allowed by applicable law, any right that it may have to assert a mechanic's or other lien against the Project or the Site and any improvements thereon, including, without limitation, the Work itself. Furthermore, Contractor will cause a similar provision, waiving to the fullest extent allowed by applicable law all rights to a mechanic's or other lien against the property, to be included in all of its Subcontracts, any sub-subcontracts, and all contracts with material Suppliers.
4. Notwithstanding the foregoing, Owner reserves the right to settle any disputed Subcontractor's, mechanic's or material Supplier's lien claim by payment to the lien claimant or by such other means as Owner, in Owner's sole discretion, determines is the most economical or advantageous method for settling the dispute. Contractor shall promptly reimburse Owner, upon demand, for any payment so made.

**80. Strike Paragraph 15.03.B in its entirety and replace with the following:**

- B. At a time Engineer determines to be reasonable, after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel, and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owned, then Owner may impose a reasonable set-off against payments due under Article 15.

**81. Strike Paragraph 15.03.E in its entirety and replace with the following:**

- E. After Substantial Completion the Contractor shall without delay begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

**82. Strike Paragraph 15.05.A in its entirety and replace with the following:**

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

83. **Strike Paragraph 15.08.A in its entirety and replace with the following:**
- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall immediately, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such other adjacent areas;
  2. correct such defective Work;
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
84. **Strike Paragraph 15.08.B in its entirety and replace with the following:**
- B. If Contractor does not immediately comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
85. **Strike Paragraph 15.08.C in its entirety and replace with the following:**
- C. In special circumstances where a particular item of equipment is placed in continuous service solely for the benefit of Owner before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
86. **Strike Paragraph 16.02.A.1 in its entirety and replace with the following:**
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to have Contractor's authorized representative required by Paragraph 2.04.B available as reasonably needed (including the repeated absence of such authorized representative for two business days consecutively or more at a time), failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
87. **Strike Paragraph 16.03 in its entirety and replace with the following:**
- A. Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this paragraph shall be by a notice of

termination delivered to Contractor specifying the extent of termination and the effective date.

- B. Upon receipt of a notice of termination for convenience, Contractor shall immediately, in accordance with instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this paragraph:
- (1) Cease operations as specified in the notice;
  - (2) Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;
  - (3) Terminate all subcontracts and orders to the extent they relate to the Work terminated;
  - (4) Proceed to complete the performance of Work not terminated; and
  - (5) Take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work.
- C. Upon such termination, Contractor shall recover as its sole remedy payment of the percentage of the Contract Price equal to the percentage of the work performed satisfactorily and not previously paid for. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- D. Owner shall be credited for: (1) payments previously made to Contractor for the terminated portion of the Work; (2) claims that Owner has against Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by Contractor that are part of the Contract Price.

**88. Strike Paragraph 16.04 in its entirety and replace with the following:**

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 60 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 30 days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 60 days to pay Contractor any sum finally determined to be due, Contractor may, seven business days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for



expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

**89. Add Paragraph 17.02 as follows:**

17.02 *Dispute Resolution.* Any dispute subject to resolution under this Article and any other claim or dispute regarding the Contract Documents shall be resolved in accordance with the process set forth in Addendum B of these Supplementary Conditions.

## ADDENDUM A

### Schedule of Insurance

#### CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers' compensation and employers liability insurance, providing the following coverages, limits and endorsements:

**1. Commercial General Liability Insurance.**

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
  - a. Include the per project aggregate endorsement;
  - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
  - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
  - d. Includes a severability of interest clause; and
  - e. Waive all rights of recovery against the Additional Insureds.

- 2. Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

**3. Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

**4. Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.

**5. Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.

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

**7. Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.

**8. Builder's Risk.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.

**9. Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.

**10. Term of Coverage**

- 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

**11. Subcontractor and Lower-Tier Entities Insurance Requirements**

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
  - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
  - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
  - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
  - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

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

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits;
- 12.3 Include the Project per aggregate endorsement;
- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and

- 12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

**13. Certificates and Endorsements**

- 13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 13.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

- 14. Reduction in Coverage.** Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

**15. Suppliers and Materialmen Coverages**

- 15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

**16. Condition Precedent to Starting Work**

- 16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the

original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

- 16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.
17. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.
18. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.
19. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

## ADDENDUM B

### DISPUTE RESOLUTION PROCEDURES

#### 1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 Contractor and the Owner will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
  - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
  - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

#### 2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
  - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
  - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
  - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association ("AAA")

Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules")

- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
  - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
  - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

**3. Non-Emergency Arbitration**

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
  - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
  - b. The two arbitrators then each select a third arbitrator.
  - c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver



to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.

- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
  - a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
  - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
  - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
  - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
  - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
  - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.
4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the Owner will continue to make payment to Contractor in accordance with the Contractor Agreement.
5. **Exceptions**
  - 5.1 Neither the Owner nor Contractor are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.
  - 5.2 The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.
  - 5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
  - 5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

**SPECIAL CONDITIONS**

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## SPECIAL CONDITIONS

### General

#### Item No. 1 Non-Collusion Affidavit

All bidders must submit with bid a non-collusion affidavit as contained in these documents.

#### Item No. 2 Discrepancies

Where there appears to be a discrepancy between the Special Conditions and any other part of the contract documents and specifications, these Special Conditions shall govern.

#### Item No.3 Tennessee Department of Transportation Specification

The most current edition of the Tennessee Department of Transportation, Standard Specifications for Roadway and Bridge Construction, and any revisions and amendments since then, are hereby designated a part of these specifications. All materials, equipment, workmanship, traffic control methods, and any other applicable parts of this publication shall be in accordance with this publication. In the Standard Specifications and Special Provisions, change the words as listed below and substitute the words:

State to Owner  
Department to Owner  
Commissioner to Owner  
Engineer to Owner

#### Item No. 4 Construction Materials Testing

The City of Murfreesboro reserves the right to sample and have performed applicable testing on any materials used and have those samples evaluated for compliance to the appropriate specifications. The cost of the testing shall be the responsibility of the City of Murfreesboro. If the initial testing is found to be out of compliance with the specifications contained herein, then the City of Murfreesboro will reserve the right to have the materials retested and those cost shall be borne by the Contractor.

#### Item No. 5 Utilities

All utility adjustments are to be performed by the contractor, except as he may negotiate with the owners to have the adjustments at the rate provided in his bid proposal and made a part of the contract.

The contractor shall schedule a meeting with all utilities at least 48 hours prior to the scheduled work to verify that all castings have been properly adjusted and there are no conflicts with proposed utility construction. It will be necessary for all utilities to perform an on-site inspection with the contractor to verify all castings are properly adjusted. Any castings that are not properly adjusted must be readjusted prior to paving.

**Item No. 6 Contract Extension**

The City of Murfreesboro reserves the right to award all or any part of this Contract to one or more bidders. The City further reserves the right to extend the contract for a period of twelve (12) months no more than four (4) times, provided both the City and Contractor agree to such extension. The time of this contract shall expire June 30, 2019.

**Item No. 7 Traffic Control**

Traffic control provisions should adhere to the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). Cost to maintain traffic control measures shall be paid for per the items provided within this contract. The contractor will furnish examples of traffic control plans for review by the Traffic Department. In certain situations, specific traffic control plans may be required based on the scheduled work and location.

**Item No. 8 Measurement of Quantities for Payment**

The Contractor will reconcile each day with the City of Murfreesboro Project Representative the materials used during that day or shipped to the project and adequately stored and protected for which the Contractor requests payment.

**Item No. 9 Certification of Scale Operators**

The Contractor's attention is specifically directed to Tennessee Code Annotated 47-26-101, et seq., governing certification and bond of scale operators. The provisions of this code as well as all other federal, state, and City of Murfreesboro laws, ordinances, rules and regulations applicable to the construction of this project shall apply to the Contract throughout. The City of Murfreesboro reserves the right to direct the Contractor to a state or commercially owned scale to verify scale weights provided by the Contractor.

**Item No. 12 Quantities**

The quantities shown under for the items listed for bidding purposes are estimated amounts only. The quantities used will fluctuate based on the need for the items during the contract period.

**Item No. 19 Miscellaneous**

All incidental equipment used in cold planning and paving of City streets shall be furnished by the Contractor and be included in the unit prices. No separate payment will be made for incidental equipment charges.

**Item No. 20 Quarterly Bituminous Asphalt Adjustment Factor**

The "monthly bituminous adjustment factor", according to Special Provision 109B, shall be averaged on a monthly basis and applied to the contract unit price bid provided the increase or decrease differs 5 percent or more from the "basic bituminous material index". The Owner reserves the right to alter the quantities of material or modify the design if the change in prices warrants material of design substitution. If adjustments are

made in quantities or design, the Contractor shall accept the unit price bid or the applicable monthly adjusted unit prices as full compensation for all work performed according to the provisions of TDOT subsection 104.02 of the standard specification.

**Item No. 21 Pre-Construction Meeting**

A pre-construction meeting will be scheduled prior to the issuance of a notice to proceed on this project.

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STATE

OF

TENNESSEE

January 1, 2015

(Rev. 08-01-00)

(Rev. 08-02-00)

(Rev. 01-07-13)

(Rev. 05-16-16)

SPECIAL PROVISION

REGARDING

PAYMENT ADJUSTMENT FOR BITUMINOUS MATERIAL

This Special Provision covers the method of payment adjustment for bituminous materials.

**100% Virgin Bituminous Material**

A payment adjustment will be made to compensate for increases and decreases of 5% or more in the contractor's bituminous material cost. The normal bid items in the contract covering the bituminous material shall not be changed. Payment adjustments (+/-) shall be paid under "Payment Adjustment for Bituminous Material" and calculated as described herein:

A "Basic Bituminous Material Index" will be established by the Tennessee Department of Transportation prior to the time the bids are opened. This "Basic Bituminous Material Index" is the average of the current quotations on P.G. 64-22 from suppliers furnishing asphalt cement to contractors in the State of Tennessee. These quotations are the cost per ton f.o.b. supplier's terminal.

The "Basic Bituminous Material Index" for this project is \$ 539.17 per ton.

The "Monthly Bituminous Material Index" is also established on the first day of each month by the same method. A payment adjustment shall be made provided the "Monthly Bituminous Material Index" varies 5% or more (+/-) from the "Basic Bituminous Material Index".

Where the price index varies 5% or more, the payment adjustment will be made as follows: PA

$$= [Ic - Ib] \times T$$

Where:

PA = Price Adjustment for Adjustment Month  
Ib = Basic Bituminous Material Index  
Ic = Monthly Bituminous Material Index  
T = Tons bituminous material for Adjustment Month

Payment adjustment will be applied to all asphalt cement, asphalt emulsion, or bituminous material used for paving on this project.



Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Change Order, payment adjustments for bituminous material will continue to be made only when the "Monthly Bituminous Material Index" is less than the "Basic Bituminous Material Index" and varies 5% or more.

Payment adjustment, for bituminous material used after the expiration of the allocated working time and where the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", will not be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, payment adjustments for bituminous material shall be calculated for each month where the allocated working time has expired, the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", and the indices vary 5% or more. The calculation of the bituminous payment adjustment shall be made using the "Monthly Bituminous Material Index" or the "Bituminous Material Index for Contract Completion Date" in accordance with the following formulas:

The "Bituminous Material Index for Contract Completion Date" is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The "Monthly Bituminous Material Index" is less than the "Bituminous Material Index for Contract Completion Date".

$$PA = [Ic - Ib] \times T$$

The "Monthly Bituminous Material Index" is greater than the "Bituminous Material Index for Contract Completion Date".

$$PA = [Icd - Ib] \times T$$

Where:

PA = Price Adjustment for Adjustment Month  
Ib = Basic Bituminous Material Index  
Ic = Monthly Bituminous Material Index  
Icd = Bituminous Material Index for Contract Completion Date (or as extended by Change Order)  
T = Tons

#### FOR REFERENCE ONLY

SiteManager calculates the price adjustment based on the actual amount of asphalt cement (residue) in the emulsion using the following percentages:

-tack coats and shoulder sealants (e.g. SS-1, SS-1h, CSS-1, Css-1h)	63% residue
-prime coats (e.g. AE-P)	54% residue
-microsurfacing (e.g. CQS-1HP)	65% residue
-chip seals (e.g. CRS-2, CRS-2P)	69% residue

### Mixes Containing Recycled Bituminous Material

The quantity of virgin asphalt cement in tons subject to payment adjustment in recycled mixes shall be the product of the total tons of each mix multiplied by the difference between (1) the percent of asphalt cement specified for bidding purposes and (2) the percent of asphalt cement obtained from the recycled asphaltic material (RAP) used in each mix. No payment adjustment under this special provision for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be allowed for asphalt cement content in excess of the percent specified for bidding purposes, as all payment adjustments for asphalt cement in the mix design of recycled mixes in excess of the percent of asphalt cement specified for bidding purposes will be made in accordance with the Standard Specifications.

No payment adjustment for bituminous material containing RAP shall be made unless the "Monthly Bituminous Material Index" varies 5% or more from the "Basic Bituminous Material Index" indicated in this Special Provision.

Where the price index varies 5% or more, the payment adjustment will be made as follows:

$$PA = \frac{[Ic - Ib] \times [BA - RA] \times Tm}{100}$$

PA = Price Adjustment for Adjustment Month  
Ib = Basic Bituminous Material Index

Ic = Monthly Bituminous Material Index

BA = Percent asphalt specified for bidding purposes

RA = Percent asphalt obtained from recycled asphaltic material

used in each mix

Tm = Tons asphalt mix for adjustment month

Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Change Order, payment adjustments for bituminous material containing RAP will continue to be made only when the "Monthly Bituminous Material Index" is less than the "Basic Bituminous Material Index" and varies 5% or more.

Payment adjustment, for bituminous material containing RAP provided after the expiration of the allocated working time and where the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", shall not be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, payment adjustments for bituminous material containing RAP shall be calculated for each month where the allocated working time has expired, the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", and the indices vary 5% or more. The calculation of the bituminous payment adjustment shall be made using the "Monthly Bituminous Material Index" or the "Bituminous Material Index for Contract Completion Date" in accordance with the following formulas:

The "Bituminous Material Index for Contract Completion Date" is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The "Monthly Bituminous Material Index" is less than the "Bituminous Material Index for Contract Completion Date".

$$PA = \frac{[Icd - Ib] \times [BA - RA] \times Tm}{100}$$

The "Monthly Bituminous Material Index" is greater than the "Bituminous Material Index for Contract Completion Date".

$$PA = \frac{[Ic - Ib] \times [BA - RA] \times Tm}{100}$$

Where:

PA = Price Adjustment for Adjustment  
Month Ib = Basic Bituminous Material Index  
Ic = Monthly Bituminous Material Index  
Icd = Bituminous Material Index for Contract Completion Date (or as extended by Change Order)  
BA = Percent asphalt specified for bidding purposes  
RA = Percent asphalt obtained from recycled asphaltic material used in each mix  
Tm = Tons asphalt mix for adjustment month

**SPECIAL PROVISION**

**REGARDING**

**EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS**

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of *Tennessee Code Annotated* §12-3-309 regarding the employment of illegal immigrants in the performance of state contracts.

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.
2. Prior to the use of any subcontractor in the performance of this Contract, and semi- annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.
3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated* § 12-3-309 for acts or omissions occurring after January 1, 2007. This law requires the Chief Procurement Officer, Department of General Services, to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Annual Paving Contract Award  
**Department:** Engineering  
**Presented by:** Chris Griffith, Executive Director  
**Requested Council Action:**

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

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## Summary

Award of Annual City Paving Contract.

## Staff Recommendation

Approve the award of Annual Paving Contract to Wiregrass Construction and Hawkins Asphalt Paving, LLC.

## Background Information

The City uses multiple annual contracts for repairing and maintaining public infrastructure. The primary and specialty paving contracts, which had a five-year term limit, expire this year. In place of having separate contracts, staff proposed combining them and selecting the two lowest, responsive, and responsible bidders. This new paving contract has a one-year term and can be renewed up to four additional years.

Staff advertised this contract and three bids were received on June 7<sup>th</sup>, 2023. The two low bids were submitted by Wiregrass Construction in the amount of 4,293,523 and Hawkins Asphalt in the amount of 4,331,261. These two contractors have successfully completed numerous paving projects under annual contracts for several years and have also paved as subcontractors on capital improvement projects.

## Council Priorities Served

### *Responsible Budgeting*

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

## Fiscal Impact

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

## Attachments

1. Agreement for 2023-2024 City Paving Contract - Wiregrass Construction
2. Agreement for 2023-2024 City Paving Contract - Hawkins Asphalt Paving

## **Agreement for 2023-2024 City Paving Contract**

This Agreement is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_ 2023 (“Effective Date”), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Wiregrass Construction Company**, a Corporation of the State of Alabama (“Contractor”).

This Agreement consists of the following documents:

- This document;
- ITB-53-2023 – City Paving Contract issued 05/23/2023 (the “Solicitation”);
- Addenda (numbered #1 dated May 25, 2023, and #2 dated May 31, 2023)
- General Conditions and Supplementary Conditions (Exhibit C)
- Special Provision (Exhibit A)
- List of Streets to be Paved (Exhibit B)
- Contractor’s Proposal, dated 06/07/2023 (“Contractor’s Proposal”);
- Contractor’s Price Proposal, dated 06/07/2023 (the “Price Proposal”); and,
- Any properly executed amendments to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Addenda (if multiple Addenda, priority shall be in numerical order);
- Fourth, the General Conditions and Supplementary Conditions
- Fifth, the Special Provisions;
- Sixth, the Solicitation;
- Seventh, the List of Streets to be Paved; and,
- Lastly, Contractor’s Proposal.

**1. Duties and Responsibilities of Contractor.**

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, and shall perform and complete all work required by Owner under the **2023-2024 CITY PAVING CONTRACT**, all in strict accordance with the Contract Documents including all addenda thereto, as prepared by Owner. Owner and Contractor agree that it is Owner’s intent that Contractor provide a variety of improvements which, depending upon circumstances, may include related items for which a specific unit description is not given or price specified. In such event Owner and Contractor shall agree on the unit and its price with a Change Order before the work is begun, but no such Change Order Shall exceed ten percent (10%) of the total estimated amount upon which the bid is awarded.

**2. Term.**

The term of this Agreement commences on the Effective Date and expires in one year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.

- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Payment.**

- a. The Owner shall pay the Contractor for each item of work in accordance with the Bid Price list submitted with the bid Proposal, which bid Price list is incorporated by this reference into this **2023-2024 City Paving Contract**. The Owner shall pay the Contractor for the performance of the Contract in current funds, subject to additions and deductions as provided in Section 14 of the General Conditions.
- b. Beginning the first anniversary after the effective date of the Annual Paving Contract, the unit rates set forth in this Agreement shall be increased effective as of that anniversary and each anniversary thereafter by an amount equal to the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items (index base period 1982-84=100), published by the United States Bureau of Labor Statistics, from the immediately preceding January of that calendar year. This increase will be subject to City Council approval.

**4. Warranty.** Contractor shall provide all warranties as described in the ITB and Bid Proposal. Warranties shall further be provided according to the terms listed in the General Conditions and Supplementary Conditions, if any.

**5. Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

**6. Insurance.** During the term of this Agreement, Contractor must maintain insurance as provided in the General Conditions, Supplemental Conditions, and Addendum A – Schedule of Insurance.



**7. Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees (“Expenses”) arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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.

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

- I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

- II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

- III. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use

of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

If to the City of Murfreesboro:	If to Contractor:
City Manager City of Murfreesboro 111 West Vine Street Murfreesboro, TN 37130	Josh Miller Wiregrass Construction Company 827 Needham Dr. Smyrna, TN 37167

9. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

**Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded

from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

be filed in the courts of Rutherford County, Tennessee.

- 19. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 20. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 21. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

**IN WITNESS WHEREOF**, the parties enter into this agreement as of \_\_\_\_\_, 2023 (the "Effective Date").

**CITY OF MURFREESBORO, TENNESSEE**

**Wiregrass Construction Company**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: \_\_\_\_\_  
Josh Miller, Vice President & TN  
Area Manager

Approved as to form:

\_\_\_\_\_  
Adam F. Tucker, City Attorney

## **Agreement for 2023-2024 City Paving Contract**

This Agreement is entered into and effective as of the \_\_\_ day of \_\_\_\_\_ 2023 ("Effective Date"), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Hawkins Asphalt Paving**, a Limited Liability Company of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document;
- ITB-53-2023 – City Paving Contract issued 05/23/2023 (the "Solicitation");
- Addenda (numbered #1 dated May 25, 2023, and #2 dated May 31, 2023)
- General Conditions and Supplementary Conditions (Exhibit C)
- Special Provision (Exhibit A)
- List of Streets to be Paved (Exhibit B)
- Contractor's Proposal, dated 06/07/2023("Contractor's Proposal");
- Contractor's Price Proposal, dated 06/07/2023\_(the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Addenda (if multiple Addenda, priority shall be in numerical order);
- Fourth, the General Conditions and Supplementary Conditions
- Fifth, the Special Provisions;
- Sixth, the Solicitation;
- Seventh, the List of Streets to be Paved; and
- Lastly, Contractor's Proposal.

### **1. Duties and Responsibilities of Contractor.**

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, and shall perform and complete all work required by Owner under the **2023-2024 CITY PAVING CONTRACT**, all in strict accordance with the Contract Documents including all addenda thereto, as prepared by Owner. Owner and Contractor agree that it is Owner's intent that Contractor provide a variety of improvements which, depending upon circumstances, may include related items for which a specific unit description is not given or price specified. In such event Owner and Contractor shall agree on the unit and its price with a Change Order before the work is begun, but no such Change Order Shall exceed ten percent (10%) of the total estimated amount upon which the bid is awarded.

### **2. Term.**

The term of this Agreement commences on the Effective Date and expires in one year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.

- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Payment.**

- a. The Owner shall pay the Contractor for each item of work in accordance with the Bid Price list submitted with the bid Proposal, which bid Price list is incorporated by this reference into this **2023-2024 City Paving Contract**. The Owner shall pay the Contractor for the performance of the Contract in current funds, subject to additions and deductions as provided in Section 14 of the General Conditions.
- b. Beginning the first anniversary after the effective date of the Annual Paving Contract, the unit rates set forth in this Agreement shall be increased effective as of that anniversary and each anniversary thereafter by an amount equal to the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items (index base period 1982-84=100), published by the United States Bureau of Labor Statistics, from the immediately preceding January of that calendar year. This increase will be subject to City Council approval.

**4. Warranty.** Contractor shall provide all warranties as described in the ITB and Bid Proposal. Warranties shall further be provided according to the terms listed in the General Conditions and Supplementary Conditions, if any.

**5. Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

**6. Insurance.** During the term of this Agreement, Contractor must maintain insurance as provided in the General Conditions, Supplemental Conditions, and Addendum A – Schedule of Insurance.

**7. Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees (“Expenses”) arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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.

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

I. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a. Procure for the City the right to continue using the products or services.
- b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
- c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use

of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

If to the City of Murfreesboro:	If to Contractor:
City Manager City of Murfreesboro 111 West Vine Street Murfreesboro, TN 37130	Nolen Spencer Hawkins Asphalt Paving 6015 Hwy 64 East Wartrace, TN 37183

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

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

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

12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement,



Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

- 20. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 22. **Effective Date.** This 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 \_\_\_\_\_, 2023 (the "Effective Date").

**CITY OF MURFREESBORO, TENNESSEE**

**Hawkins Asphalt Paving**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: \_\_\_\_\_  
Nolen Spencer, President

Approved as to form:

\_\_\_\_\_  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Wetland Mitigation Credit Purchase – Rutherford Blvd

**Department:** Engineering

**Presented by:** Chris Griffith, Executive Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Purchase of wetland mitigation credits for the Rutherford Blvd Extension Project.

**Staff Recommendation**

Approve the purchase of wetland mitigation credits.

**Background Information**

In March 2022, Council approved the design contract for the extension of West Rutherford Blvd to make a connection to Warrior Drive. This connection includes a bridge over I-24 as well as a northern connection to Rutledge Way. A section of the proposed alignment encroaches on an existing wetland. A map indicating the proposed alignment has been attached.

To complete the environmental phase of this project, wetland mitigation credits will need to be purchased to satisfy the Corps of Engineers and TDEC’s permit requirements. These credits are available through The Christmas Creek Mitigation Bank at \$60,000 per credit. The City needs to purchase 5.22 credits for a total price of \$313,200. The proposed purchase agreement has been attached for your review.

**Council Priorities Served**

*Expand infrastructure*

Implementation of the 2040 Major Transportation Plan through the construction of new roadways.

**Fiscal Impact**

Purchase of these credits are within budget and will be funded from the 2021 CIP fund.

**Attachments**

1. Christmas Creek Mitigation Bank Credit Purchase Agreement.
2. Functional Plan

**CHRISTMAS CREEK MITIGATION BANK  
CREDIT PURCHASE AGREEMENT**

**THIS MITIGATION CREDIT SALES AGREEMENT** (the “Agreement”) is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by The City of Murfreesboro (“Buyer”) and Clearwater Conservation Revival, LLC (“Banker”). The purpose of this Agreement is to establish the terms and conditions for the purchase and transfer of credits under the Christmas Creek Mitigation Bank (“CCMB”). The Buyer and Banker are referred to jointly as the “Parties.”

**RECITALS**

**WHEREAS**, the Buyer is conducting a roadway realignment and extension project, which activity will result in certain impacts to wetlands, streams and/or water quality from the project known as the Rutherford Boulevard extension. Accordingly, the Buyer has obtained a Section 404 Permit Number \_\_\_\_\_ (“404 Permit”) from the U.S. Army Corps of Engineers (USACE) and if applicable, a Section 401 Water Quality Certification (“401 Certification”) from the Tennessee Department of Environment and Conservation (TDEC);

**WHEREAS**, the Banker is the Bank Sponsor for Christmas Creek Mitigation Bank (i.e. Mitigation Bank);

**WHEREAS**, a condition of the 404 Permit, requires the Buyer to purchase from the Banker 5.22 wetland credits (for 2.61 acres of wetland impact) (“Wetland Credits”) for the Project. The 404 Permit requires the Credits to be purchased from the CCMB, managed and controlled by the Banker; and,

**WHEREAS**, the Buyer desires to purchase and Banker desires to sell the Stream Credits and/or Wetland Credits under the terms and conditions set forth herein.

**TERMS**

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated herein by reference.
2. **AGREEMENT TO PURCHASE.**
  - a. [Reserved]
  - b. Wetland Credits (if applicable) -- Banker agrees to sell, and the Buyer agrees to purchase 5.22 Wetland Credits at a cost of \$ 60,000.00 per credit from the CCMB, which bank is located within the service area where the Buyer’s impacts are located, for a total payment of \$ 313,200.00 (“Wetland Credit Payment”).
  - c. Special Conditions – In the event that this purchase is made prior to obtaining all of the necessary permits which outline the exact number of credits necessary to mitigate for the project’s stream and/or wetland impacts, this purchase shall be considered as a reservation. The bill of sale will not be provided until the permits are obtained and the exact quantity of credits are known. If the amount of credits needed to mitigate for the project become less than

the reserved amount, then the unnecessary amount of credits purchased shall be released and sold on the open market. Once these credits are sold, the Banker shall return the payment amount of the unnecessary credits within fifteen (15) days of receiving the funds.

**3. DELIVERY BY BANKER AND TRANSFER OF CREDITS.**

Upon full payment for the sale of the credit, the Bank Sponsor (Clearwater Conservation Revival, LLC) is the party responsible for fulfilling the compensatory mitigation conditions of the permit issued to the applicant/purchaser as it relates to wetland impacts associated with the project.

a. [Reserved]

b. Wetland Credit Purchase and Delivery.

(i) Banker Warranty. Banker represents and warrants that the Wetland Credits to be sold to the Buyer are currently available and have been approved for release by the applicable authorities, including, but not limited to, the U.S. Army Corps of Engineers - Nashville District.

(ii) Delivery Date. Banker shall deliver the Wetland Credits to Buyer no later than ten (10) days from the date of receipt of the Wetland Credit Payment from the Buyer.

(iii) Wetland Credit Transfer. The delivery of the Wetland Credit Payment to the Buyer shall be evidenced by the issuance of affidavits of Wetland Credit sales and copies of the applicable bank credit ledgers by the Banker within 10 days of receipt of the Wetland Credit Payment from the Buyer. The credit ledgers are maintained by the Banker and periodically reviewed by the applicable resource agencies.

**4. NOTICES:** All notices from the Buyer to the Banker shall be deemed dully served if mailed or emailed to Banker at the following Address:

Clearwater Conservation Revival, LLC  
Attn: Zachary Wilbanks  
210 Redmayne Rd  
Gardendale, AL 35071  
Phone Number: (205) 412-3373  
Email: [zach@wilbankseng.com](mailto:zach@wilbankseng.com)

All Notices from the Banker to the Buyer shall be deemed duly served if mailed or emailed to the Buyer to:

Company Name or Individual: \_\_\_\_\_ City of Murfreesboro  
Attn (if applicable): \_\_\_\_\_ Chris Griffith  
Title: \_\_\_\_\_ Executive Director  
Mailing Address: \_\_\_\_\_ 111 W Vine Street  
City, State Zip: \_\_\_\_\_ Murfreesboro, TN 37130  
Phone Number: \_\_\_\_\_ 615-893-6441  
Email: \_\_\_\_\_ cgriffith@murfreesborotn.gov

5. **TERMINATION**: Should the Banker be found to have failed to perform its services consistent with applicable law, as specified in this Agreement, the Buyer may, after giving Banker written notice of such failure and a thirty day (30) period to correct such failure, terminate said Agreement immediately for cause and Banker shall reimburse the Buyer for the cost for credits not delivered; further the Buyer may terminate this Agreement for convenience with a thirty (30) day written notice.
6. **INSURANCE**: The Banker shall provide insurance upon request and in accordance with Buyer requirements including, but not limited to, General Liability Insurance, Business Auto Liability Insurance, and Workers Compensation if applicable. The Banker is not required to provide insurance so as long as the Banker does not enter onto Buyer project property.
7. **INDEMNIFICATION**: The Banker shall indemnify and hold harmless the Buyer, its officers, and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Banker or anyone employed or utilized by the Banker in the performance of this Agreement.
9. **CONFLICT OF INTEREST**: The Banker represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Banker further represents that no persons having any such interest shall be employed to perform those services.
10. **MISCELLANEOUS**.
  - a. The benefits and obligations of the covenants herein shall inure to the benefit of and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto.
  - b. The effective date of this Agreement shall be the day upon which the last of the parties hereto shall have executed this Agreement.
  - c. This Agreement shall be interpreted as drafted by both parties hereto equally, and no rule of strict construction shall be applied against any party.
  - d. The captions are included for convenience only and shall be given no legal effect whatsoever.

e. The Banker and the Buyer may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

f. Nothing herein contained shall create or be construed as creating a partnership between the Buyer and the Banker or to constitute the Banker as an agent of the Buyer.

g. If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portion of this Agreement shall remain in effect.

h. This Agreement shall be governed by the laws of the State of Tennessee and the United States of America. Venue for any action arising out of or with respect to this Agreement shall be brought the in the courts of Rutherford County, Tennessee, or in the event of a federal question, the Middle District of Tennessee at Nashville.

**11. ADDITIONAL ITEMS/SERVICES:** A modification of this contract is not valid unless signed by both parties and otherwise in accordance with the requirements of law. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

**IN WITNESS WHEREOF:** the Banker and the Buyer, have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date and year first above written.

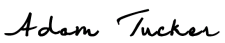
**BANKER:**  
CLEARWATER CONSERVATION REVIVAL, LLC

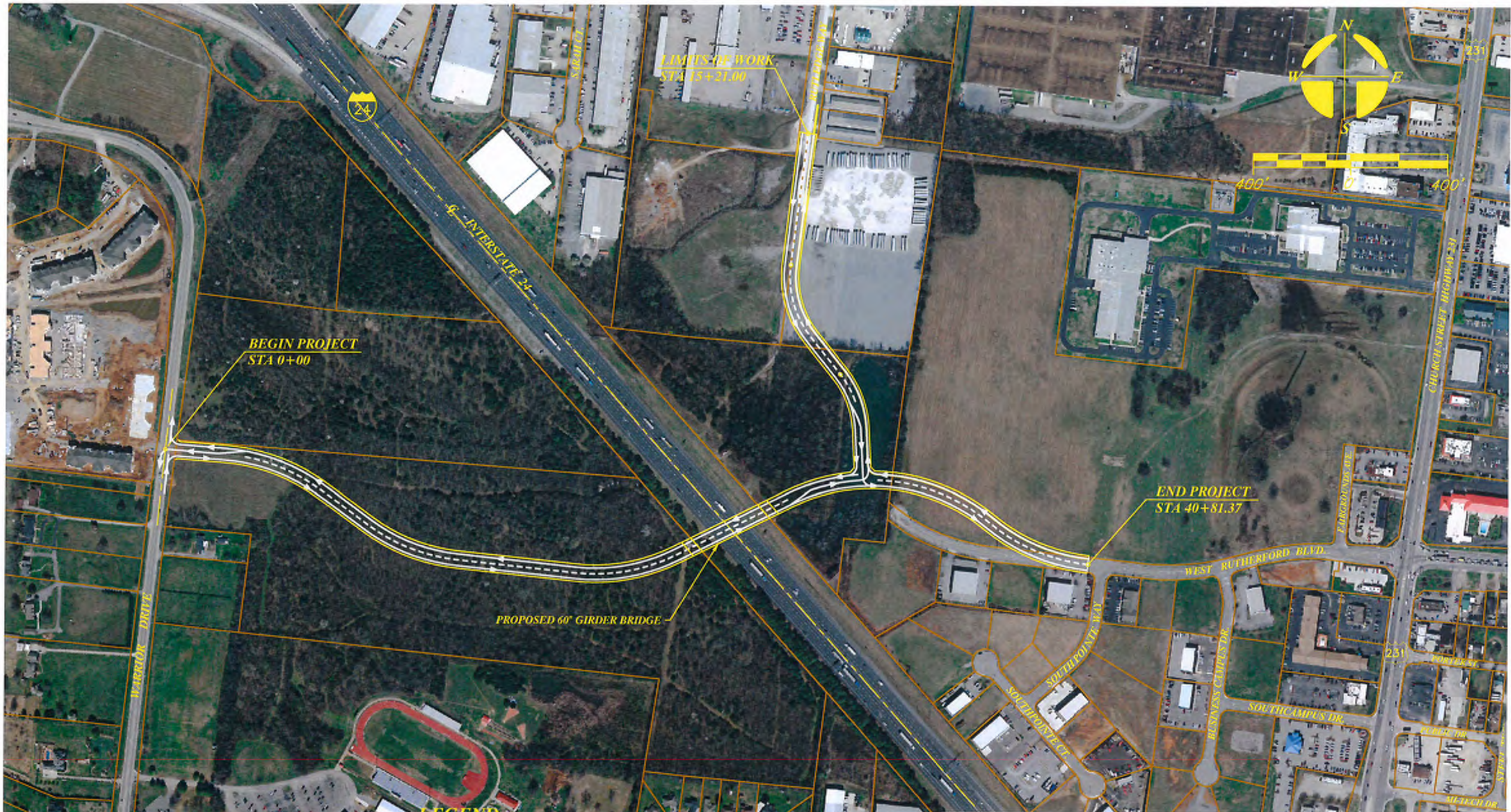
  
\_\_\_\_\_  
BY: Zachary Wilbanks  
TITLE: Vice President, Member

**BUYER:**  
CITY OF MURFREESBORO, TENNESSEE

\_\_\_\_\_  
Shane McFarland, Mayor

APPROVED AS TO FORM:

DocuSigned by:  
  
\_\_\_\_\_  
43A2035E51F9401...  
Adam Tucker, City Attorney



**LEGEND**

- CONTINUOUS THRU LANE
- - - TWO-WAY LEFT TURN LANE

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



WEST RUTHERFORD BOULEVARD EXTENSION  
 WARRIOR DR. TO WEST RUTHERFORD BLVD.

**FUNCTIONAL PLAN**

MURFREESBORO, TENNESSEE

SCALE: 1"=400'    DATE: MARCH, 2020    SHEET 10



# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Contract for Sidewalk Repair Services for ADA compliance

**Department:** Engineering

**Presented by:** Chris Griffith, Executive Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Contract for concrete sidewalk repair services for ADA compliance.

**Staff Recommendation**

Approve the contract with Precision Concrete Cutting, LLC.

**Background Information**

In the summer of 2022, Council approved a contract with Precision Concrete Cutting for a more cost-effective means of maintaining safety and ADA compliance throughout the City in the public right of way. This work included grinding off trip hazards along sections of sidewalk to regain ADA compliance. This method of repair is less invasive and more cost effective than traditional repair methods.

With the success of this previous contract, staff proposes contracting with Precision Concrete Cutting for ADA sidewalk repairs in conjunction with annual street resurfacing projects for this next fiscal year. This contract is using the TIPS (The Interlocal Purchasing System) co-operative contract. The maximum contract amount is not to exceed \$100,000 and is effective for one year from the Notice to Proceed date.

**Council Priorities Served**

*Responsible Budgeting*

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

**Fiscal Impact**

The primary funding source for the Annual City Concrete and Storm Drainage contract is from State Street Aid which is the local share of the State’s gasoline tax.

**Attachments**

Contract for sidewalk repair services from Precision Concrete Cutting, LLC.

**SIDEWALK REPAIR CONTRACT  
BETWEEN  
CITY OF MURFREESBORO  
AND  
PRECISION CONCRETE CUTTING, INC.**

This Construction Contract is entered into as of the \_\_\_\_\_, 2023 (the “Effective Date”), by and between the **CITY OF MURFREESBORO**, a Tennessee municipal corporation (the "City") and **PRECISION CONCRETE CUTTING, INC.**, a corporation of the State of Utah ("Contractor").

**PROJECT DESCRIPTION**

- A. The project for which Contractor is providing construction repair services (the “Work”) is described as follows (the “Project”): Removal of Concrete Trip Hazards measuring .25” – 2” to bring City sidewalks to ADA Standard compliance, as listed on Exhibit C, Precision Concrete’s Price Quote #051523A. The Work includes all construction repair services required under the Contract Documents, as hereinafter defined, including all labor, materials, equipment and services necessary to fulfill Contractor’s obligations.
- B. There is no architect or engineer for this project as the contemplated expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000), and the work does not alter the structural, mechanical or electrical system of the project, as permitted by T.C.A. § 62-2-107(b).
- C. The following constitute the contract documents for the Project (the “Contract Documents”):
  - (1) This Contract
  - (2) TIPS (The Interlocal Purchasing System) Contract 23010402, *Trades, Labor and Materials* (the “Solicitation”), which ends April 30, 2025
  - (3) Exhibit A - Supplemental Conditions
  - (4) Exhibit B – Insurance Requirements
  - (5) Exhibit C – Precision Concrete Cutting’s Quote #051523A
  - (6) Non-Collusion Affidavit
  - (7) Drug Free Workplace Affidavit

**AGREEMENT**

- 1. Date of Commencement; Contract Time.**
  - 1.1. The date of commencement of the Work shall be the date set forth in the Notice to Proceed by the City. The City has no liability whatsoever for any costs incurred by Contractor prior to the date set in the Notice to Proceed.
  - 1.2. Contract Time shall be for one year from the Effective Date.

**2. Scope of Services.**

- 2.1. The services to be provided by Contractor as authorized by the City are as follows: removal of concrete trip hazards measuring .25' – 2", with all repairs made with a 1:12 ratio in order to bring City sidewalks to ADA Standard compliance (1:8). The Work includes all construction repair services, including all labor, materials, equipment and services necessary to fulfill Contractor's obligations.
- 2.2. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate specific tasks and locations where services will be provided.
- 2.3. This Agreement is not a commitment by City to Contractor to issue any Task Order.

**3. Contract Sum.**

- 3.1. The total value of work performed pursuant to this agreement shall not exceed one hundred thousand dollars (the "Not To Exceed Price"), which will be paid to Contractor by the City in accordance with the Payment section of this Agreement. Contractor will be compensated based on the unit pricing contained in Contractor's Price Proposal, Quote #051523A, of \$65.00/Inch Foot (inch foot pricing is calculated by multiplying the average depth of the cut by the width of the cut in the saw cutting process).
- 3.2. The Contract Sum includes all items and services necessary for the Work. No increases in this price of this Contract is authorized unless a written Change Order is signed by a person duly authorized by the City, and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract price and no person may waive this provision. The parties further acknowledge that change orders that individually or in the aggregate will cause the Contract Sum to exceed \$50,000.00 must be approved by City Council before any such change order or orders are binding against the City.

**4. Payment.**

- 4.1. Payment Applications. At least ten days before the date established for each progress payment, Contractor will submit to City an itemized Payment Application for Work completed in accordance with the values stated in the Agreement. This Application will be supported by data substantiating the Contractor's right to payment as the City may reasonably require.
  - 4.1.1. Materials and Equipment. Payments for materials and equipment included in a Payment Application will be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.
  - 4.1.2. Title and Liens. Contractor warrants that title to all Work included in a Payment Application will pass to the City no later than the time of the City's payment all work will be free and clear of liens, claims, security interests, or other encumbrances.

4.2. Notice and Payment.

- 4.2.1. The City will within seven days after receipt of the Application, issue to Contractor a Payment Notice, for the amount determined to be due under this Agreement and provide explanation for any amount applied for that is to be withheld from payment.
- 4.2.2. The City will pay Contractor the amount due according the Payment Notice within five business days of the date of the Payment Notice.
- 4.2.3. Contractor must properly and timely pay each subcontractor and supplier upon receipt of payment from the City. The City has no responsibility for payments to a subcontractor or supplier; provided however, The City reserves the right to pay any subcontractor or supplier directly at any time.

4.3. Payment Notice, progressive payments, or use or occupancy of the Project or any part thereof does not constitute The City's acceptance of any Work not performed in accordance with this Agreement and the Contract Documents.

4.4. Substantial Completion.

- 4.4.1. Substantial Completion is achieved when the work, or a portion thereof, is completed sufficient for The City's occupancy or use and is accepted by The City. It is the intention of the parties that the Project be completed in whole and that acceptance of a part of the Project is at the City's sole discretion.
- 4.4.2. Contractor will inform The City when the work is substantially complete, and The City will inspect the Project.
- 4.4.3. Upon acceptance by The City of the Project as substantially complete, The City will provide Contractor written notice of Substantial Completion Acceptance and with a list of items ("Punch List") to be completed for Final Completion along with a reasonable period for The City to achieve Final Completion.
- 4.4.4. Contractor's warranty of the Work will begin as of the date of Substantial Completion.

4.5. Final Completion and Final Payment

- 4.5.1. Upon receipt of a final Payment Application, The City will inspect the Work and determine if the Work acceptable.
- 4.5.2. Final payment is due only after inspection and accepts as final completion by Owner and Contractor submits all releases, lien waivers, and documents (e.g. receipts) reflecting satisfaction of obligations related to construction of the Project.
- 4.5.3. Acceptance of final payment by Contractor, subcontractors, and material suppliers constitutes a waiver of all claims for which The City has not at the time of the final Payment Application been provided notice in writing as unsettled.

**5. Duties and Responsibilities of City.**

5.1. Information and Services Provided by the City.

5.1.1. The City shall furnish all necessary surveys and a legal description of the site, upon Contractor's written request.

5.1.2. The City will obtain the zoning approval, right-of-way access, and easements required for the Project unless the Contract Documents state that the Contractor will obtain.

5.2. City's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the City may direct the Contractor in writing to stop the Work until this correction is made.

5.3. The City's Right to Carry Out the Work. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

5.4. The City's Right to Perform Construction and to Award Separate Contracts. The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project. Contractor shall coordinate and cooperate with the City's own forces and separate contractors employed by the City. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

**6. Duties and Responsibilities of Contractor.** In addition to the duties and responsibilities set forth in Contract Documents, the Contractor:

6.1. Will provide construction services consistent with the Contract Documents that are beneficial in completing the Work.

6.2. Will provide post-construction warranty and repair as needed for a period of one year upon completion of the Work. Any required repairs during this warranty period will be further warrantied for a period of one year with the exception of warranties provided by manufacturer of equipment, all of which must be transferred to the City upon completion of the Work.

6.3. Provide all supervision, supplies, labor, transportation and equipment reasonably required for the proper execution of the Work and is solely responsible for all construction means, methods, techniques, sequences, and procedures, including properly coordinating all portion of the Work.

6.4. Maintain sole responsibly for the safety of Contractor personnel, all subcontractors and materialmen, and all other persons within the worksite and in the immediate vicinity of the worksite that is affected by any Work. Establishment and execution of a comprehensive personnel safety program appropriate for the type of work involved with

the various Work Assignments as may be required by the appropriate local, state, and federal agencies such as OSHA and TOSHA.

- 6.5. Keep the premises of the Work and the surrounding area free from any accumulation of debris or trash and will properly disposal of all surplus or waste materials upon completion of the Work.
- 6.6. Comply with any additional Contractor duties and responsibilities are specified in the Supplementary Conditions if attached hereto.

**7. Representations of the Contractor.** In order to induce the City to enter into this Contract, Contractor makes the following representations:

- 7.1.1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- 7.1.2. Contractor has had the opportunity to visit and inspect the work site and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- 7.1.3. Contractor is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- 7.1.4. Contractor has a clear understanding the Work Assignments will involve Public Works projects.
- 7.1.5. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing the construction activities and delivering the construction services outlined in the Scope; information and observations obtained or that should have been obtained from site inspections; the Contract Documents; with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- 7.1.6. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- 7.1.7. Contractor is aware of the general nature of work and that other work may be performed by the City and/or others at the various Work Assignment sites that relates to the Work as indicated in the Contract Documents.
- 7.1.8. Contractor has given the City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to Contractor.
- 7.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- 8. Duties and Responsibilities of the City.** In addition to the duties and responsibilities set forth in the above referenced documents, the City will provide suitable surveys, sketches, or drawings of the requirements and/or limits of the various individual Work Assignments; Appropriate schedules for the progress of the various Work Assignments; and other information as may be requested and/or appropriate for the Contractor to execute the various Work Assignments.
- 9. Term and Progress of the Work.** This Contract is not effective until approved by the City and signed by all required parties.

  - 9.1.1. The Contract time is for a period specified in the documents identify in Section 1(a) of this Agreement. No adjustment to this time will be made except by a written Change Order signed by a person duly authorized by the City and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract price and no person may waive this provision.
  - 9.1.2. No work on this Project may begin prior to a Notice to Proceed being issued by the City and Contractor hereby waives any claim for any compensation or reimbursement performed prior to the Notice to Proceed.
  - 9.1.3. The City may perform construction related to the Project with its own forces or award separate contracts in connection with other portions of the Project. Contractor must cooperate and coordinate all Contractor's work with all City work.
  - 9.1.4. Additional Progress of Work requirements are as specified in the Supplementary Conditions.
- 10. Termination for Breach.** In the event that any of the provisions of the Contract are violated by the Contractor, the City may serve written notice upon the Contractor of its intention to terminate the Contract, and unless within 72 hours after the serving of such notice upon the Contractor such violation or delay ceases and satisfactory arrangement for correction be made, the City may immediately terminate the Contract at any time after said 72 hours. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- 11. Suspension of Work.** Any unauthorized work stoppage due to any types of strike by the Contractor's labor force is grounds for immediate termination of this Contract by the City; provided however, in the City's sole discretion, during any period of work stoppage by the Contractor's labor force, the City reserves the right to have any and all Work Assignments performed by the City crews or crews from another Contractor or Contractors and to deduct from the Contract Price all costs associated with such performance.
- 12. Termination for Convenience.** The City may terminate this Contract at any time upon 30 days written notice to Contractor. In that event, the Contractor is entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
- 13. Compliance with Laws.** Contractor agrees to comply with any applicable federal, state, and local laws and regulations.

- 14. Maintenance of Records.** Contractor must maintain documentation for all charges associated with services provided pursuant to this Contract. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Contract, will 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.
- 15. Modification of Contract.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required.
- 16. Priority of Documents.** In the event of conflicting provisions, all documents are to be construed according to the following priority: (i) any properly executed amendment or change order to this Contract (most recent with first priority); then (ii) this Contract and exhibits thereto; then (iii) the provisions of any required Payment and Performance Bond; then (iv) the specifications referenced herein; and lastly (v) any other documents referenced herein.
- 17. No Partnership or Joint Venture.** 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 is liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
- 18. Waiver.** No waiver of any provision of this Contract, include modification of the Contract price, 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.
- 19. Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, the Contractor certifies and warrants it will comply with this policy.
- 20. Indemnification.** Contractor indemnifies and hold harmless the City, its officers, agents, and employees from (i) any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and (ii) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent Contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws. Contractor must pay the City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.
- 21. Insurance.** Contractor must maintain insurance as required by and in accordance with the requirements specified in Exhibit B hereto. Contractor must name the City and the City of Murfreesboro as an additional insured on all liability insurance policies and provide the City a copy of the endorsement. Contractor must notify the City within five days if the insurance



policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

22. **Attorney Fees.** Contractor agrees that should either party deems it necessary to take legal action to enforce any provision of the Contract and the City prevails to any extent, Contractor must pay all expenses of such action including the City's attorney fees and costs incurred at all stages of the litigation or dispute resolution.
23. **Assignment—Consent Required.** The provisions of this Contract inure to the benefit of and is 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 will not release Contractor from its obligations hereunder. **NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF: CITY ATTORNEY, CITY OF MURFREESBORO, 111 WEST VINE STREET, MURFREESBORO, TN 37130.**
24. **Entire Contract.** This Contract and all documents listed above, set forth the entire agreement between the parties with respect to the subject matter hereof and are govern the respective duties and obligations of the parties and supersedes any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements, between the parties respecting the subject matter of this Contract. No supplement, modification or amendment to this Contract is binding unless evidenced by a writing signed by the party against whom it is sought to be enforced. No waiver of any of the provisions of this Contract constituted, or may be deemed to constitute, a waiver of any other provision, whether or not similar, nor does any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.
25. **Force Majeure.** In the event of any occurrence of an event of *force majeure*, meaning any act of war, riot, civil unrest, order of legal authority, act of nature, epidemic, pandemic, public health crisis, or other unavoidable causes that could not have been prevented by and which are not attributed to fault or negligence of Contractor, (i) the City may choose to cancel this Contractor, pay only for work performed by Contractors, and have no further liability whatsoever under the Contract, or (ii) at the City option, Contractor will be granted an equitable extension of the period of performance.
26. **Governing Law.** The validity, construction and effect of this Contract and any and all extensions or modifications thereof is governed by the laws of the State of Tennessee. Tennessee law governs regardless of any language in any attachment or other document that the Contractor may provide.
27. **Venue.** Any action between the parties arising from this Agreement must be maintained in the courts for Rutherford County, Tennessee.
28. **Severability.** Should any provision of this Contract 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 Contract.

**29. Notices.** Notices to the City including but not limited to notice of assignment of any rights to money due to Contractor under this Contract must be mailed or hand delivered to the address below. Any notice to Contractor from the City relative to any part of the Contract will be considered delivered and the service thereof completed when said notice is posted by registered mail, to the said Contractor at its last given address or delivered in person to said Contractor or its authorized representative on the work.

**Address for notice to Contractor:**  
Precision Concrete Cutting  
Attn: Joseph Norris  
PO Box 640610  
Pike Road, AL 36064

**Address for notice to the City:**  
City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

**IN WITNESS WHEREOF**, the parties enter into this agreement as of the Effective Date first written herein.

**PRECISION CONCRETE CUTTING**

**CITY OF MURFREESBORO**

DocuSigned by:

*Matthew Haney*

By: Matthew Haney  
Its: President

By: Shane McFarland  
Its: Mayor

Approved as to form:

DocuSigned by:

*Adam F. Tucker*

Adam F. Tucker, City Attorney

**Exhibit A**  
**Supplementary Conditions**

Each party acknowledges that no Supplementary Conditions are necessary for this project by initialing below:

City: \_\_\_\_\_

Contractor:  \_\_\_\_\_

## **Exhibit B Insurance Requirements**

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers' compensation and employer's liability insurance, providing the following coverages, limits and endorsements:

### **1. Commercial General Liability Insurance.**

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
  - a. Include the per project aggregate endorsement;
  - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
  - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
  - d. Includes a severability of interest clause; and
  - e. Waive all rights of recovery against the Additional Insureds.

**2. Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

### **3. Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

**4. Term of Coverage**

- 4.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the “Completed Operations Term”).
- 4.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 4.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 4.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

**5. Subcontractor and Lower-Tier Entities Insurance Requirements**

- 5.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
  - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
  - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
  - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be

excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.

- d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

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

- 6.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 6.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 6.3 Include the Project per aggregate endorsement;
- 6.4 Waive all rights of subrogation against the Owner;
- 6.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 6.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

**7. Certificates and Endorsements**

- 7.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 7.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 7.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

**8. Reduction in Coverage.** Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The

Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

**9. Suppliers and Materialmen Coverages**

- 9.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 9.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

**10. Condition Precedent to Starting Work**

- 10.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond, if any, required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;
- 10.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

**11. Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

**12. Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

**13. Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Master Services Agreement - TTL

**Department:** Engineering

**Presented by:** Chris Griffith, Executive Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Master Services Agreement with TTL, Inc.

**Staff Recommendation**

Approve Master Services Agreement between the City and TTL, Inc.

**Background Information**

The City currently has several Master Service Agreements with professional consultants providing a variety of services. TTL has provided professional services for the City in several areas for many years. Services include, but are not limited to, geotechnical studies, environmental consulting, and construction material testing. This Master Services Agreement would allow City Staff to use TTL periodically in the development of smaller, specialized projects.

**Council Priorities Served**

*Expand infrastructure*

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

**Fiscal Impact**

The primary funding source of the City's professional service task orders is from State Street Aid, which is our local share of the State's gasoline tax, and CIP Funds.

**Attachments**

Master Services Agreement from TTL, Inc.





624 Grassmere Park, Ste. 14  
Nashville, TN 37211  
615.331.7770  
[www.TTLUSA.com](http://www.TTLUSA.com)

May 19, 2023

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

**RE: REVISED PROPOSAL FOR ON-CALL MASTER SERVICES AGREEMENT**  
**Infrastructure, Parks, and Vertical Construction Projects**  
Murfreesboro, Tennessee  
TTL Project No. 000230801783.00, R1

Dear Mr. Griffith:

Thank you for the opportunity to provide on-call services to the City of Murfreesboro, Tennessee through this Master Services Agreement (MSA). This letter contains background information, general information about the scope of services that may be required, unit rates for on-call assignments or other time and materials projects, and authorization procedures.

#### **BACKGROUND INFORMATION**

The City of Murfreesboro periodically needs geotechnical, environmental, and construction materials testing services for infrastructure, parks, and vertical construction projects. Infrastructure projects may include new collector roads, subdivision roads, bridges, and water and sewer projects. Parks projects may include new athletic fields and greenways. Vertical construction projects will typically involve single-story buildings. Our scope of services will depend on the nature, size, and complexity of the projects.

#### **SCOPE OF SERVICES**

On an as-requested basis, we will perform geotechnical, environmental, and construction materials testing services based on a mutually agreed upon scope of services outlined in individual Task Orders prepared by TTL and approved by the City. Depending on the assignments, our services will be documented in daily field reports, laboratory test reports, geotechnical engineering reports, or environmental reports. We will not typically perform services for individual home lots.

#### **COMPENSATION**

Compensation will depend on the nature of the assignment. We may choose or be asked to perform our services on a lump sum basis. If that is the case, we will document the scope of services and lump sum fee in a task order written specifically for the assignment. For smaller projects, we can provide our services on a time and materials basis according to the attached Schedule of Fees. We will still provide documentation about our scope of services in a written task order, and if the assignment involves multiple visits, we will also provide an overall fee estimate. We will issue invoices about every 4 weeks for services provided.

**AUTHORIZATION**

To formally authorize us, we request that you sign where indicated below and return a copy of this proposal to us. Our services will be performed in accordance with the attached Terms and Conditions, which have been negotiated with the City Attorney for the City of Murfreesboro.

All information (written or electronic) from TTL concerning TTL's work is for the sole use and reliance of TTL's Client. TTL intends no third-party beneficiaries (expressed or implied) and copies of such information received by third parties are NOT for reliance unless TTL receives a signed Secondary Client Agreement from the third party.

**CLOSING**

We appreciate this opportunity to be of service to the City of Murfreesboro. Please contact us at your convenience if you have questions or require additional information.

Respectfully submitted,  
TTL, Inc.



Richard D. Heckel, PE, D.GE  
Principal Engineer



Mark A. Herrmann, PE  
Principal Engineer

Attachments: Unit-Rate Schedule  
PSA

**Authorized By:**

Client (Signature and Date)

*Adam Tucker*

5/23/2023

43A2035E51F9401...

**Approved to as form**

**City Attorney**



# TTL

## 2023 FEE SCHEDULE

Staff Position	Rate
Project Administrator I .....	\$65.00 / Hour
Project Administrator II .....	\$72.00 / Hour
Project Administrator III .....	\$78.00 / Hour
Project Administrator IV .....	\$84.00 / Hour
Project Administrator V .....	\$95.00 / Hour
Project Administrator VI .....	\$101.00 / Hour
Project Administrator VII.....	\$109.00 / Hour
Project Administrator VIII.....	\$114.00 / Hour
Project Technician I.....	\$56.00 / Hour
Project Technician II.....	\$58.00 / Hour
Project Technician III.....	\$61.00 / Hour
Project Technician IV.....	\$66.00 / Hour
Project Technician V.....	\$72.00 / Hour
Project Technician VI.....	\$79.00 / Hour
Senior Project Technician I.....	\$87.00 / Hour
Senior Project Technician II.....	\$92.00 / Hour
Senior Project Technician III.....	\$98.00 / Hour
Senior Project Technician IV.....	\$110.00 / Hour
Senior Project Technician V.....	\$121.00 / Hour
Senior Project Technician VI.....	\$127.00 / Hour
Senior Project Technician VII.....	\$132.00 / Hour
Field Coordinator / Field Supervisor.....	\$110.00 / Hour
NACE Level I Technician.....	\$115.00 / Hour
NACE Level II Technician.....	\$129.00 / Hour
NACE Level III Technician.....	\$175.00 / Hour
NDT Steel/ASNT Level I Technician.....	\$110.00 / Hour
NDT Steel/ASNT Level II Technician.....	\$115.00 / Hour
NDT Steel/ASNT Level III Technician.....	\$175.00 / Hour
NDT Steel/AWS Certified Welding Inspector.....	\$110.00 / Hour
NDT Steel/AWS Certified Welding & ASNT Level I Inspector.....	\$115.00 / Hour
NDT Steel/AWS Certified Welding & ASNT Level II Inspector.....	\$125.00 / Hour
Metals QA/QC Manager I.....	\$170.00 / Hour
Metals QA/QC Manager II.....	\$175.00 / Hour
Metals QA/QC Manager III.....	\$180.00 / Hour
Professional Land Surveyor I.....	\$142.00 / Hour
Professional Land Surveyor II.....	\$170.00 / Hour
Professional Land Surveyor III.....	\$197.00 / Hour
Professional Land Surveyor IV.....	\$215.00 / Hour
Project Professional I.....	\$132.00 / Hour
Project Professional II.....	\$144.00 / Hour
Project Professional III.....	\$155.00 / Hour
Project Professional IV.....	\$166.00 / Hour
Project Professional V.....	\$178.00 / Hour
Project Professional VI.....	\$187.00 / Hour
Project Professional VII.....	\$200.00 / Hour
Senior Project Professional I.....	\$207.00 / Hour

<b>Staff Position</b>	<b>Rate</b>
Senior Project Professional II.....	\$217.00 / Hour
Senior Project Professional III.....	\$225.00 / Hour
Senior Project Professional IV.....	\$235.00 / Hour
Senior Project Professional V.....	\$245.00 / Hour
Senior Project Professional VI.....	\$255.00 / Hour
Senior Project Professional VII.....	\$265.00 / Hour
Project Manager I.....	\$139.00 / Hour
Project Manager II.....	\$149.00 / Hour
Project Manager III.....	\$160.00 / Hour
Project Manager IV.....	\$170.00 / Hour
Project Manager V.....	\$182.00 / Hour
Project Manager VI.....	\$194.00 / Hour
Project Manager VII.....	\$200.00 / Hour
Senior Project Manager I.....	\$210.00 / Hour
Senior Project Manager II.....	\$220.00 / Hour
Senior Project Manager III.....	\$230.00 / Hour
Senior Project Manager IV.....	\$240.00 / Hour
Senior Project Manager V.....	\$249.00 / Hour
Senior Project Manager VI.....	\$263.00 / Hour
Senior Project Manager VII.....	\$278.00 / Hour
Senior Project Manager VIII.....	\$295.00 / Hour
Senior Project Manager IX.....	\$305.00 / Hour
Principal I.....	\$275.00 / Hour
Principal II.....	\$285.00 / Hour
Principal III.....	\$295.00 / Hour
Principal IV.....	\$305.00 / Hour
Academia Consultant.....	Cost + 20%
Specialty Consultant.....	Cost + 20%

**Printing Costs:**

Copier Prints (Black and White/Color).....	\$0.15/Sheet
Plotter Prints (Black and White).....	\$0.70/Sq Ft
Plotter Prints (Color).....	\$1.25/Sq Ft
Mylar Prints.....	\$4.50/Sq Ft

**Notes:**

- Hourly rates for holidays, weekends, or work over 40 hours per week shall be 1.3 times the standard unit rates.
- Hourly rates listed are subject to change annually.
- Equipment, tests, vehicle mileage, meals, lodging, air travel, freight, delivery, printing, non-general overhead, etc. are not included in above personnel rates. Unless stated otherwise, such costs will be invoiced at cost plus 20%.
- A two hour minimum charge per site visit will be applied to all technician level staff positions.
- A 24-hour advance notice is requested for scheduling or canceling all personnel field services.
- Sub-Consultants billed through TTL shall be subject to an additional 10 percent administrative fee.



624 Grassmere Park, Ste. 14  
Nashville, TN 37211  
615.331.7770

www.TTLUSA.com

## Schedule of Fees (Laboratory)

### Soils:

01. Field Density Testing by Nuclear Methods (Daily Equipment Charge) .....	\$55.00 / daily
02. Natural Moisture Content (ASTM D2216) .....	\$10.50 / test
03. Atterberg Limits (ASTM D4318) .....	\$95.00 / test
04. Material in Soils Finer than the No. 200 Sieve by Washing (ASTM D1140).....	\$65.00 / test
05. Grain Size, Sieve Analysis, with hydrometer (ASTM D7928) .....	\$215.00 / test
06. Grain Size, Sieve Analysis, without hydrometer (ASTM D6913).....	\$90.00 / test
07. Moisture-Density Curve (Requires Atterberg Limits Not Included in Test Fee)	
a. Standard Proctor (ASTM D698).....	\$140.00 / test
b. Modified Proctor (ASTM D1557) .....	\$165.00 / test
c. One Point .....	\$70.00 / test
08. Laboratory CBR (ASTM D1883)	
a. In-situ .....	\$265.00 / test
b. Remolded (Not Including Proctor) .....	\$375.00 / test
09. Unconfined Compression Test:	
a. Soil Specimen (2-½-inch or 3-inch) (ASTM D2166) .....	\$175.00 / test
10. One-Dimensional Consolidation Test (1/4 to 16-ton loading) (ASTM D2435)	
(Add \$40.00 for each unload-reload cycle)	
a. Undisturbed Sample .....	\$425.00 / test
b. Remolded Sample (Proctor Not Included) .....	\$475.00 / test
11. Hydraulic Conductivity (Permeability), Flexible Wall/Backpressure (ASTM D5084).....	\$375.00 / test

### Rock:

01. Unconfined Compression Test of Rock Core Specimen (BX or NX), (ASTM D7012) .....	\$185.00 / test
02. Splitting Tensile Strength of Rock (Axial) .....	\$ 795.00 / test

### Concrete:

01. Curing & Compression Testing of Concrete.....	\$15.00 / each
02. Curing & Compression Testing of Concrete (Made by Others) .....	\$25.00 / each
03. Flexural Strength of Concrete Beams (ASTM C78) .....	\$47.50 / each
04. Sawing, Curing, Capping and Breaking Thin-Wall Concrete Cores (ASTM C42).....	\$55.00 / each
05. Floor Flatness / Floor Levelness Testing (ASTM E1155).....	\$0.06 / sq. ft.
06. Windsor Probe Testing (ASTM C803).....	\$100.00 / test
07. Monotonic Tension Test (ASTM A1034) .....	\$175.00 / test

### Aggregates:

01. Specific Gravity and Absorption, Coarse Aggregate (ASTM C127) .....	\$80.00 / test
02. Specific Gravity and Absorption, Fine Aggregate (ASTM C128).....	\$80.00 / test
03. Sieve Analysis of Fine and Coarse Aggregates (ASTM C136).....	\$105.00 / test
04. Soundness of Aggregates, Sodium or Magnesium Sulfate	
a. Five Cycles (ASTM C88) .....	\$425.00 / test
b. Bulk Sample Preparation.....	\$30.00 / each

### Asphalt:

01. Marshall Mix Design (KM 64-411-90) .....	\$575.00 / each
02. Gradation & Asphalt Content (Extraction) (KM 64-405-92 & KM 64-433-89).....	\$240.00 / each
03. Unit Weight & Thickness (AASHTO T166) .....	\$27.50 / each
04. Maximum Theoretical Density.....	\$80.00 / each



624 Grassmere Park, Ste. 14  
Nashville, TN 37211  
615.331.7770  
[www.TTLUSA.com](http://www.TTLUSA.com)

**Masonry & Mortar:**

- 01. Absorption and As-Received Moisture, Masonry Block Units (Set of 3).....\$175.00 / each
- 02. Curing & Compression Testing of Grout or Mortar ..... \$25.00 / each
- 03. Compression Test, Masonry Block Units (Set of 3) .....\$145.00 / each
- 04. Equivalent Thickness Masonry Block Unit (Set of 3)..... \$90.00 / each

**Specialty Testing:**

Based on our experience and network of contacts we can provide or develop most specialty tests on an individual basis as requested.

**CLIENT PROJECT SERVICES AGREEMENT**

Project: Master Services Agreement

TTL Proposal Number: 000230801783.00

Page 1 of 2

This AGREEMENT is between City of Murfreesboro ("Client") and TTL, Inc. ("Consultant") to set forth the terms whereby Consultant will provide professional services, generally described in Consultant's Proposal dated 05/19/2023 ("Proposal"), on one or more projects (with respect to each engagement the "Project"), with the specifics of each engagement to be set for in a Task Order.

**1. Scope of Services.** The scope of Consultant's services will be as described in the Scope of Services section of the Proposal and any Task Order issued pursuant to this Agreement ("Services"). Upon approval of Client, portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence, unless specifically addressed in a Task Order. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.

**2. Acceptance/Termination.** Additional terms and conditions regarding this Agreement may be added or changed only by written amendment to this Agreement signed by both parties. In the event a Task Order contains terms and conditions which conflict with or are in addition to this Agreement, the terms and conditions of the Task Order shall control for that specific Project only. In the event Client uses a purchase order or other form (other than a Task Order as contemplated by this Agreement) to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

**3. Change Orders.** Client may request changes to the Scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. All change orders must be in writing and signed by an authorized city official.

**4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in a Task Order. If a Task Order contains a not-to-exceed estimate, Consultant shall notify Client prior to exceeding the estimate as soon as Consultant reasonably believes that the actual fees and expenses will exceed the estimate, at which time Client may either (i) cancel the Task Order and compensate Consultant for the fees and expenses incurred up to the date of cancellation, or (ii) authorize Consultant to continue the work exceeding the estimate. Consultant may invoice Client, at Consultant's discretion, on a monthly or Task Order - Completion basis, and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address on Page 2, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of .5% per month, but not exceeding the maximum rate allowed by law, for all unpaid and undisputed amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs. Consultant may suspend or terminate Services for lack of timely payment without liability to Client in connection with such suspension or termination.

**5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries made or intended. Reliance upon the Services and any work product is limited to Client, and is not permitted as to third parties. For a limited time period, not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client; however, Client understands that such reports will be strictly for informational purposes only and not for reliance and that reliance by any third party will not be granted until those third parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee. Client also acknowledges that such third party disclosures for reliance could create an issue of conflict of interest for Consultant and Client hereby waives any and all claims of conflict of interest as Consultant, Consultant's employees or sub-consultants or subcontractors as to any disclosure to a third party for informational or reliance purposes.

**6. Intentionally left blank.**

**7. Indemnity/Statute of Limitations.** To the extent allowable by law, Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for third party claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project. The indemnification of Consultant by Client is subject to the provisions of the Tennessee Governmental Tort Liability Act. Client reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Client's sovereign immunity in whole or in part.

**8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT EXPRESSLY AND FULLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occurrence / \$2,000,000 aggregate); (iii) automobile liability insurance (\$1,000,000 Bodily Injury and Property Damage combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / aggregate). Certificates of insurance and policy endorsements naming Client as an additional insured will be provided upon request.

**10. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

**11. Choice of Law, Venue.** This Agreement shall be governed by and construed according to Tennessee law and venue for any resolution of any dispute shall be in Rutherford County, Tennessee.

**12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services and Client assumes responsibility for site restoration.

**13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or Client's contractor's adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from Client's contractor's responsibility for defects discovered in Client's contractor's work, or create a

**CLIENT PROJECT SERVICES AGREEMENT**

Project: Master Services Agreement

TTL Proposal Number: 000230801783.00

Page 2 of 2

warranty or guarantee from Consultant of any nature. Consultant will not supervise or direct the work performed by Client's contractor or Client's contractor's subcontractors at any tier and is not responsible for their means and methods.

**14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, biohazard, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Scope of Services submitted by Consultant, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and all reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. When Consultant neither creates nor contributes to the creation or existence of any Affected Materials conditions at the site, Client waives any claim against Consultant and agrees, to the extent allowable by law, to indemnify and save Consultant, Consultant's related companies, Consultant's subconsultants or subcontractors, and the agents, representatives, officers, directors, members, managers and shareholders of all of the foregoing harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any person or entity from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.

**15. Documents.** Work product, such as reports, logs, data, notes, photographs, or calculations, prepared by Consultant shall be Client's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the property of Consultant and a permanent license for use with respect to Consultant work product is hereby provided. Files shall be maintained in general accordance with Consultant's document retention policies and practices. Upon Client's request, Consultant's work product may be provided via electronic media. By such request, Client agrees that the written copy retained by Consultant in its files shall be the official base document. Consultant makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to Consultant's attention by Client. Any modifications of such electronic copy by Client or others shall be at Client's risk and without liability to Consultant. Such magnetic copy is subject to all other conditions of this Agreement. Documents, reports, tests, information and communications from Consultant to Client or Client's designees are to be used only relating to the specific project/site to which they relate and may not be re-used for other projects or sites without express written consent from Consultant; any unauthorized re-use is at Client's or the recipient's sole and exclusive risk and is without liability as to Consultant, its related companies, its subconsultants or subcontractors, or the officers, directors, employees, agents, representatives, members, managers or shareholders of all of the foregoing. Consultant may rely upon information provided to Consultant by or on behalf of Client without any duty to independently verify the accuracy or completeness or currency of same, and Consultant shall have no liability to Client arising from any deficiency of such information.

**16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to (or claims arising out of damage to) subterranean structures or utilities that are not called to Consultant's attention or are not correctly marked, including being marked by a utility location service, or are incorrectly shown on the plans furnished to Consultant by Client.

**17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, subconsultants, and subcontractors, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors and subcontractors, or other parties present at the site not invited by Consultant.

**18. Unforeseen Circumstances.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing Consultant's services. If this occurs, Consultant will promptly notify and consult with Client, but will act responsibly based on Consultant's sole judgment where risk to Consultant's personnel, the public, or where professional duties to disclose hazards or conditions are involved. Possible actions could include: (A.) Complete the original Scope of Services in accordance with the procedures originally intended in Consultant's Proposal, if practicable in Consultant's judgment; (B.) Agree with Client to modify the Scope of Services and the estimate of charges to include assessment of the unforeseen conditions or occurrences, with such revision agreed to in writing; (C.) Terminate the services effective on the date specified by Consultant in writing; (D.) Disclose information to regulators or government authorities when required by statute or professional canons of ethics.

**19. Survival.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and Consultant shall survive the completion of the services and the termination of this Agreement.

**20. Severability.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect to the extent that the intent of the parties in forming this Agreement are fulfilled such that the parties receive the full benefit of the bargain.

**CLIENT**

Firm name: City of Murfreesboro  
Authorized by: \_\_\_\_\_ Date: \_\_\_\_\_  
Print name: Shane McFarland Title: Mayor  
Address: 111 W. Vine Street Telephone no.: 615-849-2629  
City and state: Murfreesboro, TN Zip: 37130 Fax no.: \_\_\_\_\_  
E-mail address: smcfarland@murfreesborotn.gov Cell no.: \_\_\_\_\_

**CONSULTANT**

Firm name: TTL, Inc DocuSigned by: \_\_\_\_\_  
Firm address for notifications: 124 Grassmere Park, Ste. 14, Nashville, TN 37211  
TTL approval by: Mark Herrmann Date: 5/22/2023  
Print name: Mark Herrmann Title: Principal Engineer

DocuSigned by:  
APPROVED AS TO FORM  
Adam Tucker  
3A2085E81E9401  
Adam P. Tucker, City Attorney



# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

---

**Item Title:** Purchase of Liability, Property, Vehicle, Cyber, Crime, and Workers' Compensation Insurance Coverage for the City

**Department:** Legal Department

**Presented by:** Adam Tucker, City Attorney

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Purchase of insurance coverages for the City, summarized in Exhibit A, for FY2024.

**Staff Recommendation**

The Legal Department requests that Council approve the following insurance coverages for the City for FY24 and authorize the Mayor, City Manager, and City Attorney to execute any documents necessary to bind and secure such coverage.:

1. General Liability, Auto Liability, Errors and Omissions Liability (including Employment Practices Liability), and Law Enforcement Liability from Public Entity Partners;
2. Collision and Comprehensive Vehicle Insurance for all vehicles whose value equals or exceeds \$75,000 from Public Entity Partners;
3. Catastrophic Vehicle Damage Insurance from Public Entity Partners;
4. Workers' Compensation Insurance from Public Entity Partners
5. Commercial Package Property Insurance from Travelers;
6. Crime Insurance (including Faithful Performance of Duty Coverage) from Travelers; and
7. Cyber Insurance from Cowbell Insurance Agency.

**Background Information**

All the insurance policies being recommended are renewals from last year. With a premium increase of 26.2% or \$447,893, the impact to the City's risk program costs is an increase for FY24 of approximately 16.5%.

The City's insurance broker, Arthur J. Gallagher Risk Management Services ("Gallagher"), recommends the proposed property, crime, and cyber insurance coverages (Items 4, 5, and 6). Gallagher shopped coverages in the market and secured a competitive renewal offer from Travelers, although, the premium for increased by more than \$100,000 due to an 11% rate increase and a 15% increase in the replacement value of the City's insured property.

The City's crime and cyber insurance coverage will remain with Cowbell and Travelers, respectively.

The remaining coverages would be purchased directly from Public Entity Partners (PEP). Pursuant to state law and City Code § 2-10(E)(2)(f), the City may purchase from a government risk pool, like PEP, without competitive sealed bids. Public Entity Partners is a nonprofit membership corporation and coverage involves no brokerage commissions. Its members are all Tennessee local government entities. Savings from lower than anticipated claims results in premium dividends returned to the members.

During the City's first four years with PEP, premiums remained relatively stable. Unfortunately, premiums for FY2024 have increased significantly. As with property insurance, a significant percentage of the increases to liability premiums is attributable to market forces. The size of the City's budget, especially in terms of payroll, which has increased materially over the last two years is also a driving force behind the increases in liability and workers' compensation premiums. The City is working with Public Entity on ways to reduce premiums on both the auto liability and auto damage coverage lines.

### **Council Priorities Served**

#### *Responsible budgeting*

Strong insurance coverage protecting against casualty and other losses is a prudent, standard means of financial protection.

### **Fiscal Impacts**

Premiums for coverage is funded by the Risk Management Fund

### **Attachments:**

Exhibit A – Summary of Insurance Coverages

### Exhibit A – Summary of Insurance Coverages

Insurance Carrier	Insurance Coverage	Actual FY2023	Proposed FY2024	Percentage Cost Increase
<b>Public Entity Partners</b>	<b>Liability</b>			
	<b>Self-Insured Retention</b>	<b>\$500,000</b>	<b>\$500,000</b>	<b>0.0%</b>
	<b>Total Premiums</b>	<b>\$447,336</b>	<b>\$609,736</b>	<b>36.3%</b>
	<i>General Liability</i>	<i>\$72,516</i>	<i>\$96,454</i>	<i>33.0%</i>
	<i>Errors &amp; Omissions/Employment Practices</i>	<i>\$141,114</i>	<i>\$165,549</i>	<i>17.3%</i>
	<i>Auto Liability</i>	<i>\$97,762</i>	<i>\$159,988</i>	<i>63.7%</i>
	<i>Law Enforcement</i>	<i>\$135,944</i>	<i>\$187,745</i>	<i>38.1%</i>
	<b>Maximum Expenditure for Claims Made in FY2023</b>	<b>\$947,336</b>	<b>\$1,109,736</b>	<b>17.1%</b>
<b>Travelers</b>	<b>Property and Building Contents</b>			
	<b>Premium</b>	<b>\$372,614</b>	<b>\$477,633</b>	<b>28.2%</b>
	\$400,000,000 limit; \$100,000 per claim deductible			
<b>Public Entity Partners</b>	<b>Auto Property Damage</b>			
	<b>Premium</b>	<b>\$90,137</b>	<b>\$121,808</b>	<b>35.1%</b>
	Includes: 1) Auto Catastrophic (Loss from any event >\$100,000); and 2) Comprehensive/Collision for Vehicles Valued \$75,000 or more (\$5,000 per claim deductible, which are applied to liability retention.)			
<b>Travelers</b>	<b>Crime (includes Faithful Performance of Duty Coverage)</b>			
	<b>Premium</b>	<b>\$7,971</b>	<b>\$8,008</b>	<b>0.4%</b>
	\$2,000,000 coverage for most claims			
<b>Cowbell</b>	<b>Cyber</b>			
	<b>Premium</b>	<b>\$63,639</b>	<b>\$55,200</b>	<b>-13.3%</b>
	\$3,000,000 limit; per claim deductible increased from \$50,000 to \$100,000			

<b>Insurance Carrier</b>	<b>Insurance Coverage</b>	<b>Budgeted FY2022</b>	<b>Proposed FY2023</b>	<b>Percentage Cost Increase</b>
<b>Public Entity Partners</b>	<b>Workers' Compensation</b>			
	<b>Self-Insured Retention</b>	\$500,000	\$500,000	0.0%
	<b>Premium</b>	\$723,885	\$882,476	18.0%
	<b>Maximum Expenditure for Claims Made in FY2023</b>	<b>\$1,223,885</b>	<b>\$1,382,476</b>	<b>13.0%</b>
<b>Total Premium Costs</b>		<b>\$1,706,968</b>	<b>\$2,154,861</b>	<b>26.2%</b>
<b>Total Risk Management Program Costs (premiums plus self-insured retentions for liability and workers' compensation claims)</b>		<b>\$2,706,968</b>	<b>\$3,154,861</b>	<b>16.5%</b>

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

---

**Item Title:** Sewer Allocation Variance- Restaurant and Retail Development on South Church Street

**Department:** Planning

**Presented by:** Brad Barbee, Planner

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

A proposed development request for additional density above the sewer allocation ordinance’s zoning allowance.

**Staff Recommendation**

Approval of variance request allowing higher single-family unit equivalent density (sfu) by approximately nine sfu’s for the proposed commercial development.

**Background Information**

The Planning Department has conducted a due-diligence meeting for a site plan for a new restaurant and retail development to be located along the east side of South Church Street west of the Indian Hills Subdivision. The proposed development will consist of five commercial buildings on one lot of record, and the uses will include three restaurants, a bank, and a multi-tenant retail building. The property is currently zoned Commercial Fringe (CF), which, per the ordinance, only allows 2.5 sfu’s/acre. The proposed commercial development lot is 3.2 acres in size and thus is allowed only eight sfu’s. The anticipated usage is approximately 17 sfu’s; therefore, the proposed commercial development will use more than the ordinance allows by approximately nine sfu’s. The sanitary sewer system can handle the increased flows for the proposed development. Staff views the advantages of job creation and tax revenue of greater benefit than the requested additional sewer capacity.

**Council Priorities Served**

*Improve economic development*

The development will create jobs and provide additional tax revenue. It will also provide additional services and dining options along the South Church Street corridor.

**Concurrence**

MWRD concurs with the request based on sewer system capacity.

**Fiscal Impact**

The development will generate commercial tax rate revenue as well as pay one-time

development fees.

**Attachments**

1. Request letter from applicant
2. Concept site plan
3. Memo from MWRD

May 30, 2023

Mr. Greg Mcknight  
City of Murfreesboro  
111 W. Vine St.  
Murfreesboro, Tennessee 37130

RE: Yanahli Group S. Church St. Sewer Allocation Variance Request  
South Church Street  
Murfreesboro, Tennessee  
SEC Project No. 23066

Dear Mr. McKnight:

Please accept this as our variance request for the proposed site to be located along the East side of South Church Street / U.S. Highway 231. The property in question is approximately 3.20 acres in size and is zoned Commercial Fringe (CF). The sewer allocation ordinance allows for 2.5 sfue/acre or 650 gpd/acre sewer flow for CF property. For this property, the allocation ordinance would allow 2483 gpd or 9.55 sfue. Based on historical flow of existing three restaurants, bank and strip Center, the average sewer usage is 4438 gpd or 17.07 sfue.

Given this information, Yanahli Group South Church Street Development requests a variance from the sewer allocation ordinance to grant an **additional 8 sfue** of sewer flow.

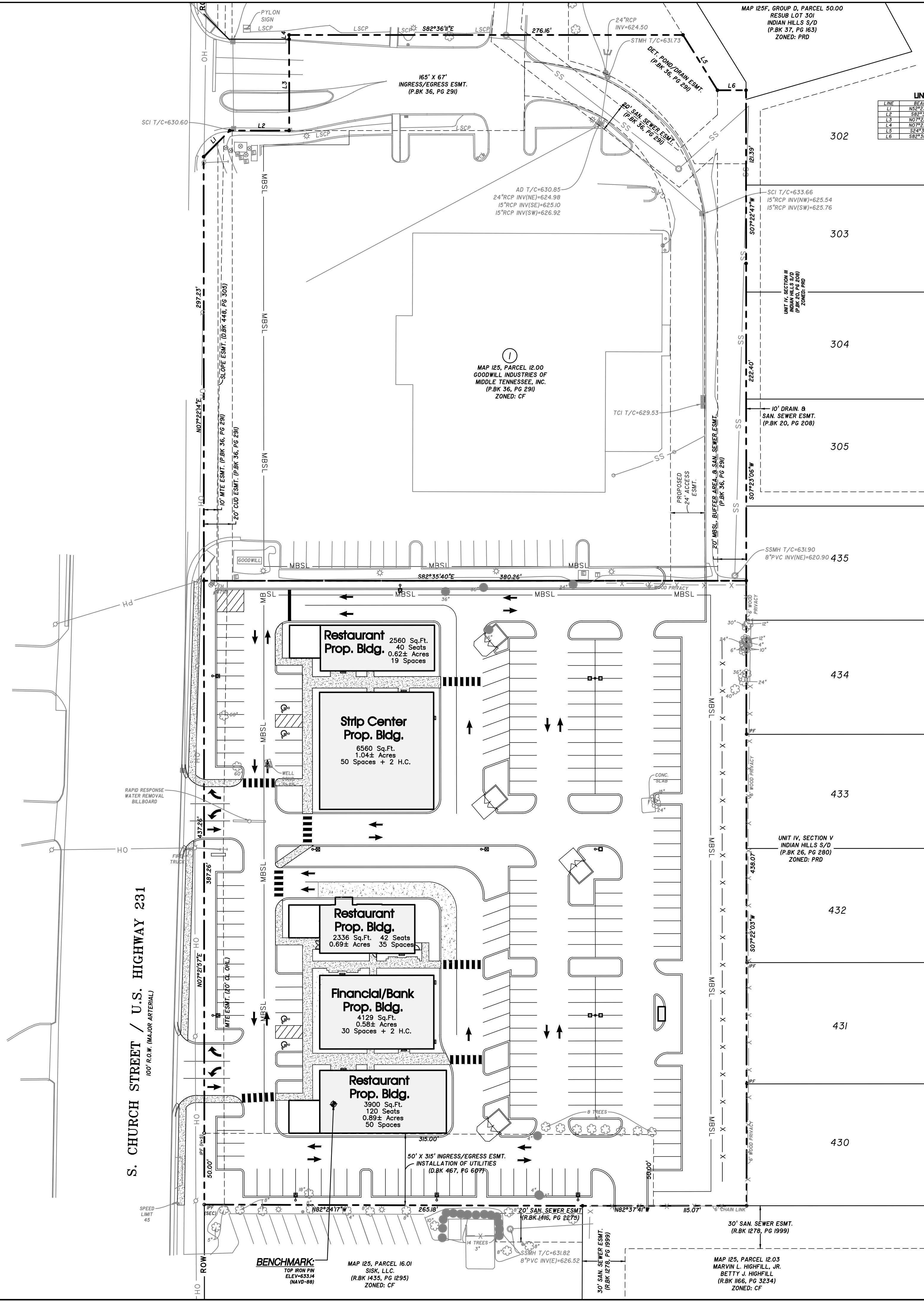
We appreciate the opportunity to present this variance and the opportunity to create new jobs, bring additional tax revenue to the City of Murfreesboro through increased sales and property taxes, as well as better serve our customers, your residents, with better accessibility to this site.

If you have any questions or need additional information, please contact me at 890-7901 or via email at [mtaylor@sec-civil.com](mailto:mtaylor@sec-civil.com).

Sincerely,

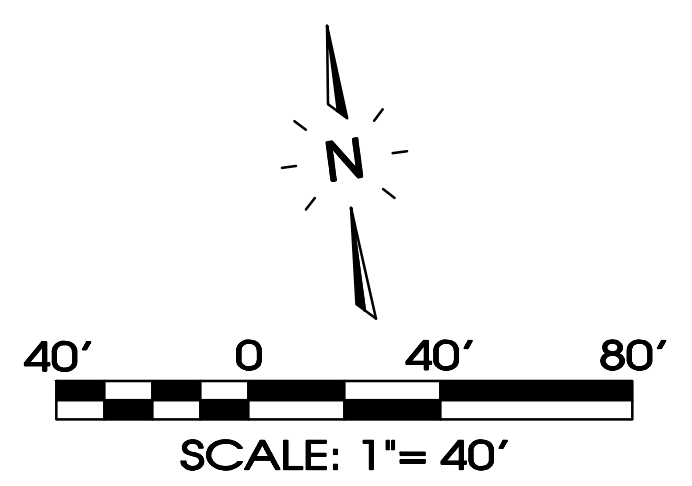


Matt Taylor, P.E.  
Vice-President  
SEC, Inc.



**LINE DATA**

LINE	BEARING	DISTANCE
L1	N50°17'39" E	25.80'
L2	S82°36'11" E	41.50'
L3	N07°52'21" W	24.00'
L4	N07°52'21" W	3.00'
L5	S22°33'14" W	25.72'
L6	S82°36'11" E	23.00'



**811**  
Know what's below.  
Call before you dig.

**Legend:**

□	EXIST. CONCRETE MONUMENT	⊕	BENCHMARK
●	IRON PIN SET (I.P.S.)	♿	HANDICAP PARKING SYMBOL
○	IRON PIN FOUND (I.P.F.)	V.A.	VAN ACCESSIBLE HANDICAP DESIGNATION
+	EXIST. SIGN POST	⊕	HC SIGN
○	EXIST. SEWER CLEANOUT	⊕	PROPOSED SIGN POST
○	EXIST. MANHOLE (SEWER & PHONE)	●	CONCRETE BOLLARD
⊕	EXIST. CATCH BASIN (STORM SEWER)	⊕	WHEEL STOP
⊕	EXIST. WATER/GAS VALVE	⊕	CONCRETE SIDEWALK
⊕	EXIST. TELEPHONE RISER	⊕	EXTRUDED CURB
⊕	EXIST. GAS RISER	⊕	CURB & GUTTER
⊕	ELECTRICAL ENCLOSURE	➔	TRAFFIC ARROW
⊕	EXIST. WATER METER	➔	TURN LANE ARROWS
○	EXIST. UTILITY POLE	⚠	REVISION NUMBER
⊕	EXIST. FIRE HYDRANT	#1	DRAINAGE STRUCTURE DESIGNATION
⊕	POST INDICATOR VALVE	A	DRAINAGE PIPE DESIGNATION
⊕	BLOW OFF VALVE	⊕	RIP RAP
⊕	REDUCER	➔	RUNOFF FLOW ARROW
⊕	REMOTE FIRE DEPT. CONNECTION	⊕	INLET FILTER PROTECTION
⊕	CONCRETE THRUST BLOCK	⊕	PROPOSED SPOT ELEVATION
⊕	DOUBLE DETECTOR CHECK VALVE	⊕	EXIST. SPOT ELEVATION
⊕	FIRE DEPT. CONNECTION	➔	SEWER/STORM FLOW DIRECTION
⊕	FIRE HYDRANT	⊕	CATCH BASIN
⊕	GATE VALVE & BOX	⊕	CURB INLET
⊕	WATER METER	⊕	AREA DRAIN
⊕	GAS METER	⊕	HEADWALL
⊕	GREASE TRAP	⊕	WINGED HEADWALL
○	EXTERIOR CLEANOUT EOC	⊕	CONCRETE SWALE
○	MANHOLE	⊕	TYPE- X- HEADWALL

EXISTING PHONE	PH
EXISTING ELECTRIC	OH
PROPERTY LINE	---
EASEMENTS	---
RIGHT OF WAY	ROW
EROSION CONTROL SILT FENCE	SF SF
EROSION EEL	E E E
EXISTING TREELINE	~ ~ ~
EXISTING FENCELINE	- X - X - X - X -
MINIMUM BUILDING SETBACK LINE	---
PHASE BOUNDARY	██████████
EXISTING GAS LINE	GAS
PROPOSED GAS LINE	GAS
EXISTING STORM	STM
PROPOSED STORM	STM
EXISTING CONTOUR LINES	-601-
PROPOSED CONTOUR LINES	-601-
EXISTING SANITARY SEWER	SS
PROPOSED SANITARY SEWER	SS
EXISTING WATER	W W
PROPOSED WATER	W W

**SEC, Inc.**  
SITE ENGINEERING CONSULTANTS  
ENGINEERING • SURVEYING • LAND PLANNING  
LANDSCAPE ARCHITECTURE  
850 MIDDLE TENNESSEE BOULEVARD  
MURFREESBORO, TENNESSEE 37129  
PHONE: (615) 890-7901 E-MAIL: MTAYLOR@SEC-CIVIL.COM FAX: (615) 895-2567  
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**Yanahli Group Church Street Development**  
Murfreesboro, Tennessee

**REVIEW SET**  
(Not intended for construction)

REVISIONS:

DRAWN: SJA/CFB3  
DATE: 6-15-2023  
CHECKED: MAT  
FILE NAME: 23066project  
SCALE: 1" = 40'  
JOB NO. 23066  
SHEET: C0.2

**Master Plan**



## Sewer Usage Calculation

### 115 Mall Circle Dr

Month	Date	Number of Days	Consumption (Cu.ft)	Consumption (Gallons per Month)	Consumption (Gallons per Day)
April	4/18/2023	30	804.00	6013.92	200.46
March	3/19/2023	27	703.00	5258.44	194.76
February	2/20/2023	32	1162.00	8691.76	271.62
January	1/19/2023	32	4740.00	35455.20	1107.98
November	11/17/2022	30	4224.00	31595.52	1053.18
October	1/1/1900	29	3642.00	27242.16	939.38
September	9/19/2022	32	2745.00	20532.60	641.64
August	10/21/2206	30	1546.00	11564.08	385.47
July	7/19/2022	30	839.00	6275.72	209.19
June	6/19/2022	33	679.00	5078.92	153.91
May	5/17/2022	28	554.00	4143.92	148.00
April	4/19/2022	35	1700.00	12716.00	363.31
March	3/15/2022	28	572.00	4278.56	152.81
February	2/15/2022	28	571.00	4271.08	152.54
January	1/18/2022	30	1272.00	9514.56	317.15
December	12/19/2021	33	688.00	5146.24	155.95
November	11/16/2021	28	634.00	4742.32	169.37
October	10/19/2021	30	669.00	5004.12	166.80
September	9/19/2021	33	757.00	5662.36	171.59
August	8/17/2021	29	715.00	5348.20	184.42
July	7/19/2021	32	839.00	6275.72	196.12
June	6/17/2021	29	618.00	4622.64	159.40
May	5/19/2021	29	557.00	4166.36	143.67
April	4/20/2021	33	860.00	6432.80	194.93
March	3/18/2021	31	670.00	5011.60	161.66
February	2/15/2021	27	646.00	4832.08	178.97
January	1/19/2021	33	809.00	6051.32	183.37
<b>Total</b>		<b>821.00</b>	<b>34215.00</b>	<b>255928.20</b>	<b>8357.65</b>
Monthly Average Usage				<b>9478.82</b>	<b>Gallons</b>
Daily Average Usage				<b>309.54</b>	<b>Gallons</b>

## Sewer Usage Calculation

### 710 NW Broad St

Month	Date	Number of Days	Consumption (Cu.ft)	Consumption (Gallons per Month)	Consumption (Gallons per Day)
April	4/24/2023	32	224.00	1675.52	52.36
March	3/23/2023	28	215.00	1608.20	57.44
February	2/23/2023	30	219.00	1638.12	54.60
January	1/24/2023	34	320.00	2393.60	70.40
December	12/21/2022	29	189.00	1413.72	48.75
November	11/22/2022	29	196.00	1466.08	50.55
October	10/24/2022	32	224.00	1675.52	52.36
September	9/22/2022	30	190.00	1421.20	47.37
August	8/23/2022	30	234.00	1750.32	58.34
July	7/24/2022	31	183.00	1368.84	44.16
June	6/23/2022	32	213.00	1593.24	49.79
May	5/22/2022	28	196.00	1466.08	52.36
April	4/24/2022	33	268.00	2004.64	60.75
March	3/22/2022	29	232.00	1735.36	59.84
February	2/21/2022	29	172.00	1286.56	44.36
January	1/23/2022	28	174.00	1301.52	46.48
December	12/26/2021	35	201.00	1503.48	42.96
November	11/21/2021	28	158.00	1181.84	42.21
October	10/24/2021	32	204.00	1525.92	47.69
September	9/22/2021	31	187.00	1398.76	45.12
August	8/22/2021	31	313.00	2341.24	75.52
July	7/22/2021	30	180.00	1346.40	44.88
June	6/22/2021	29	182.00	1361.36	46.94
May	5/24/2021	29	208.00	1555.84	53.65
April	4/25/2021	33	196.00	1466.08	44.43
March	3/23/2021	29	214.00	1600.72	55.20
February	2/22/2021	29	200.00	1496.00	51.59
January	1/24/2021	34	202.00	1510.96	44.44
<b>Total</b>		<b>854.00</b>	<b>5894.00</b>	<b>44087.12</b>	<b>1444.54</b>
Monthly Average Usage				<b>1574.54</b>	<b>Gallons</b>
Daily Average Usage				<b>51.59</b>	<b>Gallons</b>

## Sewer Usage Calculation

### 1708 Gateway Blvd

Month	Date	Number of Days	Consumption (Cu.ft)	Consumption (Gallons per Month)	Consumption (Gallons per Day)
April	4/18/2023	30	418.00	3126.64	104.22
March	3/19/2023	27	281.00	2101.88	77.85
February	2/20/2023	32	314.00	2348.72	73.40
January	1/19/2023	32	308.00	2303.84	72.00
November	11/17/2022	30	322.00	2408.56	80.29
October	1/1/1900	29	323.00	2416.04	83.31
September	9/19/2022	32	394.00	2947.12	92.10
August	10/21/2206	30	372.00	2782.56	92.75
July	7/19/2022	30	310.00	2318.80	77.29
June	6/19/2022	33	342.00	2558.16	77.52
May	5/17/2022	28	315.00	2356.20	84.15
April	4/19/2022	35	410.00	3066.80	87.62
March	3/15/2022	28	384.00	2872.32	102.58
February	2/15/2022	28	310.00	2318.80	82.81
January	1/18/2022	30	305.00	2281.40	76.05
December	12/19/2021	33	358.00	2677.84	81.15
November	11/16/2021	28	399.00	2984.52	106.59
October	10/19/2021	30	384.00	2872.32	95.74
September	9/19/2021	33	345.00	2580.60	78.20
August	8/17/2021	29	332.00	2483.36	85.63
July	7/19/2021	32	314.00	2348.72	73.40
June	6/17/2021	29	290.00	2169.20	74.80
May	5/19/2021	29	284.00	2124.32	73.25
April	4/20/2021	33	299.00	2236.52	67.77
March	3/18/2021	31	292.00	2184.16	70.46
February	2/15/2021	27	250.00	1870.00	69.26
January	1/19/2021	33	251.00	1877.48	56.89
<b>Total</b>		<b>821.00</b>	<b>8906.00</b>	<b>66616.88</b>	<b>2197.08</b>
Monthly Average Usage				<b>2467.29</b>	<b>Gallons</b>
Daily Average Usage				<b>81.37</b>	<b>Gallons</b>

<b>Sewer Usage Calculation</b>		
<b>Chipotle Restaurant</b>		
Daily Average Usage	981.80	Gallons

## Sewer Usage Calculation

### First Watch Restaurant

Month	Date	Number of Days	Average (Gallons per Month)	Average (Gallons per Day)
February	10/21/2020	58	97988	1689.45
March	8/24/2020	62	92752	1496.00
April	6/23/2020	62	75548	1218.52
May	4/22/2020	63	137632	2184.63
July	12/19/2019	58	204952	3533.66
August	1/1/1900	61	152592	2501.51
September	8/22/2019	61	125664	2060.07
<b>Total</b>		<b>425.00</b>	<b>887128.00</b>	<b>14683.83</b>
Monthly Average Usage			<b>126733</b>	<b>Gallons</b>
Daily Average Usage			<b>2097.69</b>	<b>Gallons</b>

## Allocation Variance Calculation

Allocation Variance Calculation		
Daily Average Usage (Strip Center)	309.54	Gallons
Daily Average Usage (Restaurant)	981.80	Gallons
Daily Average Usage (Bank)	66.48	Gallons
Daily Average Usage (Restaurant)	2097.69	Gallons
Daily Average Usage (Restaurant)	981.80	Gallons
Total	4437.31	Gallons
Base Generation Rate	260	Gallons
<b>Required Sewer Usage</b>	<b>17.07</b>	<b>sfue</b>
Site Area	3.82	Acres
<b>Allocated Sewer Usage</b>	<b>9.55</b>	<b>sfue</b>
<b>Allocation Variance Required</b>	<b>7.52</b>	<b>sfue</b>



*... creating a better quality of life*

# *MEMORANDUM*

DATE: May 25, 2023

TO: Greg McKnight

FROM: Valerie H. Smith

SUBJECT: S. of 2955 S. Church St.  
Sewer Allocation Ordinance (SAO)  
Variance Request

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## **Sewer System Capacity**

The sanitary sewer collection system can convey the estimated sewer flows resulting from this development and its request to vary from the density requirements associated with its current land use zoning.

## **Effects within Basin by Providing Variance to Sewer Allocation**

Per the most recent sewer connection model of the system and per the 2022 Sewer Allocation report, this Basin MF12 currently has capacity for 4668 connections. By committing sewer service to this development, Staff is determining that basin 12's sewer connection capacity will be reduced by 5 connections, resulting in 4663 available connections for future developments. Currently, staff has determined there is capacity downstream of the site. Please note that while each building is counted as one sewer connection, the current single-family unit (sfu) equivalency based on estimated water usage data is determined to be 17 sfu's, resulting in a larger sewer discharge than the 490 gallon per day per connection average the model is based upon.

Per the existing Commercial Fringe zoning (allotted 2.5 sfu/acre) and acreage, 3.20 acres, the property is allowed 8 sfu's. Therefore, the development is requesting a variance of 9 sfu's.

The S. Church St. corridor is a very attractive area within the City. Water Resources staff advises variance requests to be diligently considered to ensure the benefit to the City is commensurate with the sewer capacity committed to any proposed development requesting a variance to the sewer allocation ordinance.

Water Resources Department

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

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Water Resources Board Appointment

**Department:** Administration

**Presented by:** Mayor McFarland

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Appointment to the Water Resources Board

**Background Information**

The Board is established by City Code § 2-76. It oversees the water and sewer systems of the City in cooperation with the City Manager. There are eight members appointed for four-year terms.

**Attachments**

Memo from Mayor McFarland





June 15, 2023

Members of City Council

**RE: Recommended Appointment – Water Resources Board**

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As an item for the City Council agenda, I am recommending the following appointment to the Water Resources Board.

**Appointment**

Warren Russell replacing the expiring term of Alphonse Carter, Jr.  
(term expiring June 30, 2026)

Sincerely,

A handwritten signature in blue ink that reads "Shane McFarland". The signature is written in a cursive style with a small mark below the name.

Shane McFarland  
Mayor

# COUNCIL COMMUNICATION

Meeting Date: 06/15/2023

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**Item Title:** Beer Permits  
**Department:** Finance  
**Presented by:** Jennifer Brown, City Recorder  
**Requested Council Action:**

Ordinance   
Resolution   
Motion   
Direction   
Information

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## Summary

TCA 57-5-103 delegates the authority to regulate the sale, distribution, manufacture, or storage of beer to the City where the business is located.

## Staff Recommendation

The applications from the following applicants meet requirements and are recommended to be approved. The permits will only be issued once the permits are approved by the City Council (Beer Board) and building and codes final inspections are passed for regular beer permits or a special event permit is approved for special event beer permits.

## Special Event Beer Permits

Name of Applicant	Date of Event	Type of Event	Location of Event
Rutherford County Chamber of Commerce	7/11/2023	Networking Event	352 W. Northfield Blvd. Ste. 3

## Background Information

All applicants meet the requirements for issuing a beer permit per the City Code Chapter 4 Alcoholic Beverages with the exception of pending building and codes inspections for regular beer permits or pending special event permit for special event beer permits.

## Council Priorities Served

*Maintain public safety*

Controlling the sale of beer within the City provides enforcement tools by the City for restrictions as to where beer is sold, ability to obtain the right to sell beer, time of beer sales and onsite consumption.

## Attachments

Summaries of Request

## Special Event Beer Application

Summary of information from the beer application:

**Name of Non-Profit Organization**  
**Organization Address**

Rutherford County Chamber of Commerce  
3050 Medical Center Parkway

**Event Location**

Twelve Stone Health Partners  
352 W. Northfield Blvd. Ste. 3  
7/11/2023

**Event Date**

**Event Time**

4:00 p.m. until 7:00 p.m.

**Period for Beer to be Served**

4:00 p.m. until 7:00 p.m.

**Nature and Purpose of Event**

Networking Event

**Approximate Number of Persons Expected to Attend**

300

**Special Event Permit Approved?**

No

**Application Completed Properly?**

Yes

**Internal Revenue Letter Provided?**

Yes

**The actual beer application is available in the office of the City Recorder.**

**No Items.**

