

**MURFREESBORO CITY COUNCIL**  
**Regular Meeting Agenda**  
**Council Chambers – 6:00 PM**  
**August 31, 2023**

**PRAYER**

Mr. Austin Maxwell

**PLEDGE OF ALLEGIANCE**

**Public Comment on Actionable Agenda Items**

**Consent Agenda**

1. Agreement for Intergovernmental Services (Administration)
2. Approval of Southern Lighting & Traffic Systems Contract (Fire Rescue)
3. NAFECO Contract Amendment (Fire Rescue)
4. Asphalt Purchases Report (Water Resources)
5. Grass Cutting & Landscaping Second Amendment (Water Resources)
6. Full-scale Biosolids Thermal Dryer Controls Design (Water Resources)
7. Magnolia Village Sewer Replacement Participation (Water Resources)

**Old Business**

Land Use Matters

8. Ordinance 23-O-26 Amending the Zoning Ordinance – Building Height (2nd and final reading) (Planning)
9. Ordinance 23-OZ-28 Rezoning property along Veterans Parkway (2nd and final reading) (Planning)
10. Ordinance 23-OZ-29 Rezoning property along East Vine Street (2nd and final reading) (Planning)

**New Business**

Resolution

11. Resolution 23-R-27 Accompanying TDEC Permit for Qualified Biogas Property (Administration)
12. Resolution 23-R-28: Supporting Tax Increment Financing for Project Keystone—Broad Street Redevelopment Project (Administration)

On Motion

13. Non-Exclusive Public Right-of-Way License Agreement with Google Fiber Tennessee, LLC (Administration)
14. Development Agreement and Purchase and Sale Agreement – Project Keystone—Broad Street Redevelopment Project (Administration)
15. Contract to Purchase Buses (Transportation)
16. Polymer Contract Amendment (Water Resources)
17. FY24 Sewer Rehabilitation Contract Approval (Water Resources)

18. EnviroSight Rover X Sewer Inspection System (Water Resources)

19. Crushed Stone Contract (Water Resources)

**Board & Commission Appointments**

**Licensing**

20. Beer Permits (Finance)

**Payment of Statements**

**Other Business**

**Adjourn**

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** Agreement for Intergovernmental Services

**Department:** Administration

**Presented by:** Craig Tindall

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
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**Summary**

Agreement with Ramsey, Farrar Russell & Smith, LLC for intergovernmental services including legislative services at the General Assembly.

**Staff Recommendation**

Approve agreement with Ramsey, Farrar Russell & Smith, LLC for the 2024 Legislative Sessions.

**Background Information**

For the past several years, Ramsey, Farrar, Russell & Smith have provided the City with legislative monitoring and communication services with members of the General Assembly, the Governor’s Office and the state’s administrative agencies. The City has been well served by these services, which provides the City to have a strong voice in legislative affairs.

The firm’s fee has remained unchanged from the previous year.

**Council Priorities Served**

*Establish strong City brand*

Legislative decisions have a significant impact on the operations and services provided by the City. Maintaining a well-respected, effective voice at the legislative level is critical for the City continue working for its citizens.

**Fiscal Impact**

This expenditure, \$25,000 in FY22, is funded by the Department’s budget and the portion expended in the next fiscal year will be similarly budgeted.

**Attachments**

Professional Services Agreement with Ramsey Farrar Russell & Smith, L.L.C.

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

This agreement (the "Contract") entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between **CITY OF MURFREESBORO**, and **RAMSEY FARRAR RUSSELL & SMITH, L.L.C.**, hereinafter referred to as "CONSULTANT."

**I. SCOPE OF WORK**

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

**II. TERM AND COMPENSATION**

1. The term of this Contract (the "Term") will commence January 1, 2024 and terminate on December 31, 2024, unless otherwise extended by mutual agreement of the parties.

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

- \$4,166.67 on January 15, 2024;
- \$4,166.67 on February 1, 2024;
- \$4,166.67 on March 1, 2024;
- \$4,166.67 on April 1, 2024;
- \$4,166.67 on May 1, 2024;
- \$4,166.67 on June 1, 2024;
- \$4,166.67 on July 1, 2024;
- \$4,166.67 on August 1, 2024;
- \$4,166.66 on September 1, 2024;
- \$4,166.66 on October 1, 2024;
- \$4,166.66 on November 1, 2024;
- \$4,166.66 on December 1, 2024.

**III. GENERAL CONDITIONS**

The parties further agree as follows:

**1. CONSULTANT'S PERSONNEL**

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

further certifies that all of its employees assigned to serve **CITY OF MURFREESBORO** have such knowledge and experience as required to perform the duties assigned to them.

## 2. **INDEPENDENT STATUS**

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

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

## 3. **TERMINATION OR ABANDONMENT**

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

## 4. **CONFLICT OF INTEREST**

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

## **5. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

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

## **6. GENERAL COMPLIANCE WITH LAWS**

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

## **7. ENTIRE AGREEMENT**

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

## **8. AMENDMENT**

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

## **9. SEVERABILITY**

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part

hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

#### **10. NO WAIVER OF CONTRACTUAL RIGHT**

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

#### **11. MATTERS TO BE DISREGARDED**

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

#### **12. INCORPORATION OF OTHER DOCUMENTS**

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

#### **13. OWNERSHIP AND USE OF DOCUMENTS**

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

**14. NOTICE**

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

**CITY OF MURFREESBORO:**

Craig Tindall  
111 West Vine Street  
Murfreesboro, Tennessee 37133

**CONSULTANT:**


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

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

**CITY OF MURFREESBORO**

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

BY: \_\_\_\_\_  
SHANE MCFARLAND,  
MAYOR

BY:  \_\_\_\_\_  
J. RUSSELL FARRAR,  
FOUNDING PARTNER



# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** Approval of Southern Lighting & Traffic Systems Contract

**Department:** Fire Rescue/Transportation

**Presented by:** Chief Mark McCluskey/Jim Kerr, Transportation Director

**Requested Council Action:**

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

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**Summary**

Contract between the City and Southern Lighting & Traffic Systems, LLC.

**Staff Recommendation**

Approve contract with Southern Lighting & Traffic Systems, LLC.

**Background Information**

On April 20, 2023, Council approved the Pre-Emption Project with Arcadis, Inc. This project entails connecting vehicle devices with 18 traffic signals along Medical Center Parkway, allowing fire apparatus to communicate with traffic signals to provide priority control of the direction of travel. Roadside Units were purchased from Southern Lighting & Traffic Systems as outlined in Task 5 of the Professional Services Agreement with Arcadis, Inc.

**Council Priorities Served**

*Safe and Livable Neighborhoods*

Efficient signalization enhances the safety and operations of the City's roadways.

**Fiscal Impact**

The contract total of \$24,650 is funded through ARPA funds.

**Attachments**

Southern Lighting & Traffic Systems Contract

**CONTRACT BETWEEN  
CITY OF MURFREESBORO  
AND  
SOUTHERN LIGHTING & TRAFFIC SYSTEMS, LLC  
FOR ITERIS BLUE TOAD SPECTRA**

This Contract is entered into and effective as of \_\_\_\_\_ (“Effective Date”), by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **SOUTHERN LIGHTING & TRAFFIC SYSTEMS, LLC**, a limited liability corporation of the State of Georgia ("Contractor").

This Contract consists of the following documents:

- *This Contract*
- *Southern Lighting & Traffic Systems Invoice #46965 dated August 17, 2023 (“Contractor’s Proposal”)*
- *Attachment A- Federally Required Clauses for Projects Using ARPA Grant Expenses*
- *Any properly executed amendments to this Agreement*

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

- *First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)*
- *Second, Attachment A- Federally Required Clauses for Projects Using ARPA Grant Expenses*
- *Third, this Contract*
- *Fourth, Southern Lighting & Traffic Systems Invoice #46965 dated August 17, 2023 (“Contractor’s Proposal”)*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase three (3) Iteris Blue TOAD Spectra CV-DSRC/C-V2X RSU, one (1) FCC Licensing for Area of Operations, and three (3) FCC Licensing for Individual Site License as listed on Contractor’s proposal.
2. **Term.** The term of this contract shall be from one year from the Effective Date first listed above.
3. **Contractor’s performance may be terminated in whole or in part:**
  - a. Upon 30-day prior notice, for the convenience of the City.
  - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
  - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
  - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

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

- a. The price for the goods to be provided under this Contract is set forth in Contractor's Proposal reflecting a Purchase Price of Twenty-Four Thousand, Six Hundred Fifty Dollars and Zero Cents (**\$24,650.00**). Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. All invoices must be submitted to [accountspayable@murfreesborotn.gov](mailto:accountspayable@murfreesborotn.gov) with a copy to the Contact person listed below.
- b. Deliveries of all items shall be made within 6-8 weeks of order to: 311 Overall Street., Murfreesboro, TN 37129. Delivery Contact: Sean Williams Phone: 615-318-5373 (email: [swilliams@murfreesborotn.gov](mailto:swilliams@murfreesborotn.gov)) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. Deliveries of all items shall be made as stated in the Contract documents. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

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

6. **Indemnification.**

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

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

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

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

If to the City of Murfreesboro:

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

If to the Contractor:

Southern Lighting & Traffic Systems, LLC  
Attn: Craig Carrow  
113 Industrial Park Drive  
Cumming, GA 30040  
770-205-9007  
ccarrow@southernltg.com

8. **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.
9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
10. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of five (5) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
11. **Modification.** This Contract 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 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, 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.

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

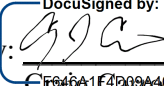
- 23. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
- 24. **Non-Boycott of Israel.** By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
- 25. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

**CITY OF MURFREESBORO**

**Southern Lighting and Traffic Systems, LLC**

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

DocuSigned by:  
By:  \_\_\_\_\_  
Craig Carrow, Owner

APPROVED AS TO FORM:

DocuSigned by:  
 \_\_\_\_\_  
43A2035E51F9404  
Adam F. Tucker, City Attorney

**FEDERALLY REQUIRED CLAUSES FOR PROJECTS USING ARPA GRANT EXPENSES**

- **CONFLICT OF INTEREST - GRATUITIES AND KICKBACKS**. It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
  
- **SUSPENSION & DEBARMENT** - Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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



## Attachment B

its lower tier covered transactions.

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

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

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

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

- **2 CFR 200.321 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

The City of Murfreesboro in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 41 U.S.C. 2000d to 2000d-4 hereby notifies all proposers that it will affirmatively insure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (“DBE’s”) will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, creed, color, sex, national origin, or handicap in consideration for an award.

- **DOMESTIC PREFERENCES FOR PROCUREMENTS.** (2 CFR § 200.322)

(a) As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(b) For purposes of this clause:

- “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

## Attachment B

- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- **BONDING REQUIREMENTS.** (2 CFR § 200.326)  
For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
  - (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
  - (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148).** (all prime construction contracts in excess of \$2,000 awarded by non-Federal entities) Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor can be found in the solicitation. Award of the contract or subcontract is conditioned upon the acceptance of the wage determination. The City will report all suspected or reported violations to the Federal awarding agency.
  1. Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or

## Attachment B

trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
  - a. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
3. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
4. The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal

## Attachment B

agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

5. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis- Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- **COPELAND “ANTI-KICKBACK” ACT.** Contractor must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City will report all suspected or reported violations to the Federal awarding agency.
  - **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
  - **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
  - **CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED** - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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- **PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.323)**. Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR § 200.216)**.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

  - Procure or obtain;
  - Extend or renew a contract to procure or obtain; or
  - Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.
- **RECORDKEEPING REQUIREMENTS**. The City must maintain records and financial documents for five years after all funds have been expended or returned to the Department of Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should

## Attachment B

be collected, transmitted, and stored in open and machine-readable formats.

The City must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.

- **SINGLE AUDIT REQUIREMENTS.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.<sup>7</sup>

Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB’s website: <https://www.whitehouse.gov/omb/office-federal-financial-management/> Recipients and subrecipients should consult the Federal Audit Clearinghouse to see examples of Single Audit submissions.

- **COMPLIANCE WITH APPLICABLE LAW & REGULATIONS.**

Recipient agrees to comply with the requirements of sections 602 and 603 of the Act, regulations adopted by Treasury pursuant to sections 602(f) and 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

Federal regulations applicable to this award include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and Treasury’s implementing regulations at 31 CFR Part 19.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- Generally applicable federal environmental laws and regulations.
- Statutes and regulations prohibiting discrimination applicable to this award, include,

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without limitation, the following:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- **HATCH ACT**. The City agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
  - **PUBLICATIONS**. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to City of Murfreesboro by the U.S. Department of the Treasury."
  - **PROTECTIONS FOR WHISTLEBLOWERS**. The City shall inform its employees in writing of the rights and remedies provided under clause 16 of the Grant Agreement, in the predominant native language of the workforce. Specifically, clause 16 states:
    - In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
    - The list of persons and entities referenced in the paragraph above includes the following:
      - A member of Congress or a representative of a committee of Congress;
      - An Inspector General;
      - The Government Accountability Office;
      - A Treasury employee responsible for contract or grant oversight or management;



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- An authorized official of the Department of Justice or other law enforcement agency;
  - A court or grand jury; or
  - A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- 
- **INCREASING SEAT BELT USE IN THE UNITED STATES.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), the City encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
  
  - **REDUCING TEXT MESSAGING WHILE DRIVING.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.



**Southern Lighting & Traffic Systems**  
**113 Industrial Park Drive**  
**Cumming, GA 30040**

**Ph: 770-205-9007**  
**Fax : 770-205-9079**

# Invoice

Date	Invoice #
8/17/2023	46965

**Bill To:**

City of Murfreesboro  
 PO Box 1139  
 Murfreesboro, TN 37133-1139

SLTS Job #	Terms	Project Details	Customer PO #
4-2928	Net 30	City of Murfreesboro Iteris RSU's	Jim Kerr

Qty	Item	Item Description	Price Ea	Amount
3	BT	Iteris BlueTOAD Spectra CV - DSRC/C-V2X RSU	7,000.00	21,000.00
1	BT	FCC Licensing for Area of Operations	2,750.00	2,750.00
3	BT	FCC Licensing for Individual Site License	300.00	900.00

<b>Subtotal</b>	<b>\$24,650.00</b>
<b>Sales Tax (0.0%)</b>	<b>\$0.00</b>
<b>Total</b>	<b>\$24,650.00</b>

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** Amendment of NAFECO Contract

**Department:** Fire Rescue

**Presented by:** Chief Mark McCluskey

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Amend contract with NAFECO for turnout gear.

**Staff Recommendation**

Approve the contract amendment with NAFECO.

**Background Information**

MFRD purchases turnout gear every year for Fire Trainees and replacement gear for Firefighters. Council previously approved the purchase of 25 sets of turnout gear through the Sourcewell Contract with NAFECO. MFRD requests approval to purchase 25 additional sets during FY24.

**Council Priorities Served**

*Maintain public safety*

Turnout gear provides protection to personnel allowing them to perform their job safely and effectively.

**Fiscal Impacts**

The expenditure, \$91,800, is funded by the Department's annual operating budget.

**Attachment**

NAFECO Contract Amendment

**AMENDMENT #1 TO CONTRACT  
BETWEEN  
CITY OF MURFREESBORO  
AND  
NAFECO (North America Fire Equipment Company, Inc.)  
FOR FIRE RESCUE TURNOUT GEAR**

This Amendment #1 to the Contract between City of Murfreesboro and NAFECO (North America Fire Equipment Company, Inc.) for Fire Rescue Turnout Gear is entered into as of the Effective Date, below, based on the following recitals, representations, and covenants.

**WHEREAS**, the City of Murfreesboro (the “City”) and North America Fire Equipment Company, Inc. (“NAFECO” or “Contractor”) entered into a contract for the provision of Fire Rescue Turnout Gear on September 2, 2022 (the “Contract”); and

**WHEREAS**, the term of the Contract is from September 2, 2022, to May 7, 2024; and

**WHEREAS**, Pursuant to Clause 12 of the Contract, said contract may be modified by written amendment executed by all parties; and,

**WHEREAS**, the City desires to amend the Contract with NAFECO to purchase an additional 25 sets of LION brand turnout gear with adjusted price as listed in Quote #1210465 dated August 14, 2023;

**NOW THEREFORE**, the parties agree to the following:

1. Contractor agrees to provide and City agrees to purchase an additional 25 sets of LION brand turnout gear with adjusted price as listed below and per descriptions listed on Contractor’s Quote #1210465 dated August 14, 2023.
2. The price for the goods and other items to be provided under this Amendment #1 is \$91,800.00
3. 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.
4. This Amendment is hereby effective on \_\_\_\_\_.

**CITY OF MURFREESBORO**

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

**North America Fire Equipment Company**

By: Ronald Woodall  
Ronald Woodall, Vice President

**APPROVED AS TO FORM:**

Adam Tucker  
Adam F. Tucker, City Attorney



NAFECO  
1515 West Moulton Street  
Decatur, AL 35601  
Phone: 800-628-6233

info@nafeco.com

# QUOTE

**Quote Number: 1210465**

**Date: 8/14/23**

**Quote Expiration: EXPIRES 30 DAYS**

**To:** MUR025  
Murfreesboro Fire Department  
Logistics Office - Receiving  
1311 Jones Boulevard  
Murfreesboro, TN 37129  
United States of America

**F.O.B. Point:** DESTINATION

**Salesperson:** NAFECO-Fire Division

**Quote Prepared By:** Brittany Barber

Qty.	U/M	Item No.	Description	Each	Amount
25	EA	CVB_1210465	LION V-Force Bi Swing Coat, Gold Armor AP, C4 Glide Ice	1898.00	47,450.00
			Stedair 4000 Liner System, Yoke Lettering and Lettered		
			Hanging Name Patch.		
			LION RETAIL: \$3,855.00		
			LESS 35% PER SOURCEWELL: \$2,505.75		
25	EA	PVF_1210465	LION V-Force Pant, Gold Armor AP, C4 Glide Ice/Stedair 4000	1774.00	44,350.00
			Liner System. With Class II A-Frame Harness. Includes		
			EZ-HBack suspender.		
			LION RETAIL: \$3,559.00		
			LESS 35% PER SOURCEWELL: \$2,313.35		
			-----		
			Pricing per Sourcewell Coop Contract 032620-L10.		
			Pricing includes delivery.		
			Sub-Total:		\$91,800.00
			Quote Total:		\$91,800.00

**Thank you for your business !**

*NOTE: All accounts are subject to sales tax charges unless a valid state tax exempt certificate is on file with NAFECO, or provided at the time of the order.*

**If you have any questions concerning this quote, please call our number listed above.**

Visit Us On The Internet At: [www.nafeco.com](http://www.nafeco.com)

**Page: 1**

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

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

**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

---

**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*

Perishable fuel-based commodity procurement fluctuates constantly; however, soliciting multiple vendors consistently provide the best pricing for the Department.

**Fiscal Impacts**

The overall costs, \$150,000 to \$175,000 per year, are funded by the FY24 operating budget.

**Attachments**

Asphalt Purchases Report

## MWRD - OPERATIONS & MAINTENANCE

### Asphalt Quotes FY 2022

	Wire Grass Const Co.		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$73.05	\$85.54	\$77.82	\$84.45	\$72.00	\$83.50	
Aug							
Sep							
Oct							
Nov							
Dec							
Jan							
Feb							
Mar							
Apr							
May							
Jun							

## 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



8/10	DH	Vulcan	411-E	\$73.50	10.00	735.00	\$51,669.13
8/10	DH	Vulacn	411-E	\$73.50	5.31	390.29	\$52,059.42
8/22	DH	Hawkins	411-E	\$78.50	14.46	1,135.11	\$42,990.16
8/22	DH	Hawkins	307-BM	\$69.00	96.85	6,682.65	\$49,672.81
9/7	DH	Hawkins	307-BM	\$69.00	18.28	1,261.32	\$50,934.13
10/10	DH	Hawkins	307-BM	\$85.51	33.55	2,868.86	\$53,802.99
2/27	DH	Hawkins	307-BM	\$82.80	198.39	16,426.69	\$70,229.68
3/7	DH	Hawkins	307-BM	\$82.80	108.20	8,958.96	\$79,188.64
6/16	DH	Vulcan	307-BM	\$72.00	18.45	1,457.72	\$80,646.36
6/13	DH	Vulcan	307-BM	\$72.00	17.11	1,231.92	\$81,878.52
6/13	DH	Vulcan	411-E	\$83.50	9.14	92.64	\$81,971.16
7/31	DH	Vulcan	307-BM	\$72.00	18.46	1,329.12	\$83,300.28
7/31	DH	Vulcan	307-BM	\$72.00	18.10	1,303.20	\$84,603.48

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Grass Cutting & Landscaping Second Amendment

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Extension of contract for lawn care and landscaping for the Stones River Water Treatment Plant.

**Staff Recommendation**

Approve the Second Amendment for the Barton Lawn Care contract.

**Background Information**

Barton Lawn Care was awarded the lawn care and landscaping contract for the Stones River Water Treatment Plant though June 30, 2022. The contract includes three one-year options to extend the contract. This request is to extend the contract through June 30, 2024.

**Council Priorities Served**

*Responsible Budgeting*

Outsourcing landscaping and grass cutting at the water plant is the least cost highest benefit means to maintain the campus grounds.

**Fiscal Impact**

The expense, \$32,100, is funded from MWRD's FY24 operating budget.

**Attachments**

Grass Cutting and Landscaping 2nd Amendment

**AMENDMENT NO. 2  
TO THE  
CONTRACT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
BARTON LAWN CARE  
FOR GRASS CUTTING AND LANDSCAPING FOR  
STONES RIVER WATER TREATMENT PLANT**

This Second Amendment (“Second Amendment”) to the Contract entered October 21, 2021 (“Contract”) is effective as of this \_\_\_\_\_, by and between the City of Murfreesboro (“City”), a municipal corporation of the State of Tennessee Barton Lawn Care, a Sole Proprietorship of the State of Tennessee, (“Contractor”).

**RECITALS**

WHEREAS, pursuant to clause 2 of the Agreement, the term of this contract was from October 21, 2021, to June 30, 2022, with three one-year options, unless extended upon agreement of the Contractor and the City; and,

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

WHEREAS, the City and Contractor previously agreed to extend the Contract term from August 19, 2022 to June 30, 2023 through the executed First Amendment.

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

1. The Contract is amended by extending the term of the contract for an additional year through June 30, 2024.
2. This amendment is hereby effective on \_\_\_\_\_.
3. All other terms of the Contract shall continue in full force and effect and are otherwise unchanged by this First Amendment.

**City of Murfreesboro**

**Barton Lawn Care**

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

DocuSigned by:  
By: Gary Barton  
5D2FEA28E4F6459  
**Gary Barton, Owner**

**Approved as to form:**

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

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Full-scale Biosolids Thermal Dryer Controls Design

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Professional services contract with MR Systems for controls design of the Water Resource Recovery Facility (WRRF) full-scale biosolids thermal drying project.

**Staff Recommendation**

Approve the professional services agreement with MR Systems.

**Background Information**

MWRD has a master services agreement with MR Systems for professional engineering services. MR Systems' area of expertise involves instrumentation and controls design and full integration services for installation of instrumentation and controls during the construction phase of the project. MR Systems was the controls integrator for the WRRF plant expansion in 2017 and its design of this project will offer cost savings during the construction/installation phase project. Utilizing the designer as the integrator during construction provides the benefit of identifying necessary elements and state-of-the-art components, which avoids change orders.

**Council Priorities Served**

*Expand infrastructure*

Controls design is necessary to optimize the energy requirements while processing biosolids through the thermal dryers.

**Fiscal Impact**

The expense, \$51,927, is funded by MWRD's working capital reserves.

**Attachments**

MR System Task Order 23-0001

**PROFESSIONAL SERVICES WORK ORDER 23-0001  
AGREEMENT FOR ENGINEERING CONSULTING SERVICES  
FOR THE  
MURFREESBORO WATER RESOURCE RECOVERY FACILITY  
FULL-SCALE THERMAL DRYER CONTROLS DESIGN**

This Work Order, made and entered into by and between the City of Murfreesboro, hereinafter called the "OWNER" and MR Systems, LLC, hereinafter called the "ENGINEER", shall be in accordance with our Professional Services Agreement- Task Order Edition amended on May 6<sup>th</sup>, 2021, and as described herein.

**Purpose**

This Work Order authorizes and directs the ENGINEER to proceed in providing to the OWNER engineering services for **the design and bidding of the instrumentation, Supervisory Control and Data Acquisition (SCADA) system, and associated networks for the Water Resource Recovery Facility (WRRF) Full-Scale Thermal Dryer Design.**

**Project Understanding**

Project will include final design phase services for a new thermal sludge dryer to be installed in the Truck Bay of the existing Biosolids Building at the WRRF.

**Engineer's Scope of Services**

A. Engineer's Scope of Service is generally defined as follows:

1. Owner has previously contracted with Smith Seckman Reid, Inc. (SSR) for the Design Phase and Construction Administration Services associated with the MWRRF Full-Scale Thermal Dryer. That design is at 60% completion stage. Owner desires for Engineer to collaborate with SSR on the completion of the design and specifications of the Supervisory Control and Data Acquisition (SCADA) and associated plant data networks and provide construction administration services. This assistance is anticipated to include the following:
  - a. Attendance at eight (8) meetings/workshops at either the WRRF, at SSR's Office, or virtual as indicated below.
    - 1) Integration Workshop to orient Engineer to current progress and expectations; up to 2 hours.
    - 2) One (1) controls design meeting at SSR (in-person or virtual); up to 2 hours each.
    - 3) Up to eight (8) virtual bi-weekly design review meeting; 30 minutes each.
    - 4) 90% in-person review meeting at WRRF.

Engineering Work Order #23-0001

Page 2

- 5) One (1) controls design meeting at SSR (in-person or virtual); up to 2 hours.
  - 6) 100% review meeting at WRRF.
  - 7) Pricing workshop at WRRF.
  - 8) One additional design meeting at Owner/Engineer discretion.
- b. Quality control reviews of SSR's equipment design and specifications related to instrumentation and controls.
  - c. Preparation of scope and fee for integration of SCADA system and data networks.
  - d. Make periodic visits to WRRF site during design as required to accomplish the work.
  - e. Provide response to bidder questions related to the controls design and provide updated drawings and specifications if revisions are required.
  - f. During construction, ENGINEER shall provide submittal reviews for process and equipment limited to the instrumentation and controls portions of the submittals. These reviews will include the dryer equipment.
  - g. During construction, ENGINEER shall provide responses to instrumentation and controls related requests for information issued by the Contractor.
  - h. At the completion of construction, ENGINEER shall prepare a set of record documents based on information provided by the Contractor.
2. Upon completion of the Final Design Phase services, Owner shall attempt to negotiate mutually beneficial terms, conditions and pricing for the Integration of the SCADA Improvements and associated data networks. Should these negotiations achieve a favorable outcome for both Owner and Engineer, one of three outcomes shall commence:
    - a. Negotiation of another Work Order for the Integration Phase Services.
    - b. Negotiation and Execution of a Procurement Contract for Goods and Services associated with the Integration Phase Services.
    - c. Inclusion of the Terms, Conditions and Pricing for the Integration Phase Services into the Construction Contract whereas Engineer shall become a subcontractor to the General Contractor.
- B. Should the negotiations not prove successful, Owner reserves the right to terminate this Work Order under the provisions of Section 6.05 of the Agreement.

Engineering Work Order #23-0001

Page 3

### **Time of Completion**

The engineering design and construction documents will be completed and ready for OWNER in accordance with SSR provided design schedule. Delivery of 90% documents will be 12 weeks after Notice to Proceed.

### **Deliverables**

The Contract Documents for the Full-Scale Thermal Dryer are being produced by SSR. Most of the deliverables required for the design of this project will be compiled and submitted by SSR.

ENGINEER will deliver to SSR the following design information:

- Control strategy narrative of the controls system (excluding the Thermal Dryer System functionality).
- All instrumentation and controls drawings in AutoCAD and PDF formats and specifications in MSWord and PDF formats at 90-percent milestone. All specification sections for the Thermal Dryer equipment (including instrumentation) are excluded from this scope of work. ENGINEER will coordinate on existing or preferred instrumentation by the OWNER.
- All instrumentation and controls drawings in AutoCAD and PDF formats and specifications in MSWord and PDF formats at 100-percent milestone. All specification sections for the Thermal Dryer equipment (including instrumentation) are excluded from this scope of work. ENGINEER will coordinate on existing or preferred instrumentation by the OWNER.
- All instrumentation and controls drawings in AutoCAD and PDF formats and specifications in MSWord and PDF formats to be included in the conformed documents for construction and Contractor use. All specification sections for the Thermal Dryer equipment (including instrumentation) are excluded from this scope of work. ENGINEER will coordinate on existing or preferred instrumentation by the OWNER.
- All instrumentation and controls drawings in AutoCAD and PDF formats and specifications in MSWord and PDF formats to be included in the record documents for OWNER use. All specification sections for the Thermal Dryer equipment (including instrumentation) are excluded from this scope of work. ENGINEER will coordinate on existing or preferred instrumentation by the OWNER.
- One set of record documents in AutoCAD and PDF format.

ENGINEER will deliver to the OWNER the following:

- Detailed Scope and Cost Information for the Integration of the SCADA and associated networks. This scope and cost information shall tabulate each component of the work as detailed in the Contract Documents and shall provide

Engineering Work Order #23-0001

Page 4

open book pricing of all materials, labor, and incidentals associated with the integration services. Engineer shall provide one (1) electronic copy of this Scope and Cost Information. The electronic copy of this Scope and Cost Information shall either be in a native Microsoft Word or Excel formats, or in an unlocked, searchable, bookmarked PDF format.

### **Compensation**

The Compensation will be in accordance with the attached Engineering Cost Breakdown and has been broken down as follows for the various services:

<b>Design:</b>	<b>Hourly with a Not-to-Exceed Price of \$43,927.00</b>
<b>Construction Administration:</b>	<b>Hourly with a Not-to-Exceed Price of \$8,000.00</b>
<b>Outside Plotting and Printing:</b>	<b>Reimbursable at cost</b>
<b>Out of Town Travel:</b>	<b>Reimbursable at cost</b>



Engineering Work Order #23-0001

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IN WITNESS WHEREOF, the parties hereto have executed this Work Order on this, the

\_\_\_\_\_ day of \_\_\_\_\_ 2023.

MR Systems, LLC

DocuSigned by:  
By: David B. Fata  
A054FEEAD68C478...

Title: Chief operating officer

CITY OF MURFREESBORO

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

DocuSigned by:  
Adam Tucker  
43A2035E51F9A01...  
Adam Tucker, City Attorney

## Amendment 1 – Term Renewal

## EXHIBIT A – Standard Hourly Rates Schedule

Labor Classification	Weekdays (M-F) (\$/hour)	Weekends/ Holidays (\$/hour)
Project Manager	160.00	210.00
Client Manager	160.00	210.00
IT Engineer	151.00	207.00
PLC Applications Engineer	151.00	207.00
HMI Applications Engineer	151.00	207.00
Design Engineer	146.00	203.00
Field Service Engineer	135.00	203.00
Electrician	135.00	203.00
Admin and Clerical	102.00	140.00

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Magnolia Village Sewer Replacement Participation

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Increase funding participation with BNA Homes, Inc (BNA) for replacing a sanitary sewer main along Minerva Drive.

**Staff Recommendation**

Approve the additional funding participation for the stone and asphalt.

**Background Information**

BNA is developing the Magnolia Village Subdivision, Minerva Drive and Dr Martin Luther King, Jr. Boulevard (MLK Blvd). In August 2022, the Water Resources Board approved to participate with BNA to replace the existing sewer main along Minerva Drive for \$14,344. BNA is responsible for extending water and sewer to the six lots shown on the attached plan and a public sewer main extension along MLK Blvd.

BNA did not account for either the full depth crushed stone backfill required over the sewer nor an asphaltic binder. After review, MWRD staff recommends a participation adjustment of \$49,757. This adjustment increases the original \$14,344 by \$35,413.

**Council Priorities Served**

*Expand Infrastructure*

Departmental funding participation for replacing or installing new sanitary sewer infrastructure with private development contractors significantly reduces the costs of minor infrastructure expansion projects.

**Fiscal Impact**

The additional expense, \$35,413, is funded by MWRD's working capital reserves.

**Attachments**

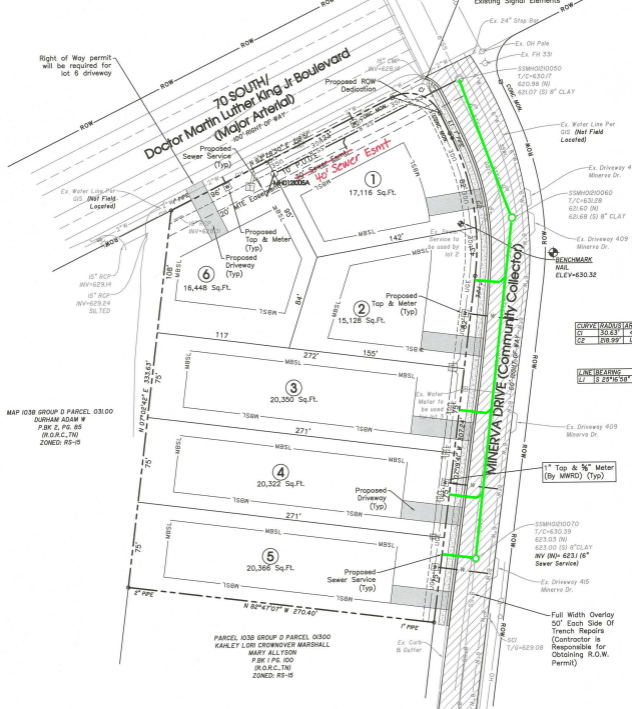
Sewer Replacement Plan

Right of Way permit will be required for lot 6 driveway

# 70 SOUTH/ Doctor Martin Luther King Jr Boulevard (Major Arterial)

100' RIGHT OF WAY

Existing Signal Elements



MAP 103B GROUP D PARCEL 03100  
DURHAM ADAM W  
P.B.K 2, PG. 05  
(R.O.R.C., TN)  
ZONED: RS-15

PARCEL 103B GROUP D PARCEL 03100  
KAHLEY LORI CROWNOVER MARSHALL  
MARY ALL YSON  
P.B.K 1 PG. 100  
(R.O.R.C., TN)  
ZONED: RS-15

CURVE	RADIUS (ARCS)	LEN
CR	30.63	48.78
CR	218.99	124.6

LINE BEARING	DM
L1	S 29°46'58" E

1" Top & 3/8" Meter  
(By MWRD) (Typ)

Full Width Overlay  
50' Each Side Of  
Trench Repairs  
(Contractor is  
Responsible for  
Obtaining R.O.W.  
Permit)

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Amending the Zoning Ordinance – Building Height  
[Second Reading]

**Department:** Planning

**Presented by:** Matthew Blomeley, AICP, Assistant Planning Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Ordinance amending the Zoning Ordinance regarding building height.

**Staff Recommendation**

Enact the ordinance amendment.

The Planning Commission recommended approval of this ordinance amendment.

**Background Information**

The Planning Department presented an ordinance amendment [2023-802] to amend the Zoning Ordinance as it pertains to the height of communications towers and buildings used in conjunction with government utilities or public safety. During its regular meeting on August 2, 2023, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On August 17, 2023, Council held a public hearing and approved this matter on First Reading.

**Council Priorities Served**

*Establish Strong City Brand*

This amendment will help to streamline the approval process for telecommunications towers and will also remove regulatory roadblocks pertaining to height for the development of certain government buildings.

*Maintain Public Safety*

This amendment will remove regulatory roadblocks pertaining to height for the development of government public safety structures, including towers used for emergency communications.

**Attachments:**

Ordinance 23-O-26

**ORDINANCE 23-O-26** amending Murfreesboro City Code Appendix A, Zoning, Sections 25, 31, Chart 2 and Chart 2 Endnotes, dealing with the maximum height of certain structures.

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

SECTION 1. Appendix A, Section 25, Temporary and Accessory Structures and Uses, of the Murfreesboro City Code is hereby amended by adding new subsection 25 (E)(4)(c) as follows:

- (c) Accessory structures used in conjunction with a government utility or government public safety agency, including but not limited to structures used in conjunction with water, repurified water, sanitary sewer, electricity, communications (including, but not limited to, emergency communications), and solid waste management, shall be exempt from all maximum height requirements, including those in any overlay district, except for the Airport Overlay District.

SECTION 2. Appendix A, Section 31, Wireless Telecommunications Towers and Antennas, of the Murfreesboro City Code is hereby amended by adding new subsection 31 (E)(7) as follows:

- (7) The maximum height of respective antenna-supporting structures shall be as determined by the Board of Zoning Appeals as a part of the special use permit process. However, no special use permit shall grant authority for such a structure to exceed the maximum height requirements denoted in the Airport Overlay District regulations.

SECTION 3. Appendix A, Chart 2, Minimum Lot Requirements, Minimum Yard Requirements and Land Use Intensity Ratios, of the Murfreesboro City Code is hereby amended by adding the superscript references [39] and [40] to the column heading "Maximum Height."

SECTION 4. Appendix A, Chart 2 Endnotes, Minimum Lot Requirements, Minimum Yard Requirements and Land Use Intensity Ratios, of the Murfreesboro City Code is hereby amended by adding the following new Endnotes:

39. Principal and accessory structures used in conjunction with a government utility or government public safety agency, including but not limited to structures used in conjunction with water, repurified water, sanitary sewer, electricity, communications (including, but not limited to, emergency communications), and solid waste management, shall be exempt from all maximum height requirements, including those in any overlay district, except for the Airport Overlay District.
40. See Section 31 for maximum height for antenna-supporting structures, including wireless communications towers.

SECTION 5. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Rezoning property along Veterans Parkway  
[Second Reading]

**Department:** Planning

**Presented By:** Matthew Blomeley, AICP, Assistant Planning Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Zoning of approximately 16.46 acres located along Veterans Parkway north of Franklin Road.

**Staff Recommendation**

Enact the ordinance establishing the requested zoning.  
The Planning Commission recommended approval of the zoning request.

**Background Information**

Cornerstone Development, LLC presented to the City a zoning application [2023-407] for 16.46 acres located along Veterans Parkway to be rezoned from CH (Commercial Highway District) to PCD (Planned Commercial District – 3.69 acres) and PRD (Planned Residential District – 12.77 acres). During its regular meeting on July 12, 2023, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On August 17, 2023, Council held a public hearing and approved this matter on First Reading.

**Council Priorities Served**

*Improve Economic Development*

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

**Attachments:**

Ordinance 23-OZ-28



**ORDINANCE 23-OZ-28** amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 16.5 acres located along Veterans Parkway from Commercial Highway (CH) District to Planned Residential Development (PRD) District (approx. 12.8 acres) and Planned Commercial Development (PCD) District (approx. 3.7 acres); Cornerstone Development, LLC, applicant, [2023-407].

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

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

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

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

Passed:

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*  
\_\_\_\_\_  
43A2035E51F9401...  
Adam F. Tucker  
City Attorney

SEAL



**PRD**  
**CLOISTER DR**

CITY LIMITS

Area Rezoned  
from  
CH to PCD

**PRD**

**CF**

Ordinance 23-OZ-28

**CF**

**MEADOW LN**

**CREEKSIDE DR**

CITY LIMITS

Area Rezoned  
from  
CH to PRD

**PRD**

**CH**

**CH**

Area Rezoned  
from  
CH to PCD

**CAROL DR**

CITY LIMITS

**PRD**

**CH**

**CH**

**JACINTH LN**

**FRANKLIN RD**

**CH**

**CH**



# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Rezoning property along East Vine Street  
[Second Reading]

**Department:** Planning

**Presented by:** Matthew Blomeley, AICP, Assistant Planning Director

**Requested Council Action:**

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

---

## Summary

Rezoning approximately 0.64 acres located along the south side of East Vine Street east of South Highland Avenue.

## Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

## Background Information

520 Vine Street, LLC presented a zoning application [2023-406] for approximately 0.64 acres located along the south side of East Vine Street to be rezoned from RS-8 (Single-Family Residential District 8) and CCO (City Core Overlay District) to PRD (Planned Residential District) and CCO. During its regular meeting on July 12, 2023, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On August 17, 2023, Council held a public hearing and approved this matter on First Reading.

## Council Priorities Served

*Improve Economic Development*

This rezoning will enable the development of five single-family attached homes.

*Establish Strong City Brand*

This rezoning will enable reinvestment and redevelopment in the City's downtown, which will strengthen the identity of downtown as a place to live, work, and play.

## Attachments:

Ordinance 23-OZ-29

**ORDINANCE 23-OZ-29** amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 0.64 acres located along East Vine Street from Single-Family Residential Eight (RS-8) District and City Core Overlay (CCO) District to Planned Residential Development (PRD) District (East Vine Manor PRD) and City Core Overlay (CCO) District; 520 Vine Street, LLC, applicant, [2023-406].

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

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

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

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

Passed:

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*  
\_\_\_\_\_  
43A2035E51F9401...  
Adam F. Tucker  
City Attorney

SEAL



**RS-15**

**RS-15**

**RS-15**

Ordinance 23-OZ-29

**RS-8**

**RS-8**

**GAYLE LN**

**RS-8**

**E VINE ST**

Area Rezoned  
from RS-8 and CCO  
to  
PRD and CCO

**RM-16**

**S HIGHLAND AVE**

**RS-8**

**PRD**

**RS-8**

**RS-4**

**RM-16**

**E SEVIER ST**

**RS-4**

**RS-4**

**RD**

**CL**



# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

---

**Item Title:** Resolution Accompanying TDEC Permit for Qualified Biogas Property

**Department:** Administration

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

**Requested Council Action:**

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

**Summary**

Resolution for permit application construct a solid waste processing facility.

**Staff Recommendation**

Approve Resolution 23-R-27

**Background Information**

The Tennessee Solid Waste Disposal Act T.C.A. 68-211-101 *et seq.* and the related TDEC regulations, Rule 0400-11-01, requires a resolution to accompany the permit application for construction of a solid waste processing facility (e.g., WastAway facility).

On December 7, 2022, Council entered into an agreement with WastAway, LLC to design a qualified biogas property (the "Project") at 2120 Butler Dr., which consists of the following components:

1. A material management station.
2. A WastAway SE3<sup>®</sup> manufacturing component.
3. An anaerobic reactor biogas generation component.
4. A renewable natural gas purification component; and
5. Related facility support spaces.

The attached permit application considers (i) the the type of waste to be processed at the facility; (ii) the method of processing; (iii) the projected impact of the facility on surrounding areas from noise and odor; (iv) the projected impact on property values on the surrounding areas; (v) the adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility; (vi) the economic impact of the facility on the City of Murfreesboro and Rutherford County; (vii) the compatibility of the project with existing development and zoning plans; and (viii) other factors that may affect the public health, safety, and welfare.

The resolution affirms that the Council finds the construction of the Project is consistent with the goal of diverting municipal solid waste from landfills and the larger public interest and approves 2120 Butler Dr. for constructing the Project, subject to final financing terms and conditions.

## **Council Priorities Served**

### *Expand infrastructure*

Constructing a solid waste processing facility with 90% diversion relieves the City's reliance on regional landfills and affords the City independence to continue to grow and serve its citizens with a long-term sustainable solution that has the lowest-cost highest-return benefits.

### *Establish strong City brand*

Diverting 90% of municipal solid waste from landfills and generating renewable nature gas as a highly valued commodity would brand the City as one of the most environmentally friendly cities in America along with the significant social benefits to the public welfare in terms of sustainability and affordability.

## **Fiscal Impact**

None

## **Attachments**

1. Resolution 23-R-27 for providing approval under the Jackson Law for the construction of a qualified biogas property within the City of Murfreesboro
2. TDEC Permit Application for a solid waste processing facility located at 2120 Butler Dr.

**RESOLUTION 23-R-27** providing approval under the Jackson Law for the construction of a qualified biogas property within the City of Murfreesboro.

**WHEREAS**, on December 7, 2022, the City of Murfreesboro (the “City”) entered into an agreement with WastAway, LLC to design a qualified biogas property (the “Project”), which consistent with the definition for such properties in the Inflation Reduction Act, 28 U.S.C.A. § 48(c)(7), will convert biomass into methane gas and will capture such gas for sale or productive use; and

**WHEREAS**, the Project’s objective is produce renewable natural gas for sale from municipal solid waste while at the same time diverting upwards of 90% of the municipal solid waste collected by the City from landfills at a market-competitive price; and

**WHEREAS**, the City intends to have the Project built on property owned by and located within the City at 2120 Butler Drive; and

**WHEREAS**, as set forth in the agreement with WastAway, the Project will include the following components: (1) a material management station; (2) a WastAway SE3® manufacturing component; (3) an anaerobic reactor biogas generation component; (4) a renewable natural gas purification component; and (5) related facility support spaces; and

**WHEREAS**, the Project constitutes a solid waste processing facility subject to regulation by the Tennessee Department of Environment and Conservation (“TDEC”) under the Tennessee Solid Waste Disposal Act, as amended and codified at Tenn. Code Ann. § 68-211-101 *et seq.*, and the related implementing regulations adopted by TDEC, specifically Chapter 0400-11-01 of the Rules and Regulations of the State of Tennessee; and

**WHEREAS**, pursuant to Rule 0400-11-01-.02, the Project cannot be operated without a permit from TDEC; and

**WHEREAS**, the City retained the engineering firm Griggs & Maloney to prepare the City’s notification for permit by rule (“Permit Application”) in accordance with Rule 0400-11-01-.02; and

**WHEREAS**, because the City adopted the Jackson Law in December 2016 and Rutherford County adopted the Jackson Law in November 2005, TDEC will not evaluate the City’s Permit Application unless and until both the Murfreesboro City Council and the Rutherford County Commission have approved the construction of the proposed solid waste processing facility; and

**WHEREAS**, the City’s Permit Application is attached hereto as Exhibit A; and

**WHEREAS**, Griggs & Maloney certifies that the Permit Application meets the requirements set forth in Rule 0400-11-01-.02; and

**WHEREAS**, upon considering (i) the type of waste to be processed at the facility; (ii) the method of processing; (iii) the projected impact of the facility on surrounding



areas from noise and odor; (iv) the projected impact on property values on the surrounding areas; (v) the adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility; (vi) the economic impact of the facility on the City of Murfreesboro and Rutherford County; (vii) the compatibility of the project with existing development and zoning plans; and (viii) other factors that may affect the public health, safety, and welfare, the Murfreesboro City Council finds that subject to final permitting by TDEC, the construction of the Project is consistent with the goal of diverting municipal solid waste from landfills and the larger public interest.

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

SECTION 1. The Murfreesboro City Council approves the property located at 2120 Butler Dr. for constructing the Project, subject to final approval of financing terms and conditions.

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



STATE OF TENNESSEE  
 DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
 DIVISION OF SOLID WASTE MANAGEMENT  
 WILLIAM R. SNODGRASS TENNESSEE TOWER  
 312 ROSA L. PARKS AVENUE, 14TH FLOOR  
 NASHVILLE, TN 37243

**SOLID WASTE PERMIT-BY-RULE NOTIFICATION**

**1. REVIEW FEE ENCLOSED?**

YES  NEW PROCESSING FACILITY (\$1,000)

NO  NEW TRANSFER STATION (\$500)

**2. TYPE OF PERMIT- BY- RULE REQUESTED**

COMPOST FACILITY   
  LAND APPLICATION   
  TIRE STORAGE FACILITY   
  NEW FACILITY  
 CONVENIENCE CENTER   
 PROCESSING FACILITY   
 TRANSFER STATION   
 AMENDMENT TO EXISTING PERMIT

**PROCESSING FACILITIES ONLY**

IS THIS FACILITY SUBJECT TO "THE JACKSON LAW"?  YES  NO

**3. FACILITY INFORMATION**

FULL LEGAL NAME OF FACILITY  
**City of Murfreesboro Qualified Biogas Project**

PHYSICAL LOCATION OR ADDRESS OF FACILITY    CITY    STATE    ZIP  
**2120 Butler Drive    Murfreesboro    TN    37130**

FACILITY MAILING ADDRESS    CITY    STATE    ZIP    FACILITY EMAIL  
**111 West Vine Street    Murfreesboro    TN    37130    dgore@murfreesborotn.gov**

FACILITY LOCATION COUNTY  
**Rutherford**

LATITUDE (DECIMAL DEGREES)  
**35.7860099**

LONGITUDE (DECIMAL DEGREES)  
**-86.37779575**

FACILITY MANAGER OR SITE OPERATOR    PHONE (WITH AREA CODE)    AFFILIATION OF SITE OPERATOR (IF DIFFERENT FROM PERMITTEE)  
**Darren Gore (615) 893-3681    n/a**

**4. APPLICANT (PERMITTEE)**

APPLICANT NAME    PHONE (WITH AREA CODE)    EMAIL  
**City of Murfreesboro    (615) 893-3681    dgore@murfreesborotn.gov**

RESPONSIBLE OFFICIAL / TITLE    PHONE (WITH AREA CODE)    EMAIL  
**Craig Tindall    (615) 893-5210    ctindall@murfreesborotn.gov**

RESPONSIBLE OFFICIAL MAILING ADDRESS    CITY    STATE    ZIP  
**111 West Vine St.    Murfreesboro    TN    37130**

LANDOWNER NAME    LANDOWNER MAILING ADDRESS    CITY    STATE    ZIP  
**City of Murfreesboro    111 West Vine Street    Murfreesboro    TN    37130**

⇒ \_\_\_\_\_  
 LANDOWNER SIGNATURE    LANDOWNER SIGNATURE    LANDOWNER SIGNATURE    DATE

**5. WASTE HANDLING**

DESCRIPTION OF ACTIVITIES AND WASTES HANDLED OR PROCESSED    AMOUNT OF WASTE HANDLED, PROCESSED OR STORED

A qualified biogas facility will process municipal and commercial solid waste as feedstock for anaerobic digestion.

<b>~400</b>	<b>~40,000</b>	<b>~90,000</b>
WEIGHT TONS / DAY	VOLUME YARDS / DAY	STORAGE MAX CU YARDS

**6. CERTIFICATION REQUIRED**

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury.

⇒ \_\_\_\_\_  
 SIGNATURE OF RESPONSIBLE OFFICIAL    PRINTED NAME

\_\_\_\_\_    \_\_\_\_\_  
 TITLE    DATE

⇒ \_\_\_\_\_  
 SIGNATURE OF NOTARY    DATE COMMISSION EXPIRES

## **INSTRUCTIONS FOR SOLID WASTE PERMIT-BY-RULE NOTIFICATION**

COMPLETE THIS FORM FOR EACH FACILITY THAT IS PROCESSING AND/OR DISPOSING OF SOLID WASTE IN TENNESSEE. IF MULTIPLE FACILITIES EXIST OR ARE PLANNED, DESCRIBE EACH FACILITY AND ITS WASTES ON A SEPARATE FORM. SUBMIT COMPLETED DOCUMENT TO THE RESPECTIVE FIELD OFFICE IN YOUR AREA.

### **1. REVIEW FEE**

#### **TYPE OF PERMIT-BY-RULE WITH FEES**

A FEE IS ONLY REQUIRED FOR A NEW PROCESSING FACILITY OR A NEW TRANSFER FACILITY.  
MAKE CHECKS PAYABLE TO: **"TREASURER, STATE OF TENNESSEE"**

### **2. TYPE OF PERMIT- BY- RULE REQUESTED**

#### **TYPE OF PERMIT-BY-RULE**

CHECK TYPE OF PERMIT-BY-RULE REQUESTED AND DISTINGUISH IF THIS REQUEST IS FOR AN ALREADY EXISTING FACILITY OR A REQUEST FOR A NEW FACILITY.

**NEW PROCESSING FACILITIES** MUST DETERMINE IF THEY ARE SUBJECT TO LOCAL APPROVAL THROUGH THE "JACKSON LAW" AS SPECIFIED IN TENNESSEE CODE ANNOTATED § 68-211-701.

### **3. FACILITY INFORMATION**

#### **FULL LEGAL NAME OF FACILITY**

ENTER THE FULL LEGAL NAME FOR THIS SITE TO DISTINGUISH IT FROM ANY OTHER SITE THE APPLICANT OR ORGANIZATION MAY OWN OR OPERATE IN TENNESSEE.

#### **PHYSICAL LOCATION**

INFORMATION (ADDRESS, DIRECTIONS) THAT WILL AID IN FINDING THIS SITE (NO PO BOX NUMBERS!) PROVIDE COUNTY WHERE SITE IS LOCATED. PROVIDE LATITUDE AND LONGITUDE FOR SITE LOCATION IN DECIMAL DEGREES.

#### **FACILITY MAILING ADDRESS**

PROVIDE COMPLETE MAILING ADDRESS FOR THIS SITE

#### **NAME OF FACILITY OR SITE MANAGER OR SITE OPERATOR**

NAME AND PHONE NUMBER OF PERSON WHO IS RESPONSIBLE FOR THE DIRECTION OF ACTIVITIES AT THIS SITE

#### **AFFILIATION OF SITE OPERATOR (IF DIFFERENT FROM PERMITTEE)**

IF SITE IS OPERATED BY PERSON OR ENTITY OTHER THAN PERMITTEE, GIVE NAME OF PERSON, CORPORATION ETC.

### **4. APPLICANT (PERMITTEE)**

#### **APPLICANT NAME**

NAME OF LEGAL ENTITY MAKING APPLICATION FOR PERMIT. THIS NAME WILL BE THE PERMITTEE OF RECORD.

#### **RESPONSIBLE OFFICIAL**

PERSON AUTHORIZED TO COMPLETE THIS APPLICATION AND WHO MAY BE CONTACTED BY TDEC FOR ANY FURTHER INFORMATION.

#### **LANDOWNER NAME**

PERSON(S) OR ORGANIZATION(S) OF THE IMMEDIATE PROPERTY OWNER(S). ATTACH LETTER FROM LANDOWNER(S).

#### **LANDOWNER SIGNATURE(S)**

LANDOWNER(S) MUST SIGN AND DATE APPLICATION

### **5. WASTE HANDLING**

#### **AMOUNT OF WASTE HANDLED / PROCESSED / STORED**

PROVIDE AN ESTIMATE OF THE DAILY WEIGHT (IN TONS) AND/OR VOLUME (IN CU YARDS/DAY) THAT WILL BE HANDLED AT THE FACILITY. INDICATE THE MAXIMUM AMOUNT OF WASTE THAT CAN BE STORED (IN CUBIC YARDS).

### **6. CERTIFICATION REQUIRED**

#### **CERTIFICATION**

AFTER ALL DOCUMENTS HAVE BEEN COMPILED FOR SUBMISSION TO THE DIVISION, THE MANAGER OR OWNER RESPONSIBLE FOR THE SITE MUST SIGN THE CERTIFICATION AND GIVE DATE AND TITLE. THIS SIGNATURE MUST BE NOTARIZED.



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
 DIVISION OF SOLID WASTE MANAGEMENT  
 312 Rosa L. Parks Avenue, 14<sup>th</sup> Floor  
 Nashville, TN 37243  
 SOLID WASTE APPLICATION FILING/PROCESSING FEE**

<p>1. Facility Information</p> <p><u>City of Murfreesboro Qualified Biogas Property</u>        Full Legal Name of Facility</p> <p><u>2120 Butler Drive</u>        Mailing Address</p> <p><u>Murfreesboro, TN 37130</u>        City, State, Zip Code</p>	<p>2. Permittee Information</p> <p><u>City of Murfreesboro, Tennessee</u>        Permittee (Name/Legal Entity)</p> <p><u>111 West Vine Street</u>        Mailing Address</p> <p><u>Murfreesboro, TN 37130</u>        City, State, Zip Code</p> <p><u>(615) 893-3681</u>        Telephone Number of Permittee</p>															
<p>3. Physical Location/Directions to Facility</p> <p>The future processing facility is located at 2120 Butler Drive. (35.7860099, -86.37779575)</p> <p>From exit 81 from I-24 E:</p> <p>Proceed South on Church Street approximately 1.5 miles to Butler Drive. Left on Butler Dr. Proceed 2.2 miles.</p>	<p>4. Type Facility and Fee Due:</p> <p><input type="checkbox"/> New Disposal Facility*</p> <p style="margin-left: 20px;"><input type="checkbox"/> Class I    <input type="checkbox"/> Class II</p> <p style="margin-left: 20px;"><input type="checkbox"/> Hydrogeology.....\$    4,000</p> <p style="margin-left: 20px;"><input type="checkbox"/> Construction Plan Review...    6,000</p> <p style="margin-left: 20px;"><input type="checkbox"/> Class III .....    3,000</p> <p style="margin-left: 20px;"><input type="checkbox"/> Major Modification .....    2,000</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> Processing Facility .....    1,000</p> <p style="margin-left: 20px;"><input type="checkbox"/> Transfer of Ownership.....    1,000</p> <p style="margin-left: 20px;"><input type="checkbox"/> Transfer Station .....    500</p> <p>*Includes Lateral Expansions</p>															
<p>5. Total Site Acres (If Disposal Operation):</p> <p><b>n/a</b></p>	<p>6. Amount of Fee Enclosed:</p> <p><b>\$1,000.00</b></p>															
<p>7. Total Acres In Landfill Footprint:</p> <p><b>n/a</b></p>	<p>8. Type and Size Facility If Processing Facility:</p> <p><b>400 TPD Resource Recovery Facility</b></p>															
<p>9. I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, and accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury.</p>																
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p><u>Craig Tindall</u>            _____            Print or Type Name</p> <p>_____            Signature</p> </td> <td style="width: 50%; border: none;"> <p><u>City Manager</u>            _____            Title</p> <p>_____            Date</p> </td> </tr> </table>		<p><u>Craig Tindall</u>            _____            Print or Type Name</p> <p>_____            Signature</p>	<p><u>City Manager</u>            _____            Title</p> <p>_____            Date</p>													
<p><u>Craig Tindall</u>            _____            Print or Type Name</p> <p>_____            Signature</p>	<p><u>City Manager</u>            _____            Title</p> <p>_____            Date</p>															
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**APPLICATION FOR PERMIT BY RULE  
FOR  
QUALIFIED BIOGAS PROPERTY  
CITY OF MURFREESBORO**

**FOR**



**AUGUST 2023**

**PREPARED BY**

**GRIGGS & MALONEY  
INCORPORATED**

Engineering & Environmental Consulting

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

FILE NO. 226-212

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## 1. INTRODUCTION AND BACKGROUND

The following enumerated items are provided to obtain a solid waste processing permit for a Qualified Biogas Project located at 2120 Butler Drive in Murfreesboro, Tennessee (see Appendix I, Figure 1 – Site Location Map). The site is a greenfield consisting of parcels 126-046.00 and 126.046.01 that are 19.3 acres and 2.34 acres, respectively, for a total of 21.64 acres.

In 2017, the City of Murfreesboro (“City”) developed a Solid Waste Strategic Plan. The study recommended the construction of a processing and/or transfer station on the north and south sides of the City. With the possible closure of Middlepoint Landfill, the City is working its plan to construct a Qualified Biogas Project that includes a receiving floor, materials management facility, and an anaerobic digester. In 2023, the City entered into an agreement with WastAway to design a Qualified Biogas Project to produce renewable natural gas (RNG) from municipal solid waste.

## 2. PROJECT RATIONALE

The City is making application for a TDEC solid waste processing plant. A permit for the proposed processing facility is being applied for to mitigate risks to the City should Middlepoint Landfill not receive a permit to expand its operations. Middlepoint Landfill has an estimated 4-6 years of remaining life at the current tonnage rates and density. Part I of a permit to expand the landfill has been submitted to TDEC but local opposition and legal action currently place the permit action in suspension.

The City is planning and designing a Qualified Biogas Project within the City of Murfreesboro. The City entered into an agreement with WastAway that will convert biomass into methane gas for sale or productive use. The resolution (23-R-XX, in Appendix V) provides approval under Jackson Law for the construction of the Qualified Biogas Project consisting of a receiving floor, materials management facility, WastAway’s SE3 processing equipment, an anaerobic digester, renewable natural gas purification and storage, and related facility support spaces.

The City proposes to construct a 400-ton-per-day facility that will operate as a resource recovery facility and Qualified Biogas Project as detailed in the Inflation Reduction Act, 28 USCA §48(c)(7).

The Qualified Biogas Project, as shown in Appendix I, is a flat-floor lift-and-load style facility. The facility has options to load a pre-shredder hopper to create biomass (WastAway SE3 fuel), load out process reject material/residuals, and/or function to transfer municipal solid waste by loading open top trailers in the tunnel if the process is not in operation.

The receiving floor is 125 feet x 150 feet and approximately 20,700 s.f. The materials management portion of the facility is approximately 100 feet wide by 275 feet long. The overall building footprint is 412 feet x 150 feet and is of steel framed construction. A 50-foot diameter, 130-foot tall anaerobic digester, 35-foot

diameter RNG storage vessel, and a ±10-foot diameter enclosed flare comprise the biogas and gas management system. The facility has 70-foot dedicated inbound and outbound scales. The tunnel accommodates open-top trailer(s) and could accommodate a compactor in the future. The outbound ramp to the tunnel is a 5% max grade. The WastAway process within the materials management facility is designed to maximize the retention of desirable (combustible) components of municipal solid waste (MSW). The system is designed to maximize the removal of inert material, ferrous and non-ferrous metals and polyvinyl chloride plastic (PVC). The system can be configured to remove other materials for recycling if desired, or economically beneficial.

One advantage of the WastAway is that the system is designed to retain the organic fraction of the MSW. This allows communities to meet organic diversion goals, while not employing a separate collection system. The system is designed to produce a high-quality biomass solid fuel, called SE3, that is a direct replacement for coal or biomass. However, the WastAway system can also be utilized to produce MSW derived biogas that can be used for energy conversion or further refined as renewable natural gas (RNG). SE3 can be recovered from the digestate and sold as solid fuel. A process narrative follows and a process flow diagram is included in Appendix I as Sheet 4.

**Pre-Shredder:** Acceptable waste is first loaded into a pre-shredder that is used to size the Acceptable Waste material to 6" minus. The pre-shredder unit designed will serve as a bag opener. The pre-shredder will discharge shredded waste to disc screen separator.

**Bulky Material Separation:** After pre-shredding, the waste will be screened to remove large pieces of wood and other material that did not shred in the pre-shredder. The disc screen separator is designed to remove any material greater than the nominal shredded material. The screen will primarily remove large contaminants such as plastic tarps. These materials will be directed to the tipping floor where they may be reintroduced into the pre-shredder or removed as residue.

**Glass, Fines, and Heavy Fraction Separation:** A glass breaker/fines screen will be used to break the glass into -2" size and remove it along with any small metals, such as batteries and coins, as well as small pieces of paper, cardboard and organics. The heavy fraction of this waste stream will be sent to the initial air separator where the light combustibles will be returned to the main processing line and the heavy fraction sent to the organic/non-organic separator. Organic waste separated from inerts in the organic/non-organic separator will be redirected to the fuel line. Inert material will be conveyed and discharged.

**Ferrous Metal Removal:** The ferrous metal removal process uses a belt magnet to separate the ferrous metals from the waste stream. Ferrous metals removed will be transported off-site. The primary ferrous removal system will be designed to capture 90+% of the ferrous metals. An additional magnetic head pulley will be incorporated in the main processing line for secondary magnetic capture prior to secondary sizing. Ferrous materials removed at this secondary station will be combined with the ferrous from the initial ferrous separator.



**Air Density Separator:** After Fe separation, the material will be conveyed to a second air density separation. The light fraction will be directed to a disc screen with 6" nominal openings. The heavy fraction will be directed to the third air density separator. The heavy fraction from the third air density separator will be combined with the heavy fraction of the initial separator in the organic/non-organic separator. The light fraction will be returned to the processing line.

**Container Removal:** The light fraction from the second and third air density separators will be sent to a 6" nominal screen separator where containers (cans and bottles) will be separated from flat materials (paper, plastic film and cardboard). The flat materials will be directed to an optical sorter designed to remove PVC material. The separated containers will be sent to the non-ferrous separator.

**Non-Ferrous Metal Removal:** This process uses an eddy current magnet designed to remove non-ferrous metals, primarily aluminum. Non-Ferrous metals will be conveyed and discharged for recycling.

**PVC/PET Removal:** After removal of non-ferrous metals, the remaining waste from the non-ferrous separator will be sent to a second optical sorter designed for PVC and/or PET removal. This removal is accomplished using transmitted near infrared light. The plastics will be conveyed and discharged for recycling or disposal. Any material remaining after PVC removal will be combined with the flat material from the 6" screen separator and sent to the secondary shredder.

**Secondary Sizing:** This step will utilize a single shaft shredder to size the material processed waste to 1" minus.

**Hydrolyzer:** The near continuous-flow hydrolyzer uses a combination of steam and pressure to further decompose the processed Acceptable Waste stream. The hydrolyzer chamber uses live steam injection to generate the required pressure and temperature for adequate processing. Once the processed waste exits the chamber, it will be allowed to rapidly expand from 8.6 bars to atmospheric pressure further aiding the decomposition of the processed Acceptable Waste material. Upon exit from the hydrolyzer, many of the characteristics of the input processed waste stream will have been significantly altered. SE32 exiting the hydrolyzer will be homogeneous, non-putrescible and stable. Each hydrolyzer will be designed for a nominal throughput of 6.5 tons per hour of waste.

**Final SE3 Conditioning:** The SE3 will be processed through an additional screening and sizing system with a nominal ½" grate size. Unders from this screen will be directed to the anaerobic digester. Overs will be sent to grinder and directed to a walking floor storage bin.

**Digestate:** After digestion, the remaining solids (digestate) will be sent to the dewatering system. A series of dewatering equipment, belt and screw presses, will be used to remove excess water from the digestate. The dewatered digestate will be combined with the unders from the SE3 conditioning and sent to the belt dryers.

**Belt Dryer:** To optimize the fuel, a belt dryer will be used to control by weight moisture content of the SE3 to approximately 15%. In order to maintain proper throughput, the system will contain two dryers.

**3. JACKSON LAW NOTIFICATION – COMPLIANCE NARRATIVE [RULE 0400-11-01.02(1)(c)(2)(vii)(1)(i-viii) & TCA §68-211-704(b)]**

The following narrative is intended to serve as notice to satisfy TDEC Solid Waste Rule 0400-11-01.02(1)(c)(2)(vii)(1)(i-viii) & TCA §68-211-704(b) page 22, Part 2 (vii) paragraph (i-viii):

*(viii) For solid waste processing facilities that are proposed to be located within jurisdictions in which the Jackson Law is applicable, any person seeking a permit by rule authorization for a new solid waste processing facility or a lateral expansion of a facility (a modification that expands the previously permitted footprint) shall provide:*

*(i) Documentation to the department that the applicant submitted a copy of the notification required by part (2)(b)2. Of this rule that contains the information required by subparts (i) through (v) of that part for the proposed new solid waste processing facility or lateral expansion of a solid waste processing facility to the local government(s) in compliance with T.C.A. § 68-211-701 and that the notification included information about the following:*

*I. The type of waste to be processed;*

The facility will receive and process municipal solid waste and commercial waste.

*II. The method of processing;*

The facility is a resource recovery facility primarily. There will also be recycling of metals and some plastics. Solid waste will be sorted on the receiving floor and sorted so that construction and demolition debris, electronics, white goods, and other materials or residuals that are not suitable for recovery (producing WastAway's proprietary SE3 fuel) are excluded from the process. The WastAway process shreds, separates, removes, and stabilizes solid waste as part of its resource recovery process.

*III. The projected impact on surrounding areas from noise and odor;*

Impacts on surrounding areas will be minimal. The site is located in an area primarily designated as industrial or commercial highway. I-24 and Joe B. Jackson (Exit 84) are separated by only the Butler Drive Right-Of-Way. Predominant wind

direction is south, southwest towards I-24. Noise and odor will be mitigated as all proposed operations will be conducted inside the facility.

*IV. The projected impact on property values on surrounding areas;*

Sewer will be extended along a new proposed road and will serve the facility as well as other development in the area. Property values will increase with the availability of sewer. The existing road, Butler Drive, will also be terminated at its end with a cul-de-sac. The proposed solid waste facility will be located on the end of the dead-end road (Butler Drive).

*V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility;*

Butler Drive and the new proposed road (3 lanes) have adequate width and are or will be constructed and maintained to meet the traffic demands of the facility. 40-60 additional trips are estimated due to the facility operations.

*VI. The economic impact on the county, city or both;*

Sewer and host agreements, respectively, provide the City of Murfreesboro and Rutherford County with solid waste disposal at Middlepoint Landfill at no cost to its citizens. The proposed processing facility will provide the City with an alternative to Middlepoint Landfill should a permit expansion not be approved. The facility will create WastAway's SE3 fuel to be used as a feed stock for anaerobic digestion. The digester will produce a renewable natural gas that has shown the ability to recover capital costs from the expenditure to construct the project, while stabilizing future solid waste costs for City residents.

*VII. The compatibility with existing development or zoning plans; and*

The City recently annexed and rezoned the property to accommodate the use. The proposed facility will be located in an area surrounded by industry and commercial interstate activities. The location is ideal for the proposed facility.

*VIII. Any other factor which may affect the public health, safety or welfare.*

Anaerobic digesters will be designed with the health, safety, and welfare of the public as a primary factor.

The City has or will consider during design and operations phases the following:

### Design Phase

1. Location - The structure meets local zoning and is located on the property with adequate distances to structures to satisfy fire code.
2. Gas Management System – A low-pressure gas storage system is co-located with the digester. A flare is also necessary for combusting excess gas.
3. Ventilation and Gas Detection – Ventilation and gas detection systems to be installed to monitor/manage gas concentrations in the digester and within the facility.
4. Digestate Management – Digestate will be discharged to the sanitary sewer and treated at the City-owned POTW.
5. Emergency Systems – Emergency shut-offs, pressure relief valves, and fire suppression mechanisms will be on standby to mitigate risks.

### Operational Phase

1. Regular Maintenance – Implement a thorough maintenance schedule to ensure all components of the digester are in proper working condition.
2. Gas Monitoring – Continuously monitor biogas composition to detect any changes in gas quality and potential leaks of hazardous gases.
3. Operator Training – Properly train staff to operate the digester safely, understand emergency protocols, and handle routine tasks effectively.
4. Feedstock Management – Ensure that only approved feedstock is used, and avoid materials that could introduce toxins or impurities into the digestion process.
5. Temperature And Retention Time – Maintain optimal temperature and retention time for effective digestion and pathogen destruction.
6. Digestate Handling – Implement a well-defined process for handling, storing, and transporting digestate. Prevent spills, runoff, and contamination risks.
7. Regular Inspections – Conduct routine inspections to identify potential issues early and address them promptly.
8. Community Communication – Maintain open communication with local communities about digester operations, addressing concerns and providing updates on safety measures.
9. Emergency Response – Have well-documented emergency response plans in place, including evacuation procedures, contact information, and coordination with local authorities.

10. Records And Documentation – Keep detailed records of maintenance, inspections, gas monitoring, and any incidents. This documentation can help track performance and address safety concerns.

The new Qualified Biogas Project will allow the City's solid waste system to keep pace with its growth, provide an innovative solid waste solution that, subject to approval by TDEC, diverts waste from landfills, produces renewable energy and minimizes impacts to the environment.

#### 4. NARRATIVE DESCRIPTION OF PERMIT BY RULE COMPLIANCE

The following narrative references TDEC Solid Waste Rule 0400-11-01-.02, (page 24 through continued)

- Paragraph 2(a): Permits by rule, subparts 4 through 8
- Paragraph 2(b)(5) Permit by rule eligible facilities and activities, Transfer Station – items 1.(i)(1) through (XV) and (XVII) within Paragraph 2(b)(1)(i).

##### 4.1. PARAGRAPH 2(A): PERMITS BY RULE, SUBPARTS 4 THROUGH 8

**Part 4:** *New solid waste processing facilities, tire storage facilities, and transfer stations must not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.*

No part of the proposed new transfer station improvements is located within any wetlands. A National Wetlands Inventory (NWI) Map is included in Appendix II.

**Part 5.** *Solid waste processing facilities, tire storage facilities, and transfer stations must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:*

- (i) *Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain; and*
- (ii) *The facility is designed, constructed, operated, and maintained to prevent washout of any solid waste.*

No part of the proposed new facility is located within a flood plain or will experience washout of solid waste. See attached FEMA Firmette in Appendix III.

**Part 6.** *Solid waste processing facilities, tire storage facilities, and transfer stations must not:*

- (i) *Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or*
- (ii) *Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.*

No taking or impact to habitat of threatened or endangered species is anticipated as a result of the new transfer station construction. The Federal and State Threatened and Endangered list is included as Appendix IV.

**Part 7.** *An owner or operator proposing a new solid waste processing facility or a transfer station that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must SOLID WASTE PROCESSING AND DISPOSAL CHAPTER 0400-11-01 (Rule 0400-11-01-.02, continued) March, 2021 (Revised) 26 demonstrate to the satisfaction of the Commissioner that the facility does not pose a bird hazard to aircraft.*

The proposed facility is not within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used only by piston-type aircraft.

The proposed facility is not within a 5-mile radius of any airport runway end.

**Part 8.** *An owner or operator proposing a new solid waste processing facility or a transfer station that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.*

The proposed facility is not within a 5-mile radius of any airport runway end.

#### **4.2. PARAGRAPH (B)** *Permit by rule eligible facilities or activities.*

##### *1. Solid waste processing facilities.*

*(i) Except as specified in subpart (iv) of this part, an owner or operator of a solid waste processing facility shall:*

*(I) Construct, operate, maintain, and close the facility in such a manner as to minimize:*

*(I). The propagation, harborage, or attraction of flies, rodents, and other disease vectors;*

The new facility will be fully enclosed to limit the potential for vector access to the building. Periodic washdowns of the tipping floor and daily use of the processing equipment as well as general housekeeping practices will aid in limiting the propagation, harborage, or attraction of flies, rodents, and other disease vectors.

*II. "The potential for explosions or uncontrolled fires:"*

Waste received on the receiving floor will be monitored for "hot loads." Two 2-inch diameter hoses will be included at the new transfer station, one in the building and one outside of the building to

manage loads that are on fire and/or smoldering. A dry-pipe sprinkler system will also be installed in the new facility. In addition, ample space is available on the apron outside the building to dump “hot loads,” if necessary. Fire extinguishers will be placed throughout the facility and a fire cart will also be stored. Hazardous and explosive wastes will not be accepted by the City on the receiving floor.

*III. "The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by the state and local air pollution control, water pollution control, and/or solid waste management agencies;*

Transfer of waste not used to create biomass and process residuals will be loaded into open top trailers. The tops of open top semi-trailers are covered with tarpaulins that are tightened and secured to prevent solid waste from escaping during transit to the permitted landfills. The trailers are sealed to prevent the leakage of putrescibles.

Contact liquids from the tipping floor and tunnel will be collected by interior drains in the transfer station and conveyed to a duplex grinder pump station before being pumped to an onsite manhole which will connect to the City of Murfreesboro Sewer Collection System. The wet well storage volume is over 2,000 gallons. The submersible pumps operate in a lead/lag mode.

Storm water is managed through a series of drop inlets, catch basins, or overland flows to pipes or swales than convey water to the water quality treatment unit. Stormwater is treated with either detention ponds, or infiltration basins for quality prior to discharge. The City will utilize its street sweepers to assist with housekeeping and stormwater quality at the facility.

*IV. "The potential for harm to the public through unauthorized or uncontrolled access."*

The site will be completely enclosed by a fence. Gates will be used to control access to the site during non-operating hours.

*(II) "Ensure the facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility;"*

The site is completely enclosed by a fence. Gates are used to control access to the site during non-operating hours.

*(III) "The facility, if open to the public, has clearly visible and legible signs at the points of public access (that) indicates the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedules of charges (if applicable) and other necessary information;"*

The City will limit its users to City collection trucks, Rutherford County's waste streams and select commercial entities. Signage will be posted that includes hours of operation, type of waste materials acceptable, emergency contact information, and other necessary information.

*(IV) "Ensure that the facility has trained personnel present during operating hours;"*

Trained personnel will always be present during operating hours at the facility.

*(V) "Ensure that the facility has adequate sanitary facilities, potable water, emergency communications (e.g., telephone), and shelter available for personnel;"*

The facility will have offices and an employee area which provides restrooms, phones, and shelter. A scale house will also be provided with restrooms and communications. All will contain telephones and restroom facilities that are operational. A new employee area and new manager's office will be added within the new facility.

*(VI) "Ensure that the facility has access road(s) and parking area(s) constructed so as to be accessible in all weather conditions;"*

The improvements will pave all roads and parking areas. Pavement will be of concrete construction.

*(VII) "Restrict all waste handling (including loading and unloading) at the facility to paved surfaces;"*

All operations are conducted on concrete paved surfaces.

*(VIII) "Restrict the storage of solid wastes at the facility to containers, bins, lined pits or on paved surfaces, designated for such storage;"*

The proposed receiving floor at the facility receives solid waste inside the building on a concrete tipping floor. Any stored waste on site will be in containers, on paved surfaces designated for such storage.

*(IX) "Not burn solid waste at the facility;"*

No burning will take place at the facility.

*(X) Prohibit scavenging of solid wastes at the facility and limit salvaging to safe, designated areas and times;"*

No scavenging will be permitted. Salvaging may occur on the tipping floor for the recovery of ferrous and nonferrous metals and uncontaminated cardboard by authorized facility personnel. Metals and select plastics (PVC/PET), and glass are recovered to be recycled or disposed of depending upon commodity market pricing.



*(XI) Ensure that wind dispersal of solid wastes at or from the facility is adequately controlled, and that windblown litter and other loose, unconfined solid wastes are collected daily and properly disposed;*

All loose litter and unconfined waste will be collected daily and returned to the confining areas on site (dumpster on-site).

*(XII)"Ensure that all liquids which either drain from solid wastes or are created by washdown of equipment at the facility are collected and directed to either:*

*I. A wastewater treatment facility permitted to receive such wastewaters under T.C.A. §§ 69-3-101 et seq. (Tennessee Water Quality Control Act), or*

*II. Other methods approved by the Commissioner;"*

Water that drains from solid wastes or is created by wash-down will be collected within the building or tunnel. This process water will be collected and discharged to the sanitary sewer system to be treated by the City of Murfreesboro's POTW facility.

*(XIII) "Ensure that special wastes are not received, unless:*

*I. Such receipt has been specifically approved in writing by the Commissioner, and*

*II. Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes;"*

The existing and proposed solid waste transfer station will not involve the handling of special wastes.

*(XIV) "Have alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes authorized to be managed at the facility in the event the facility cannot operate"*

The City will enter into agreements with transportation and disposal entities to haul biomass fuel and MSW/residuals from the process approximately one year prior to receiving waste. The facility is designed to function as a lift and load transfer operation in the event the processing facility/qualified biogas property cannot operate.

*(XV) "Properly maintain and locate fire suppression equipment (e.g., fire extinguishers, water hoses) and make the equipment continuously available in sufficient quantities to control accidental fires that may occur;"*

The facility will have fire deluge sprinkler systems, fire extinguishers, and fire hydrants located around facility.

*(XVII) "Install the processing equipment on-site and ensure it is ready for use before accepting solid waste for storage or processing;"*

The City requests that, if needed, the facility be allowed to function as a transfer station should delays due to supply chain availability prevent processing equipment to be installed. The design of the facility allows for the facility's receiving to operate as a transfer station if the facility is not processing waste.

*(XVIII) Prior to receiving solid waste for processing, or within 90 days of the effective date of these rules, if authorized and operating on the effective date of these rules:*

- I. File with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee in an amount determined by the Commissioner to be sufficient to ensure the proper operation, closure, and post closure care of the facility;*
- II. Submit financial assurance instruments that are specified in subparagraph (3)(d) of Rule 0400-11-01-.03; and*
- III. Ensure that the financial assurance meets the criteria set forth in T.C.A. § 68-211-116(a), and complies with subparagraph (3)(b) of Rule 0400-11-01-.03.*

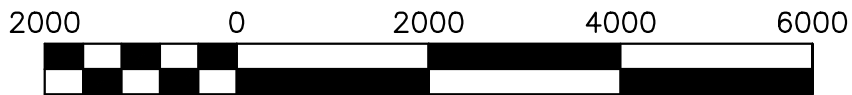
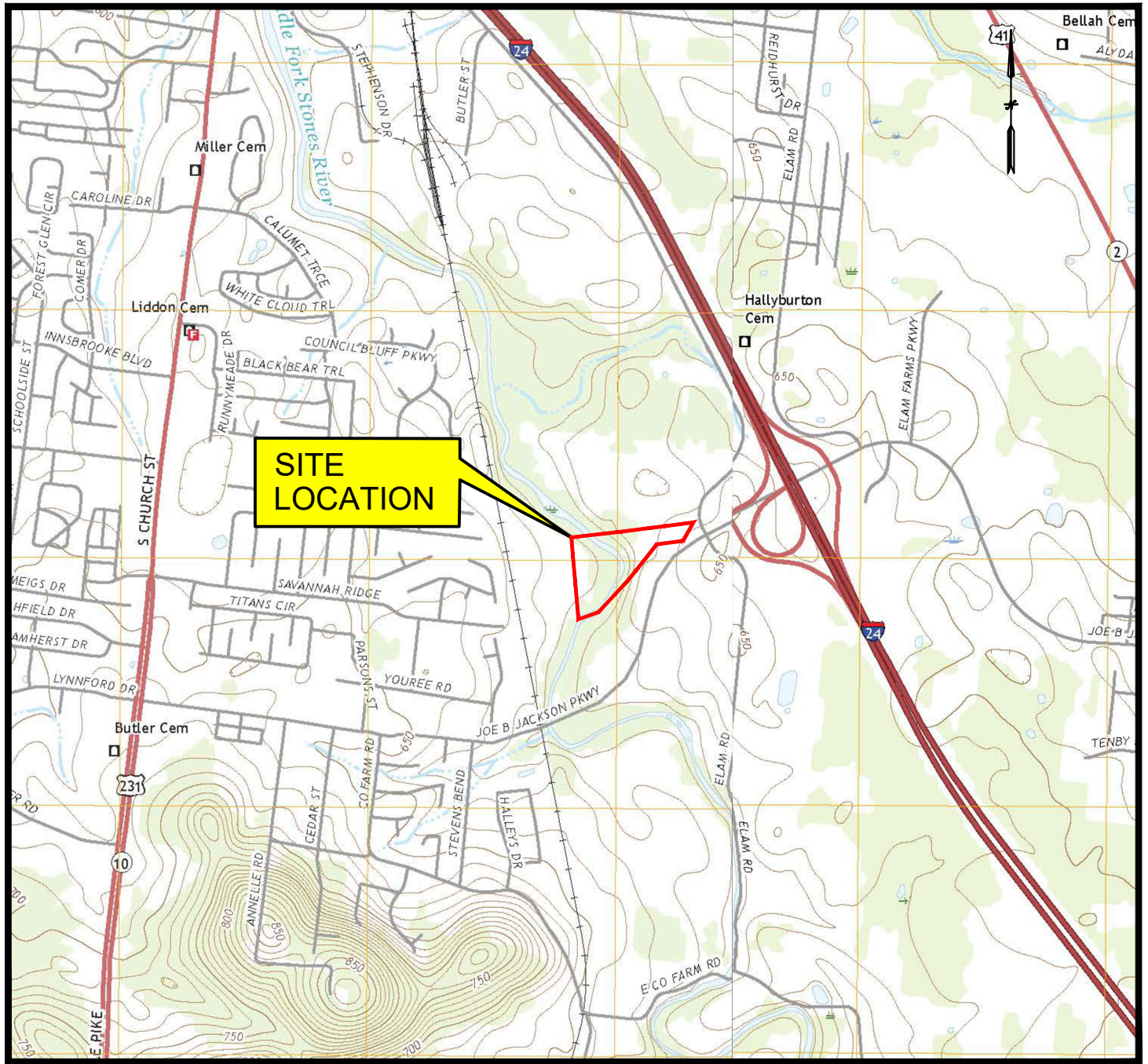
The City acknowledges this requirement. Prior to receiving solid waste for processing, the City will file with the Commissioner financial assurance per (3)(d) of Rule 0400-11-01-.03. The City intends to use the Municipality Contract of Obligation Option for its financial assurance option.

*(XIX) Maintain records documenting the amounts of the different types of solid waste at the facility, including, but not limited to, the amounts stored to be processed, in process, and that have completed processing, in order to determine processing completion within one year.*

The City acknowledges the record-keeping requirements of this paragraph.

**APPENDIX I**

**Figure 1: Site Location Map and Facility Permit Set**



SCALE: 1"=2000'

Taken from: U.S.G.S.  
7.5 Minute Series (Topographic)  
Dillon, TN 2019  
Murfreesboro, TN 2019

**GRIGGS & MALONEY**  
INCORPORATED  
Engineering & Environmental Consulting

P.O. BOX 2968, MURFREESBORO, TN 37133-2968  
(615) 895-8221 \* FAX (615) 895-0632  
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**Figure 1**  
**Site Location Map**  
Murfreesboro Waste Recovery Facility  
(On Butler Drive)  
Murfreesboro, Rutherford County, Tennessee  
Project No. 226-207 August 2023

# Qualified Biogas Project City of Murfreesboro Rutherford County, Tennessee

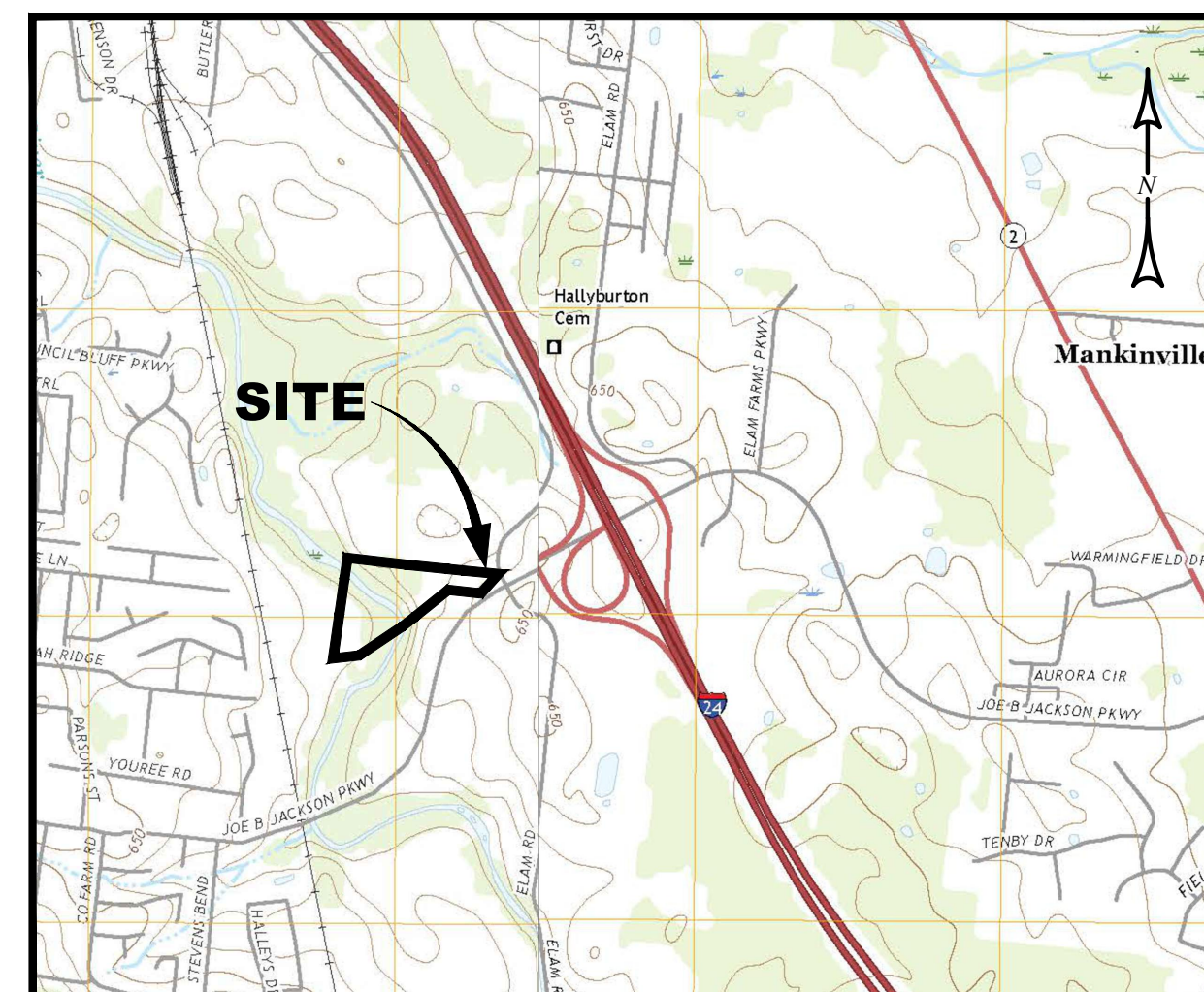
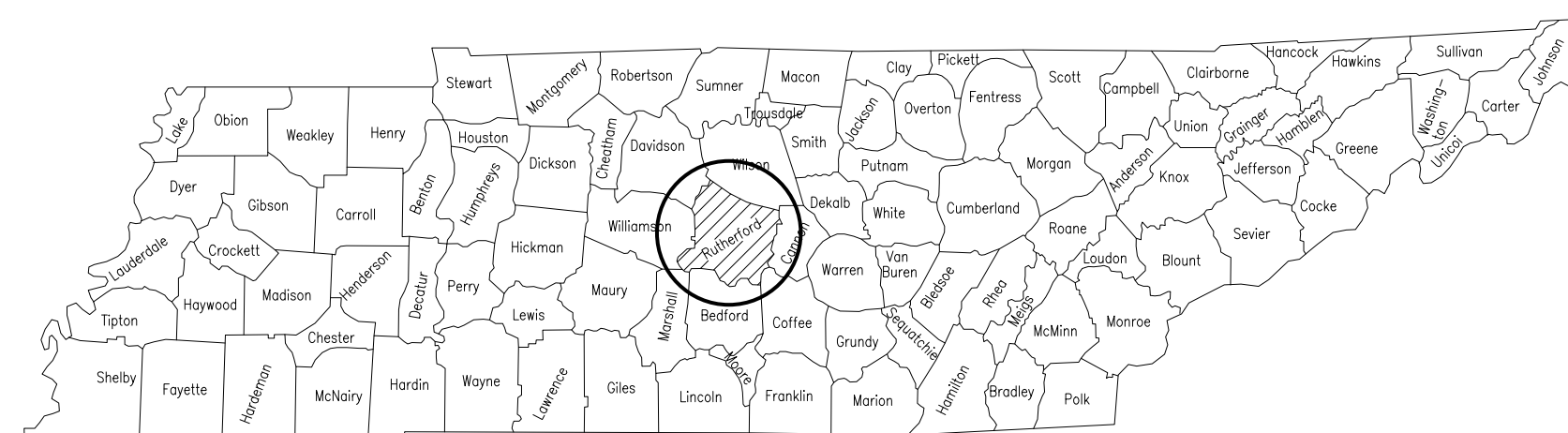
AUGUST 2023

Mayor  
Shane McFarland

Vice Mayor  
Bill Shacklett

Councilmembers  
Jami Averwater  
Madelyn Scales Harris  
Austin Maxwell  
Kirt Wade  
Shawn Wright

Assistant City Manager  
Darren Gore, P.E.



### SITE LOCATION MAP

USGS 7.5 MINUTE TOPOGRAPHIC MAP MURFREESBORO, 2019  
AND DILLTON, 2019  
SCALE: 1"=2000'

### INDEX OF SHEETS

<u>SHEET NO.</u>	<u>DESCRIPTION</u>
1	COVER SHEET
2	EXISTING SITE CONDITIONS PLAN
	PROPOSED SITE PLAN

Recommended By: \_\_\_\_\_  
Ryan Maloney, P.E.

Approved By: \_\_\_\_\_  
Darren Gore, Assistant City Manager

**GRIGGS & MALONEY**  
**INCORPORATED**  
Engineering & Environmental Consulting

P.O. BOX 2968, MURFREESBORO, TN 37133-2968  
(615) 895-8221 \* FAX (615) 895-0632

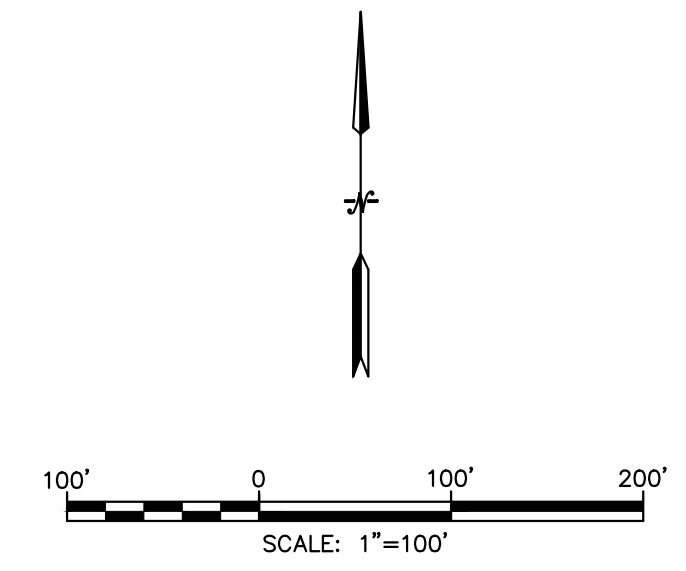
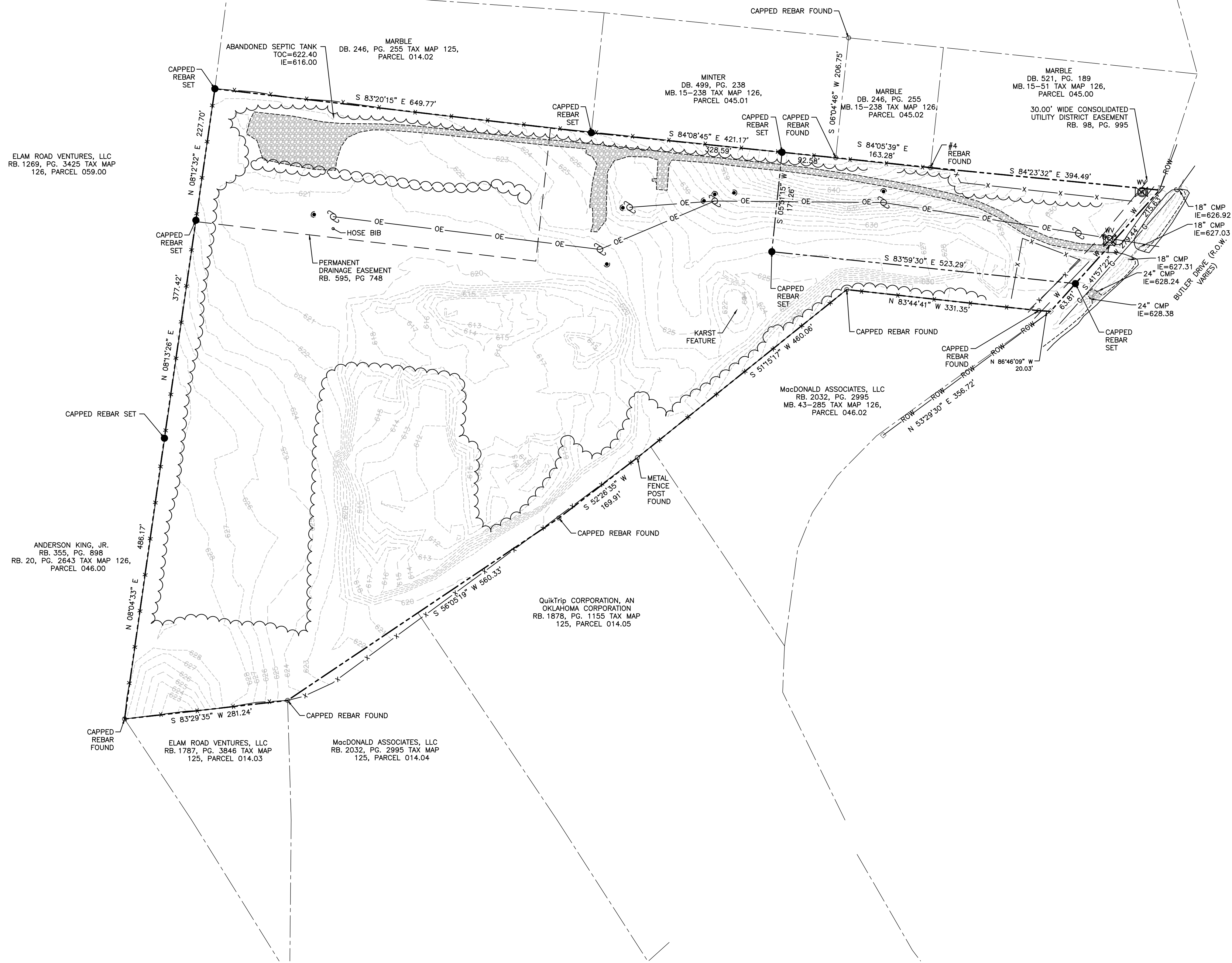
**PERMIT**  
**SET**  
**NOT FOR**  
**CONSTRUCTION**

PROJECT NO. 226-212  
SET NO. \_\_\_\_\_

SUBMITTALS AND REVISIONS			
DATE	BY	NO.	DESCRIPTION

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L:\Engineering\226 City of Murfreesboro\226-212 MMF Shell and Site Design and Bidding\DRAWINGS\QUALIFIED BIOGAS PROJECT\226-212 QUALIFIED BIOGAS PERMIT SET.dwg PAGES: 2 LAYOUT: 2 SAVED: 8/24/2023 12:03 PM PAGES: 2 PLOTTED: 8/24/2023



- LEGEND**
- PROPERTY LINE
  - BUILDING SETBACK LINE
  - ADJOINER PROPERTY LINE
  - EASEMENT LINE
  - ROW --- RIGHT OF WAY
  - FOUND PROPERTY CORNER/FOUND REBAR
  - SET PROPERTY CORNER
  - 575 --- EXISTING MAJOR CONTOUR
  - 574 --- EXISTING MINOR CONTOUR
  - x --- EXISTING FENCE
  - EXISTING GRAVEL DRIVE
  - EXISTING CONCRETE
  - EXISTING CONCRETE MONUMENT AND TEMPORARY BENCHMARK
  - EXISTING TREE LINE
  - EXISTING CULVERT
  - OE --- EXISTING OVERHEAD ELECTRIC LINE
  - EXISTING UTILITY POLE
  - G --- EXISTING GAS LINE
  - EXISTING HYDRANT
  - W --- EXISTING WATER LINE
  - EXISTING WATER VALVE

PROJECT NO. 226-212  
 AUGUST 2023  
 DRAWN BY: JAE  
 CHECKED BY: JRM  
 SCALE: AS NOTED  
 APPROVED BY: RML  
 SHEET NO. 2

EXISTING CONDITIONS PLAN

QUALIFIED BIOGAS PROJECT  
 CITY OF MURFREESBORO  
 RUTHERFORD COUNTY, TENNESSEE

SUBMITTALS AND REVISIONS	
DATE	DESCRIPTION

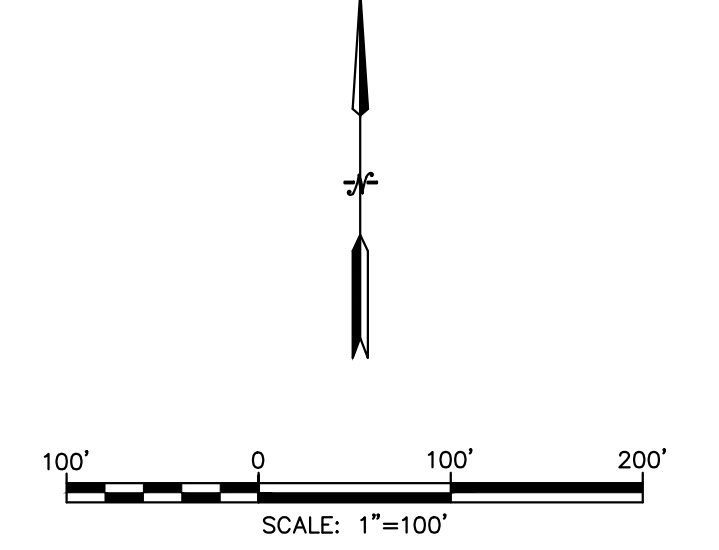
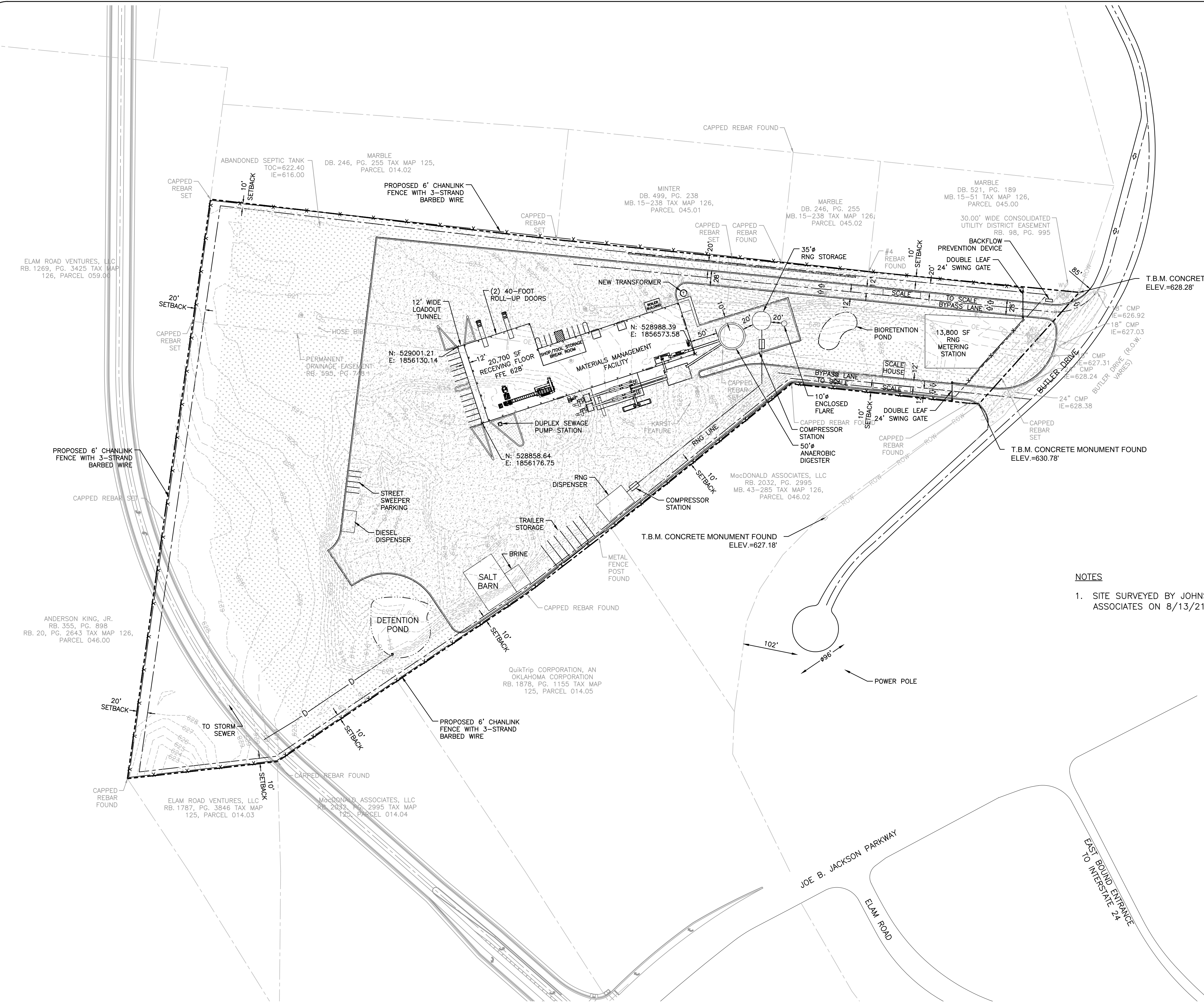
**PERMIT SET  
 NOT FOR  
 CONSTRUCTION**

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 (615) 895-8221 • FAX (615) 895-0832

SURVEY BY:  
**JOHNSON AND ASSOCIATES**  
 REGISTERED LAND SURVEYORS  
 616 DAVID CROCKETT HWY. TEL: (931) 967-8889 OFFICE  
 WINCHESTER, TENNESSEE 37398 EMAIL: kurt@johnsonandsurveyors.com

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L:\Engineering\226 City of Murfreesboro\226-212 MMF Shell and Site Design and Bidding\DRAWINGS\QUALIFIED BIOMETHANATION\226-212 QUALIFIED BIOMETHANATION PERMIT SET.dwg PLOTTED: 8/24/2023 12:03 PM PAGES: 3 SHEETS: 8/24/2023 12:03 PM PAGES: 3



- ### LEGEND
- PROPERTY LINE
  - BUILDING SETBACK LINE
  - ADJOINER PROPERTY LINE
  - EASEMENT LINE
  - ROW --- ROW --- RIGHT OF WAY
  - 575 --- EXISTING MAJOR CONTOUR
  - 574 --- EXISTING MINOR CONTOUR
  - EXISTING CONCRETE MONUMENT AND TEMPORARY BENCHMARK
  - EXISTING CULVERT
  - OE --- EXISTING OVERHEAD ELECTRIC LINE
  - UP --- EXISTING UTILITY POLE
  - G --- EXISTING GAS LINE
  - HY --- EXISTING HYDRANT
  - W --- EXISTING WATER LINE
  - WV --- EXISTING WATER VALVE
  - [Rectangle with diagonal lines] PROPOSED BUILDING
  - x-x- PROPOSED 6' CHAINLINK FENCE
  - [Double line] PROPOSED ROAD
  - [Patterned area] PROPOSED CONCRETE
  - [Patterned area] PROPOSED GRASS
  - [Dashed outline] PROPOSED POND

**NOTES**  
 1. SITE SURVEYED BY JOHNSON AND ASSOCIATES ON 8/13/21.

PROJECT NO. 226-212

DRAWN BY: JAE  
 DATE: AUGUST 2023  
 CHECKED BY: JRM  
 SCALE: AS NOTED  
 APPROVED BY: JRM  
 SHEET NO. 3

## PROPOSED SITE PLAN

### QUALIFIED BIOMETHANATION PROJECT CITY OF MURFREESBORO RUTHERFORD COUNTY, TENNESSEE

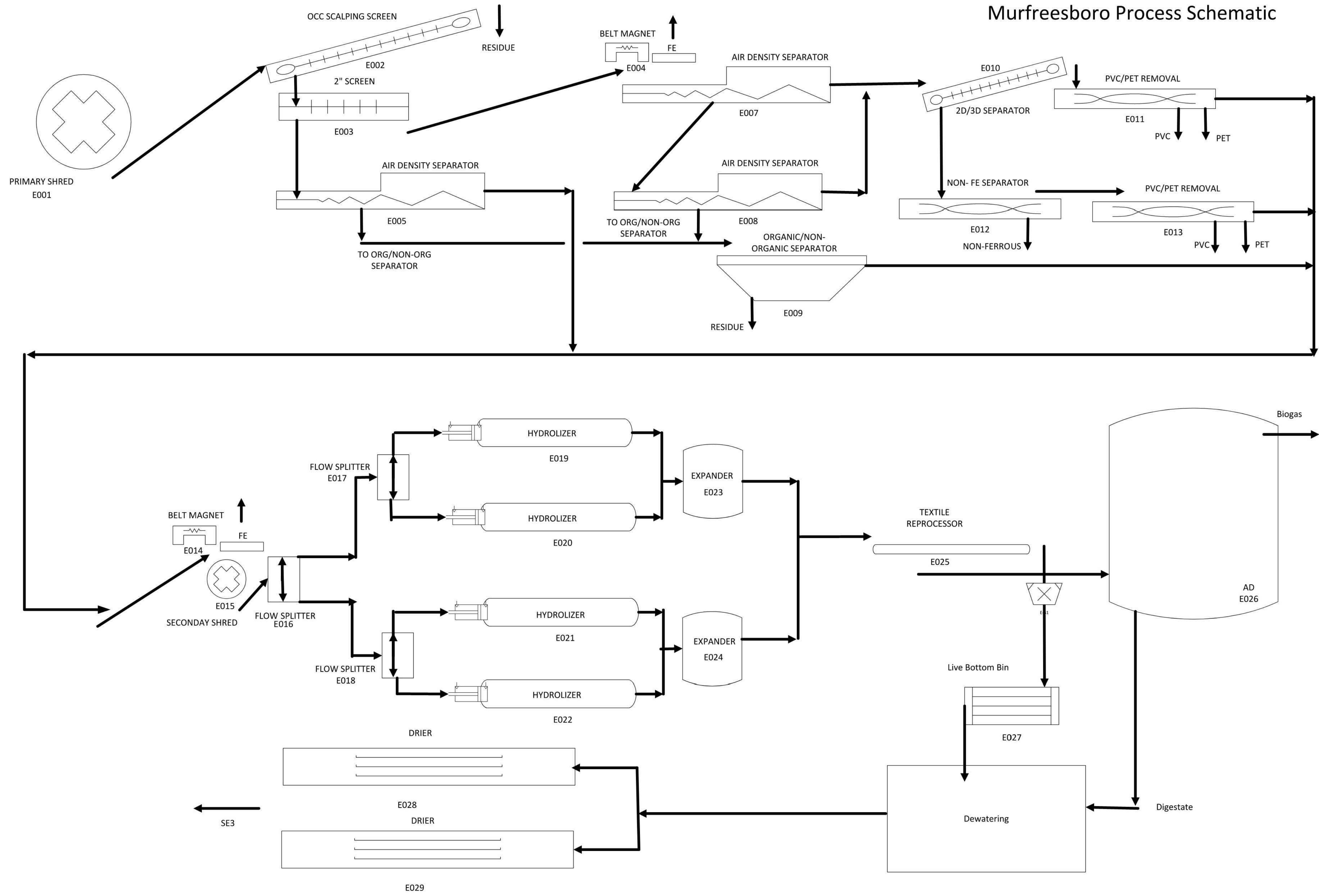
DATE	REVISION

## PERMIT SET NOT FOR CONSTRUCTION

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L:\Engineering\226 City of Murfreesboro\226-212 MF Shell and Site Design and Bidding\DRAWINGS\QUALIFIED BIOGAS PROJECT\226-212 QUALIFIED BIOGAS PERMIT SET.dwg LAYOUT: 4 SAVED: 8/24/2023 9:58 AM PAGESETUP: ----- PLOTTED: 8/24/2023



PROJECT NO. 226-212

DATE: \_\_\_\_\_ DRAWN BY: \_\_\_\_\_  
AUGUST 2023 CHECKED BY: \_\_\_\_\_  
SCALE: AS INDICATED APPROVED BY: \_\_\_\_\_  
SHEET NO. 4

PROCESS SCHEMATIC

QUALIFIED BIOGAS PROJECT  
CITY OF MURFREESBORO  
RUTHERFORD COUNTY, TENNESSEE

SUBMITTALS AND REVISIONS

DATE BY NO. DESCRIPTION

**PERMIT SET**  
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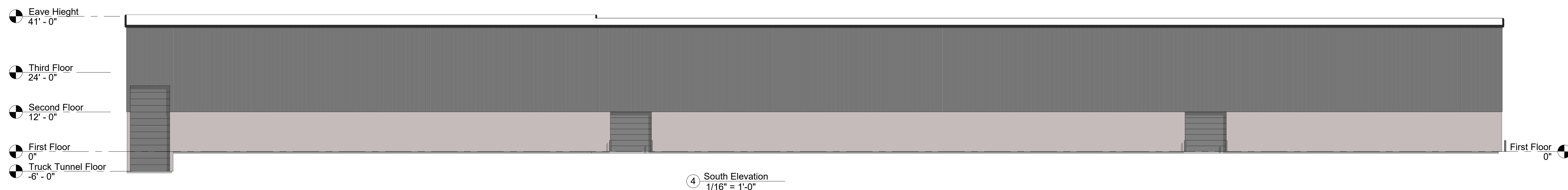
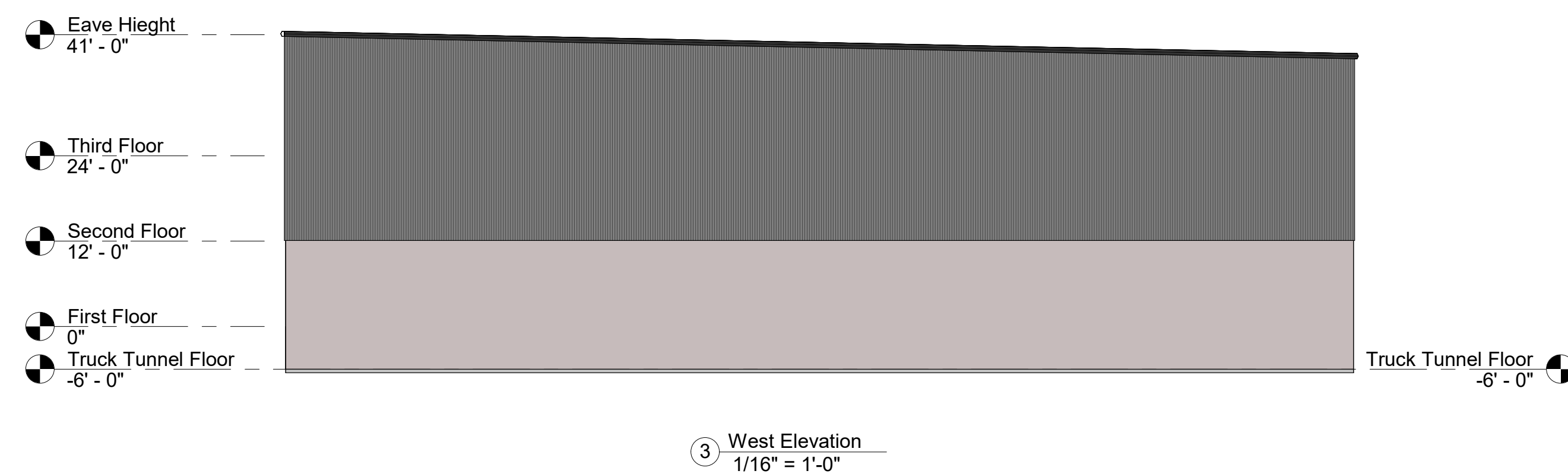
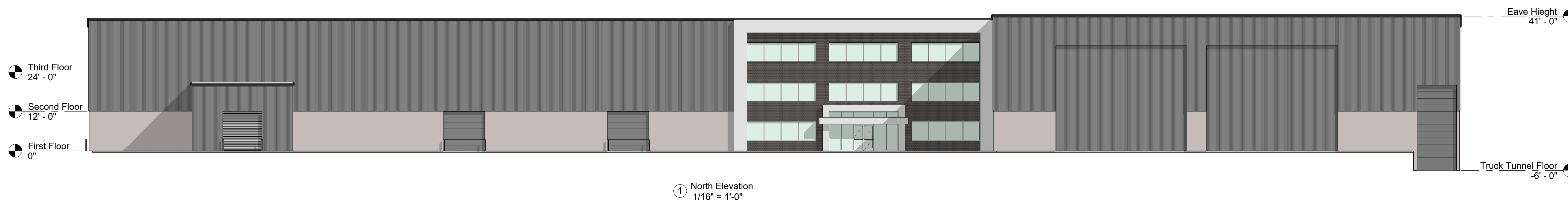
Studio Oakley  
Architects, LLC

233 Legends Drive Suite 102  
Lebanon, Tennessee 37087  
v) 615.466.8240  
www.studio-oakley.com



Preliminary

City of Murfreesboro  
Materials Management Facility  
Butler Drive  
Murfreesboro, TN



Revisions		
Rev	Date	Remarks

This drawing and the design shown is the property of the architect. The reproduction, copying or use of this drawing without their written consent is prohibited and any infringement will be subject to legal action.

Job Number 129923 Author Drawn By

Date Issue Date Checker Checked By

Scale 1/16" = 1'-0"

Exterior Elevations

A5.1

Sheet Number:

**APPENDIX II**

**National Wetlands Inventory (NWI) Map**



August 24, 2023

**Wetlands**

- |  |   |  |
|--|---|--|
|  Estuarine and Marine Deepwater |  Freshwater Emergent Wetland       |  Lake     |
|  Estuarine and Marine Wetland   |  Freshwater Forested/Shrub Wetland |  Other    |
|  |  Freshwater Pond                   |  Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

**APPENDIX III**

**FEMA Firmette**

# National Flood Hazard Layer FIRMMette



86°23'2"W 35°47'25"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
OTHER FEATURES		Levee, Dike, or Floodwall
		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 2/18/2022 at 11:45 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

**APPENDIX IV**

**Federal Threatened and Endangered Species List**

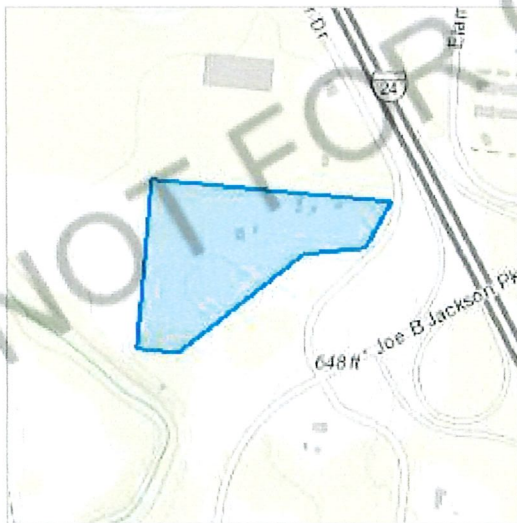
# IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

## Location

Rutherford County, Tennessee



## Local office

Tennessee Ecological Services Field Office

☎ (931) 528-6481

📠 (931) 528-7075

446 Neal Street

NOT FOR CONSULTATION



# Endangered species

**This resource list is for informational purposes only and does not constitute an analysis of project level impacts.**

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species<sup>1</sup> and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries<sup>2</sup>).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact [NOAA Fisheries](#) for [species under their jurisdiction](#).

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information. IPaC only shows species that are regulated by USFWS (see FAQ).

2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

## Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/6329">https://ecos.fws.gov/ecp/species/6329</a>	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Endangered
Tricolored Bat <i>Perimyotis subflavus</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/10515">https://ecos.fws.gov/ecp/species/10515</a>	Proposed Endangered

## Birds

NAME	STATUS
Whooping Crane <i>Grus americana</i> No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/758">https://ecos.fws.gov/ecp/species/758</a>	<a href="#">EXPN</a>

## Clams

NAME	STATUS
Littlewing Pearlymussel <i>Pegias fabula</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/2572">https://ecos.fws.gov/ecp/species/2572</a>	Endangered

## Insects

NAME	STATUS
------	--------

Monarch Butterfly *Danaus plexippus*

Candidate

Wherever found

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/9743>

## Flowering Plants

NAME

STATUS

Braun's Rock-cress *Arabis perstellata*

Endangered

Wherever found

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

<https://ecos.fws.gov/ecp/species/4704>

Guthrie's (=pyne's) Ground-plum *Astragalus bibullatus*

Endangered

Wherever found

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/1739>

Leafy Prairie-clover *Dalea foliosa*

Endangered

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/5498>

## Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

There are no critical habitats at this location.

You are still required to determine if your project(s) may have effects on all above listed species.

## Bald & Golden Eagles

There are no documented cases of eagles being present at this location. However, if you believe eagles may be using your site, please reach out to the local Fish and Wildlife Service office.

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds  
<https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide conservation measures for birds  
<https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

Bald and Golden Eagle information is not available at this time

**What does IPaC use to generate the potential presence of bald and golden eagles in my specified location?**

The potential for eagle presence is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply). To see a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

**What does IPaC use to generate the probability of presence graphs of bald and golden eagles in my specified location?**

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

**What if I have eagles on my list?**

If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the [Eagle Act](#) should such impacts occur. Please contact your local Fish and Wildlife Service Field Office if you have questions.

# Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described below.

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

Migratory bird information is not available at this time

**Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.**

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

**What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?**

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid

cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

**What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?**

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

**How do I know if a bird is breeding, wintering or migrating in my area?**

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

**What are the levels of concern for migratory birds?**

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

**Details about birds that are potentially affected by offshore projects**

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to

you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

**What if I have eagles on my list?**

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

### **Proper Interpretation and Use of Your Migratory Bird Report**

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

## Facilities

### National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

There are no refuge lands at this location.

# Fish hatcheries

There are no fish hatcheries at this location.

## Wetlands in the National Wetlands Inventory (NWI)

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

This location did not intersect any wetlands mapped by NWI.

**NOTE:** This initial screening does **not** replace an on-site delineation to determine whether wetlands occur. Additional information on the NWI data is provided below.

### Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

### Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.



## Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate Federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

NOT FOR CONSULTATION

## Environmental Review Report

### Project Information

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**Report Generation Date:** 8/22/2023 2:55 pm  
**Project Name:** Proposed Waste Away Facility  
**User-defined Project ID:** 226-207  
**ERT Project ID:** TNNHP\_ERT\_189  
**Project Size:** 30.87 acres  
**County(s):** Rutherford  
**State:** TN  
**TN Physiographic Province:** Central Basin  
**Watershed(s) HUC 8:**

- 05130203

**Watershed(s) HUC 12:**

- 051302030202 (Middle Fork Stones River)

**Latitude, Longitude (Decimal Degrees):** 35.785842 / -86.378508

### Contact Information

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**Organization:** Griggs & Maloney, Inc.  
**Name:** Steve Maloney  
**Phone:** 615-895-8221  
**Email:** smaloney@griggsandmaloney.com  
**Address:** 745 South Church St., Murfreesboro , TN 37130

### Project Description

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Solid Waste Collection and Processing Facility for the City of Murfreesboro

This report is based on documented occurrences in the vicinity of your project area. As all areas of the state have not been surveyed for rare species, this report only serves as guidance as to what rare species could occur onsite.

The Tennessee Department of Environment and Conservation - Division of Natural Areas (TDEC-DNA) currently tracks over 1,100 rare and endangered plant and animal species as well as hundreds of conservation sites across the state. The Division and other scientists collect this information through ongoing research and field investigations and from scientific literature, museum collections, and other sources. We continually analyze and update the database. The data are not only important in identifying areas of ecological significance for conservation and restoration activities, but are also useful in the environmental review process.

Additional Information about the TDEC Division of Natural Areas can be found here:

<https://www.tn.gov/environment/program-areas/na-natural-areas.html>

The following report and agency comments are based on a query of the TDEC-DNA rare species database and associated geographic information with regard to the project information you submitted through the Environmental Review Tool.

Please note that although TDEC-DNA manages data for state and federally listed plant and animal species in Tennessee, **the Tennessee Wildlife Resources Agency (TWRA) has legal authority over wildlife** and **the U.S. Fish and Wildlife Service (USFWS) has legal jurisdiction over all federally listed species**. Furthermore, both agencies may possess additional data of which we are unaware or have additional concerns not addressed herein. TDEC Division of Water Resources (TDEC-DWR) is the state authority for all Waters of the State. As such, we ask that you coordinate your project with these entities (where appropriate) and any other relevant federal, state, or local authorities beyond your coordination with TDEC-DNA. We encourage you to share this report from the TDEC-DNA rare species database when coordinating with other agencies.

Thank you for considering Tennessee's rare species throughout the planning of this project. Should you have any questions, please do not hesitate to contact our office at 615-532-4799 or [environmental.review@tn.gov](mailto:environmental.review@tn.gov).

### Managed Areas within 1 Mile of the Project Area

Area Name	Manager
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### Rare Species Occurrences within 1 Mile of the Project Area

Type	Scientific Name	Common Name	<a href="#">Global Rank</a>	<a href="#">State Rank</a>	<a href="#">Fed. Protection</a>	<a href="#">State Protection</a>	Habitat
Vascular Plant	Arnoglossum plantagineum	Fen Indian-plantain	G4G5	S2	--	T	Moist Prairies And Marshes
Vascular Plant	Paysonia densipila	Duck River Bladderpod	G3	S3	--	S	Cultivated Fields
Vascular Plant	Zanthoxylum americanum	Northern Prickly-ash	G5	S2	--	S	Cedar Thickets
Vertebrate Animal	Ambystoma barbouri	Streamside Salamander	G4	S2	--	E	Seasonally flowing karst streams; middle Tennessee.

### Rare Species Occurrences within 4 Miles of the Project Area

Type	Scientific Name	Common Name	<a href="#">Global Rank</a>	<a href="#">State Rank</a>	<a href="#">Fed. Protection</a>	<a href="#">State Protection</a>	Habitat
Vascular Plant	Ammoselinum popei	Pope's Sand-parsley	G4	S2	--	T	Glades
Vascular Plant	Anemone caroliniana	Carolina Anemone	G5	S1S2	--	E	Glades And Cedar Woodlands
Vascular Plant	Arnoglossum plantagineum	Fen Indian-plantain	G4G5	S2	--	T	Moist Prairies And Marshes
Vascular Plant	Astragalus tennesseensis	Tennessee Milk-vetch	G3	S3	--	S	Glades
Vascular Plant	Dalea candida	White Prairie-clover	G5	S2	--	T	Barrens
Vascular Plant	Dalea purpurea	Purple Prairie-clover	G5	S1	--	E	Barrens
Vascular Plant	Echinacea pallida	Pale-purple Coneflower	G4	S1	--	E	Barrens And Dry Openings
Vascular Plant	Evolvulus nuttallianus	Evolvulus	G5	S3	--	S	Glades

Vascular Plant	<i>Helianthus occidentalis</i>	Naked-stem Sunflower	G5	S2	--	S	Limestone Glades And Barrens
Vascular Plant	<i>Liatrix cylindracea</i>	Slender Blazing-star	G5	S2	--	T	Barrens
Vascular Plant	<i>Mirabilis albida</i>	Pale Umbrella-wort	G5	S2	--	T	Glades
Vascular Plant	<i>Paysonia densipila</i>	Duck River Bladderpod	G3	S3	--	S	Cultivated Fields
Vascular Plant	<i>Phemeranthus calcaricus</i>	Limestone Fame-flower	G3	S3	--	S	Glades
Vascular Plant	<i>Sagittaria platyphylla</i>	Ovate-leaved Arrowhead	G5	S2S3	--	S	Swamps, Emergent
Vascular Plant	<i>Schoenolirion croceum</i>	Yellow Sunnyside	G4	S3	--	T	Wet Areas In Glades
Vascular Plant	<i>Solidago gattingeri</i>	Gattinger's Goldenrod	G3?Q	S1	--	E	Glades
Vascular Plant	<i>Veronica catenata</i>	Sessile Water-speedwell	G5	S1	--	E	Slow Flowing Streams And Ditches
Vascular Plant	<i>Zanthoxylum americanum</i>	Northern Prickly-ash	G5	S2	--	S	Cedar Thickets
Invertebrate Animal	<i>Gomphus sandrius</i>	Tennessee Clubtail	G1	S1	--	Rare, Not State Listed	Slow streams with bare bedrock shores; Central Basin; upper Duck River and middle Cumberland River watersheds.
Vertebrate Animal	<i>Ambystoma barbouri</i>	Streamside Salamander	G4	S2	--	E	Seasonally flowing karst streams; middle Tennessee.

Vertebrate Animal	<i>Etheostoma microlepidum</i>	Smallscale Darter	G2G3	S2	--	D	Small rivers, in deep, strongly flowing riffles with gravel, boulder, and coarse rubble substrates; Cumberland River drainage.
Vertebrate Animal	<i>Lanius ludovicianus</i>	Loggerhead Shrike	G4	S1B,S2N	--	D	Open country with scattered trees and shrubs and occasionally open woodland; extremely rare breeder.
Vertebrate Animal	<i>Notropis rupestris</i>	Bedrock Shiner	G2	S2	--	D	Bedrock pools of some low-gradient streams of the Nashville Basin.
Vertebrate Animal	<i>Percina phoxocephala</i>	Slenderhead Darter	G5	S3	--	D	Small-large rivers with moderate gradient in shoal areas with moderate swift currents; portions of Tenn & Cumb river watersheds.

You can consult the TN Rare Plant List and the TN Rare Animal List at the Natural Heritage Inventory Program web page: <https://www.tn.gov/environment/program-areas/na-natural-areas/na-natural-heritage-inventory-program.html>

Additional information regarding rare species can be found in NatureServe Explorer: <https://explorer.natureserve.org>



Additional information regarding federally listed species can be found at USFWS ECOS:

<https://ecos.fws.gov/ecp>

Full details regarding global/state ranks and fed/state protection can be found here:

[https://www.tn.gov/content/dam/tn/environment/natural-areas/documents/na\\_status-ranks.pdf](https://www.tn.gov/content/dam/tn/environment/natural-areas/documents/na_status-ranks.pdf)



**User-Submitted Responses**

<b>Project Type:</b>	Other
<b>Will this project require damage to or destruction of native vegetation outside of a maintained right-of-way, manicured/mowed lawn, or garden?:</b>	Yes
<b>Will this project impact wetlands or jurisdictional streams as defined by TDEC Division of Water Resources?:</b>	No
<b>Is any portion of the project area on land owned by the State of Tennessee or the U.S. Federal Government?:</b>	No
<b>Will this review be used for certification in the Tennessee Department of Economic and Community Development's Select TN Certified Sites Program?:</b>	No
<b>Is this project publicly-funded or supported by a publicly-funded grant?:</b>	Yes
<b>Is this environmental review being requested to fulfill requirements of a TDEC permit application?:</b>	Uncertain

**COMMENTS REGARDING USER-SUBMITTED RESPONSES**

TDEC-DNA does not have any comments regarding the User-Submitted Responses for this project. See comments regarding Managed Areas and Rare Plant Species in the sections below.

**COMMENTS REGARDING NEARBY MANAGED AREAS**

Our query does not show that any managed conservation areas are in the proposed project area. That said, it is your responsibility to ensure any such areas that may be impacted by your project are correctly identified and that appropriate coordination is conducted. The TN property viewer can be accessed here: <https://tnmap.tn.gov/assessment/>

**COMMENTS REGARDING POTENTIAL IMPACTS TO RARE PLANT SPECIES**

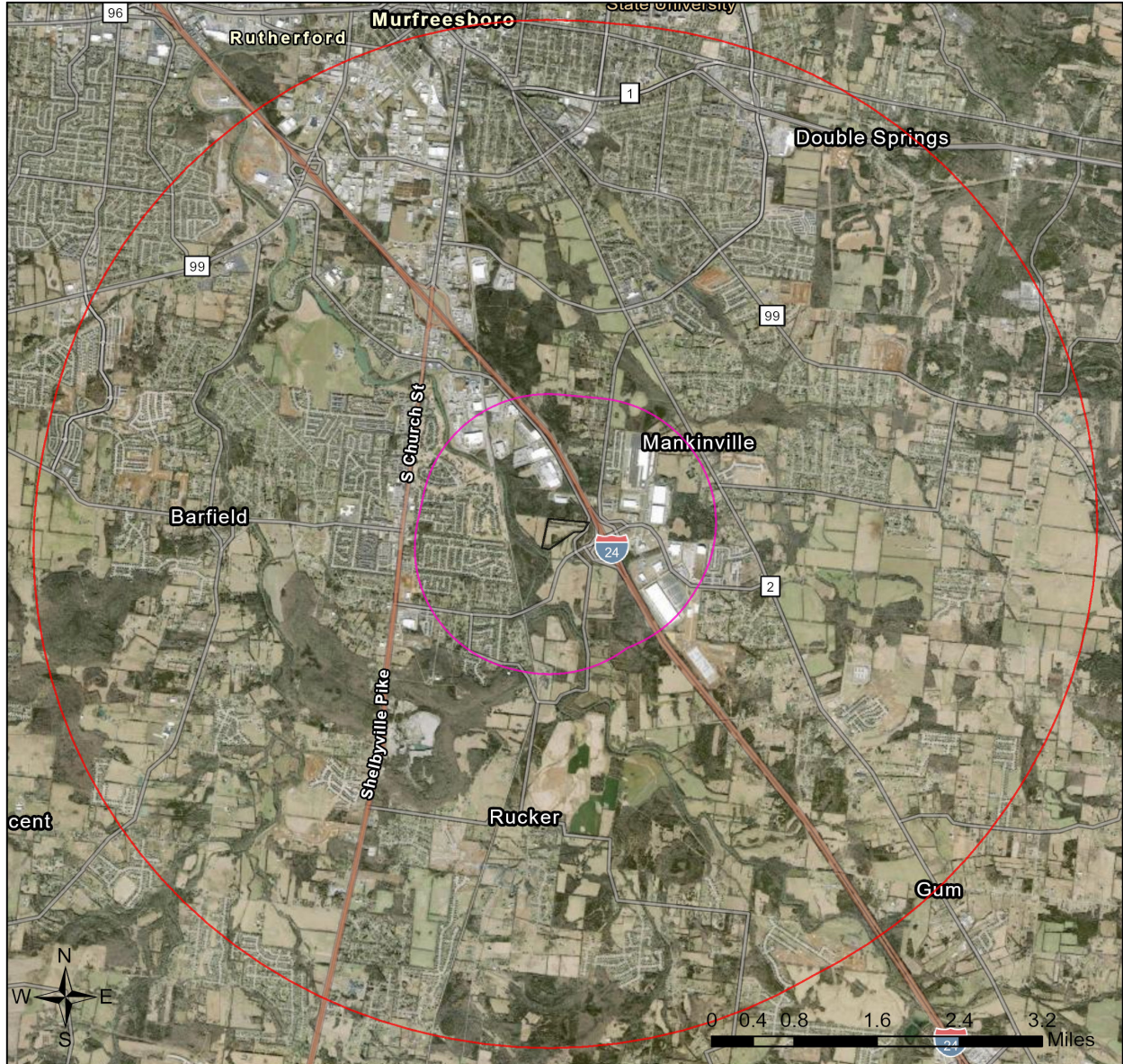
Where suitable habitat is present any of the rare plant species known from within four miles of the





project area may occur at the site. An appropriately timed survey by a qualified biologist would be necessary to identify and avoid impacting rare plant species at the site.

### Proposed Waste Away Facility Aerial Image Basemap With Locator Map



- Project Boundary
- Buffered Project Boundary 4 Mile
- Buffered Project Boundary 1 Mile



Project Size (acres): 30.87  
 Lat/Long (DD): 35.7858 / -86.3785  
 Lat/Long (DMS): 35° 47' 9.308" N / 86° 22' 42.6287" W  
 County(s): RUTHERFORD  
 Watershed (HUC12): 051302030202  
 USGS Quad(s): DILLTON; MURFREESBORO

Rutherford County, TN, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA  
 Earthstar Geographics  
 Esri, HERE, Garmin, FAO, NOAA, USGS, EPA

Proposed Waste Away Facility  
 Web Map As Submitted By User



- Water Lines
- Scenic Rivers
- Managed Areas
- Buffered Project Boundary 100 Meters
- Project Boundary



## Contacts

### USFWS

If your project review list includes federally listed plant or animal species, and you would like a review from the U.S. Fish and Wildlife Service, please follow the instructions for submitting a review request provided at <https://www.fws.gov/media/tn-es-project-review-requests-guidance>.

### TWRA

Environmental reviews are coordinated by TWRA via regional habitat protection biologists. Based on the location of your submission, the appropriate TWRA contact for this project is listed below. When project areas include two TWRA regions, both staff members are listed in the Contacts section of the ERT report.

#### **Katie Murphy**

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<b>TWRA Region for this Project:</b>	Region 2
<b>TWRA Region Contact for this Project:</b>	Katie Murphy
<b>Address:</b>	5105 Edmondson Pike, Nashville, TN 37211
<b>Email Address:</b>	Katie.M.Murphy@tn.gov

### TDEC Environmental Field Office

The nearest Environmental Field Office (EFO) should be your starting point for any environmental question. Each EFO is staffed with technical staff who are available to assist with permitting needs, outreach functions, and general guidance. If water resources - including streams, wetlands, or riparian areas - are to be impacted by the project, you can also coordinate with TDEC Division of Water Resources via the appropriate Environmental Field Office or Permitting Unit.

#### **NASHVILLE**

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<b>TDEC Environmental Field Office for this Project:</b>	NASHVILLE
<b>Address:</b>	711 R.S. Gass Blvd, Nashville, TN 37216
<b>Phone number:</b>	(888) 891-8332

## Appendix A: TDEC-DNA ERT Self-Certification (Rare Plant Species)

For individuals or agencies that wish to document their use of the ERT, this self-certification can help with using the ERT Report to evaluate potential impacts to rare plant species. If the ERT Report section Comments Regarding Potential Impacts to Rare Plant Species indicates that “One or more rare plant species or rare ecological communities have been documented within the immediate vicinity of the project boundary...” we suggest contacting TDEC Division of Natural Areas for further consultation via the method described in the ERT Report prior to using this self-certification.

### STEP 1

In consultation with TDEC-Division of Natural Areas via the ERT Report, I have reviewed the rare species documented within 1- and 4- miles of the project area and compared their habitat requirements to the habitat present at the project site.

Based on my survey of the project area or a survey by a qualified biologist (SELECT ONE):

Habitat for rare plant species known from within 4-miles of the project area IS present in the project area. (Go to STEP 2)

OR

Habitat for rare plant species known from within 4-miles of the project area IS NOT present in the project area. (Skip to STEP 4)

### STEP 2

Where suitable habitat is present for rare plant species known from within 4 miles of the project area, appropriately timed surveys were conducted for the rare plant species known from those habitat types as informed by the ERT Report, the TN Rare Plant list, and/or other botanical resources – (see APPENDIX B for Example Rare Plant Survey Documentation). Following our appropriately timed surveys and documentation of those surveys, we determined (SELECT ONE):

Rare plant species **ARE** present in the project area. (GO TO STEP 3)

OR

Rare plant species **ARE NOT** present in the project area. (SKIP TO STEP 4)



### STEP 3

Following observation of rare plant species at the site, we began further consultation with TDEC Division of Natural Areas. [Send survey results and pictures of rare plant species to TDEC-DNA at [environmental.review@tn.gov](mailto:environmental.review@tn.gov), making sure to include the ERT Project ID in the subject line]. I have attached correspondence with TDEC-DNA regarding additional consultation to this form. (GO TO STEP 4)

### STEP 4

Following consultation with TDEC-Division of Natural Areas through the ERT and due diligence in the form of a habitat assessment and/or appropriately timed surveys for rare plant species, I have determined that this project is unlikely to impact rare plant species **OR** after identifying rare plant species at the site, I have notified TDEC-DNA that state or federally listed threatened or endangered species are present.

NAME: \_\_\_\_\_

COMPANY/ORGANIZATION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

## Appendix B: Example Rare Plant Survey Documentation

*All surveys...*

**Date of survey**

**Names of surveyors**

**Total effort (hours)**

**Map of total project area** (with annotations identifying survey areas within project area)

**Representative photos of areas surveyed** (with latitude/longitude and direction for each)

*When rare plant species are identified (repeat for each species)...*

**Photos** of any rare species identified, along with the following information for each photo (or photo series):

**Latitude and longitude of observation(s) (decimal degrees)**

*Multiple points or the centroid of a large population can be used if individuals are widely dispersed*

**Notes regarding extent of population**

*e.g. phenology, number of individuals, quality of habitat, extent of area where species is present*

### Survey Certification

One or more **appropriately timed** surveys were conducted in a study area where suitable habitat was present for rare plant species known from within four miles. Select the result of your survey(s) below.

\_\_\_ **Result 1:** The survey results suggest that rare plant species ARE NOT present at the site.

*Sign below and use this documentation to support your TDEC-DNA ERT Self-Certification for rare plant species.*

NAME: \_\_\_\_\_

COMPANY/ORGANIZATION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**OR**

\_\_\_ **Result 2:** The surveys identified rare plant species at the site.



*TDEC-DNA welcomes the opportunity to review the results of rare species surveys where rare species have been previously documented and/or new occurrences of rare species are identified. When a survey identifies rare plant species at a site, you may submit your survey documentation to TDEC Division of Natural Areas via email at [environmental.review@tn.gov](mailto:environmental.review@tn.gov) making sure to include your ERT Project ID in the subject line.*



**APPENDIX V**

**Jackson Law Application Approval**

**RESOLUTION 23-R-27** providing approval under the Jackson Law for the construction of a qualified biogas property within the City of Murfreesboro.

**WHEREAS**, on December 7, 2022, the City of Murfreesboro (the “City”) entered into an agreement with WastAway, LLC to design a qualified biogas property (the “Project”), which consistent with the definition for such properties in the Inflation Reduction Act, 28 U.S.C.A. § 48(c)(7), will convert biomass into methane gas and will capture such gas for sale or productive use; and

**WHEREAS**, the Project’s objective is produce renewable natural gas for sale from municipal solid waste while at the same time diverting upwards of 90% of the municipal solid waste collected by the City from landfills at a market-competitive price; and

**WHEREAS**, the City intends to have the Project built on property owned by and located within the City at 2120 Butler Drive; and

**WHEREAS**, as set forth in the agreement with WastAway, the Project will include the following components: (1) a material management station; (2) a WastAway SE3® manufacturing component; (3) an anaerobic reactor biogas generation component; (4) a renewable natural gas purification component; and (5) related facility support spaces; and

**WHEREAS**, the Project constitutes a solid waste processing facility subject to regulation by the Tennessee Department of Environment and Conservation (“TDEC”) under the Tennessee Solid Waste Disposal Act, as amended and codified at Tenn. Code Ann. § 68-211-101 *et seq.*, and the related implementing regulations adopted by TDEC, specifically Chapter 0400-11-01 of the Rules and Regulations of the State of Tennessee; and

**WHEREAS**, pursuant to Rule 0400-11-01-.02, the Project cannot be operated without a permit from TDEC; and

**WHEREAS**, the City retained the engineering firm Griggs & Maloney to prepare the City’s notification for permit by rule (“Permit Application”) in accordance with Rule 0400-11-01-.02; and

**WHEREAS**, because the City adopted the Jackson Law in December 2016 and Rutherford County adopted the Jackson Law in November 2005, TDEC will not evaluate the City’s Permit Application unless and until both the Murfreesboro City Council and the Rutherford County Commission have approved the construction of the proposed solid waste processing facility; and

**WHEREAS**, the City’s Permit Application is attached hereto as Exhibit A; and

**WHEREAS**, Griggs & Maloney certifies that the Permit Application meets the requirements set forth in Rule 0400-11-01-.02; and

**WHEREAS**, upon considering (i) the type of waste to be processed at the facility; (ii) the method of processing; (iii) the projected impact of the facility on surrounding

areas from noise and odor; (iv) the projected impact on property values on the surrounding areas; (v) the adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility; (vi) the economic impact of the facility on the City of Murfreesboro and Rutherford County; (vii) the compatibility of the project with existing development and zoning plans; and (viii) other factors that may affect the public health, safety, and welfare, the Murfreesboro City Council finds that subject to final permitting by TDEC, the construction of the Project is consistent with the goal of diverting municipal solid waste from landfills and the larger public interest.

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

SECTION 1. The Murfreesboro City Council approves the property located at 2120 Butler Dr. for constructing the Project, subject to final approval of financing terms and conditions.

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*  
\_\_\_\_\_  
43A2035E51F8401...  
Adam F. Tucker  
City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** Resolution Supporting Tax Increment Financing for Project Keystone—Broad Street Redevelopment Project

**Department:** Administration

**Presented by:** Sam A. Huddleston, Assistant City Manager

**Requested Council Action:**

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

**Summary**

Economic Impact Plan for Project Keystone—Broad Street Redevelopment

**Staff Recommendation**

Adopt Resolution 23-R-28 approving the Economic Impact Plan

**Background Information**

Project Keystone—Broad Street Development Project is partially financed through the implementation of Tax Increment Financing program (TIF). TIF programs allow for the allocation of future property tax payments to the project to assist development or redevelopment projects not otherwise financially feasible. The funds allocated under a TIF program are those received from property tax payments by the project. No other public funds are included. Moreover, the use of TIF funds is limited to certain aspects of the project. In Rutherford County, TIF programs are created and administered by the Industrial Development Board of Rutherford County (IDB).

The statutes permitting TIF programs required that an Economic Impact Plan be written that outlines the economic benefits offered by the Project. The proposed Resolution approving the Economic Impact Plan indicates that Council is supportive of a TIF for Project Keystone and the Broad Street Redevelopment. TIF proceeds are restricted to use for development of the Project’s parking garages and public infrastructure construction and is capped at 20 years or \$26m.

As outlined in the Plan, at current property tax rates, it is estimated that the appraised value of the Project would generate City property tax revenues of \$530,866 annually, of which \$435,000 will be allocated to the TIF. The City will receive an estimated \$108,260 annually of the indirect and shared property taxes paid. These amounts may vary if the City alters its property tax rate. New commercial and retail establishments within the Project will result in increased annual local sales tax revenues. The retail and restaurant use within the Development are estimated to produce approximate \$155,589 in local sales taxes annually. Similarly, the hotel is expected to produce additional sales and lodging tax revenue of approximately

\$186,500 to the City.

The Funding Agreement between the developer and the IDB is provided to Council for information only. The Economic Impact Plan and companion Funding Agreement are on the August 30, 2023 agenda. Staff will report on the action of the IDB. Rutherford County Commission must approve the EIP before the TIF is final. It is anticipated the County Commission will consider the items during Committee and Regular meetings in September.

### **Council Priorities Served**

#### *Improve economic development*

Redevelopment of Broad Street between Main Street and Church Street is a major economic development enhancement that will assist in redevelopment of the Historic Bottoms Area as well as attracting additional downtown development projects.

#### *Establish strong City brand*

Redevelopment of the Downtown and the Bottoms areas will be instrumental in establishing a positive City brand.

### **Concurrence**

The IDB is considering the Economic Impact Plan and Funding Agreement at its August 30 meeting. Rutherford County Commission must approve the EIP before the TIF is final. It is anticipated the County Commission will consider the items during Committee and Regular meetings in September.

### **Fiscal Impact**

The Project is expected to produce more than \$531,000 in property tax per year and allocated \$435,000 to the TIF. The City will received \$450,000 in estimated direct and indirect revenue.

### **Attachments**

1. Resolution 23-R-28
2. Funding Agreement

**RESOLUTION 23-R-28** regarding Economic Impact Plan for Project Keystone Development Area.

**WHEREAS**, The Industrial Development Board of Rutherford County (the “Board”), is a public, nonprofit corporation organized and existing under, and by virtue of, the provisions of Chapter 53, Title 7, Tennessee Code Annotated, as amended (the “Act”); and

**WHEREAS**, the purpose of said Act, as stated therein, being to authorize the incorporation in the several municipalities in the State of Tennessee of public corporations to finance, acquire, construct, own, lease, equip and/or dispose of properties to the end that such corporations may be able to, among other things, maintain and increase employment opportunities by promoting industry, trade, commerce, tourism, and recreation by inducing manufacturing, industrial, governmental, educational, financial service, commercial, and recreational enterprises to locate or to remain in the State of Tennessee; and

**WHEREAS**, the Board desires to induce HRP Residential, LLC (the “Company”), to undertake a development (the “Development”), in the Project Keystone Development Area, being certain property located along NW Broad Street, W Vine Street and S Church Street, which will include commercial office, retail, restaurant, residential and hotel uses, together all necessary on-site water, sewer, stormwater and other utility infrastructure, extensions and public infrastructure necessary to serve the needs of the Development (the “Infrastructure Improvements”) and the privately-owned parking garage facilities that will serve both the users of the Development and the public (the “Garage Project”), which Garage Project is anticipated to be composed of three garages with approximately 715 total parking spaces; and

**WHEREAS**, the Garage Project and the Infrastructure Improvements are an eligible project within the meaning of T.C.A. § 7-53-101(15)(A) and the TIF Uniformity Act as defined in the Plan; and

**WHEREAS**, the Board is authorized by the Act to, among other things, prepare and submit to the City and to the Board of Commissioners of Rutherford County, Tennessee (the “County”), for their approval, an economic impact plan pursuant to Section 312 of the Act; and

**WHEREAS**, the Board held a public hearing relating to the proposed “The Industrial Development Board of Rutherford County – Project Keystone Development Area” (the “Plan”), attached hereto as Exhibit A and incorporated herein by reference, and approved the Plan pursuant to which the Board would receive certain property taxes allocated to the Board pursuant to Section 312(h) of the Act and the Plan (the “TIF Revenues”) and use the same for an incentive (the “Incentive”) to the Company,

by using a portion of the TIF Revenues each year either to (i) pay (or reimburse the Company for paying) a portion of the Eligible Costs (such term, and all other terms the initial letter of which are capitalized and is not otherwise defined herein shall have the meaning ascribed thereto in the Plan) of the Garage Project and the Infrastructure Improvements, or to (ii) provide financial assistance to fund a portion of the Eligible Costs of the Garage Project and the Infrastructure Improvements by borrowing money under a nonrecourse note, and providing the proceeds thereof to the Company to reimburse it for or otherwise finance the Eligible Costs of the Garage Project and the Infrastructure Improvements; and

**WHEREAS**, the Board is authorized by law and has deemed it necessary to provide the Incentive pursuant to the terms of a certain Funding Agreement (the "Funding Agreement"), to be entered into with the Company, which Funding Agreement shall be subject to the approval of the City Manager and the City Attorney; and

**WHEREAS**, the City has been asked to approve the Plan and the Incentive to the Company.

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

SECTION 1. Findings with Respect to the Project. The City Council of the City of Murfreesboro, Tennessee, hereby finds with respect to the Project that the acquisition, construction and equipping thereof by means of the Incentive is necessary and desirable; that the Plan Area is within an area that could provide substantial sources of tax revenues or economic activity to the City and the County; that the use of the Incentive is in furtherance of promoting economic development in the City and the County; that the use of the Incentive will develop trade and commerce in and adjacent to the City and the County, will contribute to the general welfare, and will alleviate conditions of unemployment; and that the Project will be necessary and advantageous to the Board in furthering the purposes of the Act.

SECTION 2. Approval of the Incentive and the Plan. The form, content, and provisions of the Plan, and the grant of the Incentive as contemplated herein, in the Funding Agreement and in said Plan are hereby in all particulars approved; and the Mayor, or in the Mayor's absence, the Vice Mayor, is hereby authorized, empowered and directed to execute, acknowledge and deliver said Plan, in substantially the form now before this meeting of the City Council, or with such changes therein as shall be approved by the Mayor or Vice Mayor executing the same, their execution thereof to

constitute conclusive evidence of their approval of any and all such changes or revisions, in the name, and on behalf, of the City.

The Mayor or in the Mayor's absence, the Vice Mayor, is hereby authorized, empowered, and directed, from and after the date hereof, to do all acts and things, and to execute all documents with the Company, the Board and/or the City as may be necessary or convenient to carry out, and to comply with the provisions of said Economic Impact Plan.

SECTION 3. Miscellaneous Acts. The Mayor, the Vice Mayor, the City Manager, the City Attorney, the City Recorder, the Treasurer, and the Director of Finance or any of them, are hereby authorized, empowered, and directed to do any and all such acts and things, and to execute, acknowledge, deliver, and, if applicable file or record, or cause to be filed or recorded, in any appropriate public offices, all such documents, instruments, memoranda and certifications, certifications hereinbefore authorized and approved, as may, in his or her discretion, be necessary or desirable to implement or comply with the intent of this Resolution, or any of the documents herein authorized and approved, or for the granting and implementation of the Incentive or the undertaking of the Project by the Company for the foregoing purposes, including without limitation, the execution, delivery and recordation of any memoranda, certificates or other documents or instruments as they may deem necessary or desirable in connection with the foregoing.

SECTION 4. Limited Obligation and Liability. The obligations of the Board under the Plan and the Funding Agreement (the "Obligations"), and any payments with respect thereto, are limited obligations of the Board and shall not be deemed to constitute a general debt or liability of the Board, except insofar as the applicable portions of the TIF Revenues have been received by the Board and the same is payable to the Company in accordance with the provisions of the Plan and in the Funding Agreement referenced therein.

Neither the City, the County, the State of Tennessee, nor any other political subdivision thereof, shall be liable for the payment or performance of the Obligations or any agreement, or certification, of any kind whatsoever of the Board and neither the Obligations, nor any of the agreements, Obligations, or certifications of the Board shall be construed to constitute an indebtedness of the City, the County or the State of Tennessee, or any other political subdivision thereof, within the meaning of any constitutional or statutory provisions whatsoever. No recourse under, or upon any statement, obligation, covenant, agreement, or certification, contained in any of the foregoing documents, or any other document or certification whatsoever; or under any judgment obtained against the Board or by the enforcement of any assessment or by any legal or equitable proceeding or by virtue of any constitution or statute or



otherwise, or under any circumstances, under or independent of the foregoing documents, or any other document or certification, whatsoever, shall be had against any incorporator, member, director, or officer, as such, past, present, or future, of the Board, either directly or through the Board, or otherwise, for the payment for, or to, the Board, or any receiver thereof, for any sum that may be due and unpaid by the Board for the Obligations. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for, or to, the Board or any receiver thereof, shall be deemed to have been waived and released as a condition of, and consideration for, the execution of the aforesaid documents.

SECTION 5. Captions. The captions or headings in this Resolution are for convenience only and shall in no way define, limit, or describe the scope or intent of any provision hereof.

SECTION 6. Partial Invalidity. If any one or more of the provisions of this Resolution, or of any exhibit or attachment thereof, shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, or of any exhibit or attachment thereto, but this Resolution, and the exhibits and attachments thereof, shall be construed the same as if such invalid, illegal, or unenforceable provision had never been contained herein, or therein, as the case may be.

SECTION 7. 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*  
\_\_\_\_\_  
43A2035E51F9401...  
Adam F. Tucker  
City Attorney

Exhibit A

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF RUTHERFORD COUNTY**

Economic Impact Plan for  
Project Keystone Development Area  
\_\_\_\_\_, 2023

**1. Authority**

(a) Industrial development corporations are authorized under T.C.A. § 7-53-312 to prepare and submit to cities and counties an economic impact plan with respect to an area that includes a project within the meaning of T.C.A. § 7-53-101 and such other properties that the corporation determines will be directly improved or benefited due to the undertaking of a project.

(b) T.C.A. § 7-53-312 authorizes cities and counties to allocate new incremental tax revenues, which arise from the area subject to the economic impact plan, to an industrial development corporation to promote economic development, to pay the cost of projects, or to pay debt service on bonds or other obligations issued by the corporation.

**2. The Development and Project**

(a) Development. The City of Murfreesboro (the "City"), with the support of Rutherford County (the "County"), intends to support the development of the Project Keystone Development Area, being certain property located along NW Broad Street, W Vine Street and S Church Street in a mixed-use development project (the "Development"), consistent with the Development Agreement described below. The Development is currently anticipated to contain at least 30,000 square feet of commercial space for office, retail, restaurant uses, not more than 239 rental residential apartments and 80 to 100 for sale residential condominium units, as well as a hotel containing not less than 80 hotel rooms that are comparable in design, style, quality, services and amenities to at least an Upscale Chain according to *Smith Travel Resources Chain Scales – North America and Caribbean*, or comparable, together with privately-owned parking garage facilities that will serve both the users of the Development and the public visiting the offices, retailers, restaurants and hotel (the "Garage Project"). The Garage Project is anticipated to be composed of three garages with approximately 715 total parking spaces.

(b) Developer. The developer of the Development will be HRP Residential, LLC, or its affiliate ("Developer"). Developer will incur substantial costs associated with the design, construction, and marketing of the Development in accordance with a certain "Development Agreement Project Keystone", dated \_\_\_\_\_, 2023 (said agreement, as amended from time to time, being the "Development Agreement"), by and between Developer and the City, which Development Agreement is incorporated herein by reference, and reference is hereby made to the Development Agreement for a comprehensive statement of the rights and responsibilities of the Developer and the City in connection with the Development. As set forth in Section 3.a of the Development Agreement, Developer will, at its sole cost and

expense, and in accordance with City approved construction plans, construct all necessary on-site water, sewer, stormwater and other utility infrastructure, extensions and Public Infrastructure necessary to serve the needs of the Development (the "Infrastructure Improvements"). The cost of the Garage Project portion of the Development and the Infrastructure Improvements will be subject to reimbursement as set forth herein.

(c) The Plan. The Industrial Development Board of Rutherford County (the "Board") desires to adopt this economic impact plan (the "Plan."), in order to induce the Developer to undertake the Development and to make the Garage Project financially feasible. Upon its adoption, the Board will submit this Plan to the City and County for their approval. The Garage Project is an eligible project within the meaning of T.C.A. § 7-53-101(15)(A).

**3. Plan Area**

(a) The Development is located in the City along NW Broad Street, W Vine Street and S Church Street (the "Plan Area"), which the Board hereby agrees and determines is the property that will directly benefit from the development of the Garage Project.

(b) A map of the Plan Area, consisting of approximately 7.08 acres, is shown on **Exhibit A** attached hereto and incorporated herein by reference. The Tax Map and Parcel numbers of the real property in the Plan Area are set forth in the table below:

Key to Parcel No. On Exhibit A	Tax Map & Parcel No.
1	091N C 0080
2	091N C 00900*
3	091N C 0230
4	091N C 0240
5	091N C 0250
6	091N C 02601
7	091N C 0260
8	091N C D 0060

\*Cross hatched portion of 091N C 00900 as shown on Exhibit A, as more fully to be described in a survey to be made pursuant to the Development Agreement.

(c) Upon adoption of this Plan, the Plan Area is hereby declared to be subject to this Plan.

#### **4. Expected Benefits to City and the County**

(a) Redevelopment of the Plan Area is instrumental in the redevelopment of NW Broad Street, a major thoroughfare, creating a gateway to the City's historic downtown and complementing the City's daylighting of Town Creek resulting in the creation of an urban open space along the south side of NW Broad Street across from the Development. The Development will enhance and encourage the redevelopment of the Historic Bottoms District that was studied by the City and identified for redevelopment in 2017. The Garage Project is expected to promote economic development in the Plan Area by providing well-located, safe parking facilities thereby inducing the occurrence of the Development, leading to the redevelopment of the Plan Area neighboring properties by adding commercial office, retail, restaurant, residential, hotel and parking opportunities that will draw residents and tourists to the downtown area, including the Public Square, of Murfreesboro, and make the Development a walkable area with the potential for the encouragement of a live-work-shop-dine-play lifestyle near and possibly within the Central Business District.

(b) As Murfreesboro is the largest City in Rutherford County and is the County seat, this revitalization will directly benefit the County and the City.

(c) The Development will entail approximately \$170,000,000 to \$175,000,000 of capital investment in the Plan Area and should create, using a conservative estimate, 1,700 construction jobs during construction of the Development. A significant part of the Development will be commercial office, retail, restaurant and hotel uses, which will result in significant long-term job creation.

(d) The City and the County are also expected to realize additional tax receipts as a result of the Development. With respect to property taxes, all but one tax parcel of the property in the Plan Area is currently publicly owned and therefore has a base tax of zero. Transferring the property to private ownership and the capital investment in developing the property will create incremental property tax revenue that would be applied as provided herein to pay for costs of developing the Garage Project. The capital investment in the development is estimated to result in an appraised tax value of approximately \$150,314,000. At current property tax rates, this appraised value would generate annual property tax revenues of approximately \$1,045,571 to the County and \$530,866 to the City, for a total of \$1,576,437, after the tax appraisal of the completed Development. The County Dedicated Taxes percentage for 2023 is 21.14% of its budget (.3966 of the County's 1.8762 property tax rate), which would equate to \$221,034 annually on the estimated appraised tax value of the Development. The City Dedicated Taxes percentage for 2023 is 18.16% of its budget (.1730 of the City's .9526 tax rate), which would equate to \$96,391 annually on the estimated appraised tax value of the Development. These percentages and numbers will vary each year for the County and the City.

(e) The new commercial and retail establishments within the Development will result in increased annual local sales tax revenues. The retail and restaurant use within the Development are estimated to produce \$385,000 in local sales taxes. The hotel is expected to produce additional sales and lodging tax revenue. With an 80-room hotel averaging \$160/room x 80% occupancy for 365 nights, the hotel would generate approximately an additional \$128,500 in local sales tax revenue. In addition, lodging taxes based on these numbers would produce an additional \$373,800 in taxes, \$186,500 to the County and \$186,500 to the City.

## 5. Distribution of Property Taxes and Tax Increment Financing

(a) Distribution of Taxes. In accordance with and subject to T.C.A. § 7-53-312(c) and T.C.A. § 9-23-1010 *et seq.* (the "Tax Increment Act"), real property taxes (excluding personal property taxes) imposed on the property located within the Plan Area will be allocated and distributed as provided in this subsection. The taxes assessed by the City and the County on the real property (excluding personal property taxes) within the Plan Area will be divided and distributed as follows:

(i) The portion of the real property taxes payable with respect to the Plan Area equal to the year prior to the date of approval of this Economic Impact Plan (the "Base Tax Amount") was \$0 as to the parcels owned by the City at that time, and \$1,494 (City tax) and \$2,535 (County tax) as to the parcel privately owned.

(ii) The "Dedicated Taxes" are defined in *Tennessee Code Annotated* § 9-23-101, *et. seq.* (the "TIF Uniformity Act"), as "that portion of property taxes, if any, designated by a taxing agency to pay debt service on the taxing agency's debt." "Taxing agency" is defined in the TIF Uniformity Act as "any county, city, town, metropolitan government or other public entity that levies property taxes on property within a plan area and that has approved the plan." The County and the City hereby designate the percentage of its budget each year that is to pay debt service on its financings as its Dedicated Taxes for purposes of this Plan, the 2023 fiscal year percentages having been designated and set forth in Section 4(d) above. The Dedicated Taxes will be allocated to and will be paid to the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid. The excess of real property taxes over the Base Tax Amount and the Dedicated Taxes (the "TIF Revenues") shall be allocated and, as collected, paid into a separate fund or funds of the Board, created to hold such payments until the TIF Revenues in the funds are to be applied (A) first, equally to reimbursing the City, County and the Board for costs, including without limitation legal fees, of preparing, negotiating and adopting this Plan and the associated documents implementing the incentive hereunder until all such costs are fully paid ("Initiation Expenses"); (B) then, up to 1% of the TIF Revenues for the reimbursement of the actual administrative expenses of the City, County and Board for administering the Plan, including a reasonable allocation of overhead expenses ("Administrative Expenses"); and (C) thereafter, to Developer to pay for Eligible Costs (as defined in (b) below) within the Plan Area or to pay debt

service on any debt obligations described below (the "Annual Incentive Amounts").

The Board is authorized to make all calculations of TIF Revenues on the basis of each parcel within the Plan Area instead of on an aggregate basis. As permitted by the Tax Increment Act, the Board is also authorized to separately group one or more parcels within the Plan Area for purposes of calculating and allocating TIF Revenues, and in such case, the allocation of TIF Revenues shall be calculated and made based upon each such parcel or group of parcels and not the entire Plan Area.

The TIF Revenues for parcels within the Plan Area will be separated. The Base Tax Amount will be separately established for each parcel, as each such parcel may be subdivided, and the Board will make calculations and allocations of TIF Revenues for each parcel separately. The parcels within the Plan Area may be further divided, in which case such parcels, as divided, will be treated separately, and the Base Tax Amount with respect to each tax parcel that is subdivided shall be allocated to each subdivided parcel on a pro-rated basis either using the acreage of each subdivided parcel as a percentage of the total acreage of the original tax parcel or using the relative then current property tax amounts, as the Board may determine.

(b) Eligible Costs. As provided in a separate Funding Agreement to be entered into by and between the Board and the Developer, the Annual Incentive Amounts will be used only to reimburse the Developer for the design and other costs incurred to construct the Garage Project and the Infrastructure Improvements (the "Eligible Costs") and/or to pay debt service on any debt obligations described below, the proceeds of which were used to pay or reimburse the Developer for Initiation Expenses and Eligible Costs.

6. Public Infrastructure. "Public Infrastructure" is defined in Section 102(15) of the TIF Uniformity Act, and includes, "roads, streets, publicly-owned or privately-owned parking lots, facilities or garages, traffic signals, sidewalks or other public improvements that are available for public use, utility improvements and storm water and drainage improvements, whether or not located on public property or a publicly-dedicated easement, that are necessary or desirable, as determined by the tax increment agency." By adoption of this Plan, the City and the County hereby determine that the use of the Annual Incentive Amounts to pay for costs of the Garage Project and the Infrastructure Improvements is necessary and desirable. Consequently, the use of the Annual Incentive Amounts as provided herein and in the Funding Agreement is not subject to the written determination of the Tennessee Commissioner of Economic and Community Development or the Tennessee Comptroller.

7. Maximum Amount. The aggregate amount of the Annual Incentive Amounts for all Initiation Expenses, Administrative Expenses, and Eligible Costs will not in any event exceed \$26,000,000.00 ("TIF Maximum Amount"), including interest on any debt obligations as is described below, based upon an interest rate not to exceed the maximum interest rate allowed by law.

**8. Commencement Date.** The Funding Agreement sets forth a Required Commencement Date for Commencement of Work for certain critical components of the Development and required Date of Completion for certain Required Work and for the expenditure of at least \$135,000,000 in capital expenditures and necessary and appropriate soft costs for the construction and equipping of the Development on or before January 1, 2028, subject to the Force Majeure provision of the Funding Agreement and to certain unforeseen delays in governmental approvals as set forth therein. A default by the Company under the Funding Agreement or otherwise to satisfy the time frames set forth in the Funding Agreement for the completion of the Required Work and a decision by the Board, the City or the County to terminate the Funding Agreement, the City Financial Obligation and/or the County Financial Obligations as provided therein, as applicable, shall terminate this Plan with respect thereto.

**9. Time Period; Payments.** TIF Revenue will be allocated to the Board as provided in this Plan beginning with the allocation made with respect to the 2029 tax year or such earlier year designated in a written notice from the Board to the City and County (the “Initial Allocation Year”). The term of the Funding Agreement and this Plan shall end (the “End of the Term”), and the payment of TIF Revenue hereunder shall terminate upon the earlier of the payment of the TIF Maximum Amount, or upon the allocation of twenty (20) annual payments of TIF Revenue from and including the payment of the TIF Revenue for the Initial Allocation Year, after which time all property taxes will be collected by the City and County in the normal course. The City and County will allocate and pay the Available Increment to the Board no later than sixty (60) days after the date that taxes are paid, as to each of the City and the County for each tax year. Delinquent payments received by the City and the County will be allocated to the Board, to the extent required no later than sixty (60) days of receipt by the City or County with interest to the extent provided in the TIF Uniformity Act.

**10. Default.** In the event of a default by the Developer under the Development Agreement or the Funding Agreement that is continuing after any applicable notice and cure period, the obligation of the City and County to allocate the Annual Incentive Amounts hereunder may be terminated by either the City or the Board, in which case all property taxes will be collected by the City and County in the normal course.

**11. Debt Issuance.** The Board may borrow funds through the issuance and sale of notes, bonds or other obligations of the Board in one or more issuances, to pay and/or reimburse the Developer for the Initiation Expenses and Eligible Costs, to the extent permitted by the Act. The Developer may be the bond or note holder. The Board may pledge all or a portion of the TIF Revenues allocated to the Board pursuant to this Plan to the payment of such notes, bonds or other obligations, including, without limitation, principal and interest thereon, provided that the payment of any interest thereon shall not increase the TIF Maximum Amount. In no event will the obligations issued by the Board be considered a debt or obligation of the City or the County in any manner whatsoever, and the source of the funds to satisfy the Board's payment obligations thereunder shall be limited solely to the TIF Revenues and shall otherwise be non-recourse to the Board. Any debt obligation of the Board may be refinanced by the Board at any time as permitted by the Act, and upon such refinancing, available tax increment revenues shall be applied to the payment of such refinancing debt to the extent such tax increment revenues were to be used to pay the debt that is being refinanced. Any and all documents to be entered into by the Board with respect to the foregoing shall be in form and substance acceptable

to the Board, in its sole discretion, and subject to the Developer's payment of the Board's application fee.

**12. Finding of Economic Benefit.** The Board, the City and the County, by the adoption of this Plan, find that the Garage Project, which is making the provision of the remaining portions of the Development, including the hotel possible, is within an area that could provide substantial sources of tax revenues and economic activity to the City and the County, and find that the use of the TIF Revenues, as described herein, is in furtherance of promoting economic development in the City and the County, and that the use of the TIF Revenues as provided herein will develop trade and commerce in and adjacent to the City and the County, will contribute to the general welfare, and will alleviate conditions of unemployment; and that the construction and equipping of the Garage Project will be necessary and advantageous to the Board in furthering the purposes of the Act.

**13. Approval Process.**

(a) Pursuant to T.C.A. § 7-53-312, the process for the approval of this Plan is as follows:

(b) The Board shall hold a public hearing on this Plan after publishing notice of such hearing in a newspaper of general circulation in the City at least two weeks prior to the date of the public hearing. The notice must include the time, place and purpose of the hearing as well as notice of how a map of the subject area may be viewed by the public. Following such public hearing, the Board shall submit the Economic Impact Plan to the City and County for their approval.

(c) The governing bodies of both the City and the County must approve this Plan for this Plan to be effective to both the City and the County. This Plan may be approved by resolution of the City Council and County Commission, whether or not the local charter provisions of the City or County provide otherwise. If the governing body of either the City or the County fails to approve this Plan, this Plan will not become effective. If either the City or County make any changes to this Plan in connection with their approval hereof, such changes must be approved by the Board following a public hearing related thereto, and such changes must also be approved by the City or County, as applicable.

(d) Once the governing body of the City and the County has approved this Plan, the Plan and related documents must be filed with the local taxing officials and the Comptroller of the State. Annual statements of incremental tax revenues allocated to the Board shall be filed with the State Board of Equalization. The Board will also comply with all other requirements of the Tax Increment Act and other applicable laws.

In witness whereof the parties hereto have entered into this Agreement as of the Effective Date.



*[Signature Page to Economic Impact Plan]*

**APPROVED:**

ATTEST:

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF RUTHERFORD COUNTY**

\_\_\_\_\_  
Secretary

(SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman  
Date: \_\_\_\_\_

*[Signature Page to Economic Impact Plan]*

**APPROVED:  
CITY OF MURFREESBORO, TENNESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

*[Signature Page to Economic Impact Plan]*

**APPROVED :**  
**RUTHERFORD COUNTY, TENNESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

### EXHIBIT A

Plan Area is the Cross-Hatched Area Shown Below:



## FUNDING AGREEMENT

THIS FUNDING AGREEMENT (hereinafter “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the INDUSTRIAL DEVELOPMENT BOARD OF RUTHERFORD COUNTY, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee (the “Board”), and HRP RESIDENTIAL, LLC (the “Company”).

### WITNESSETH:

WHEREAS, industrial development corporations (“Authorities”) are authorized under Tennessee Code Annotated § 7-53-312 to prepare and submit to cities and counties an economic impact plan with respect to an area that includes a project within the meaning of Tennessee Code Annotated § 7-53-101 *et seq.* (the “IDB Act”) and such other properties that the Authorities determine will be directly improved or benefited due to the undertaking of such project; and

WHEREAS, the IDB Act and the Uniformity in Tax Increment Financing Act of 2012, Tennessee Code Annotated § 9-23-101, *et seq.* (the “TIF Uniformity Act”), also authorize Authorities, cities and counties to apply and pledge new incremental tax revenues which arise from the area subject to the economic impact plan to Authorities to promote economic development to pay the cost of projects or to pay debt service on bonds or other obligations issued by Authorities to pay the costs of projects; and

WHEREAS, pursuant to Section 312 of the IDB Act, the Board has approved, after a public hearing, an economic impact plan entitled “Industrial Development Board of Rutherford County Economic Impact Plan for Project Keystone Development Area” (the “Plan”), and thereafter the Plan was approved by the City Council of the City of Murfreesboro, Tennessee (the “City”) and the County Commission of Rutherford County, Tennessee (the “County”), and the Plan is incorporated herein by reference; and

WHEREAS, the Plan was adopted in order to support the development of a mixed-use development project (the “Development”), in the Project Keystone Development Area, being certain property located along NW Broad Street, W Vine Street and S Church Street, which will include commercial office, retail, restaurant, residential and hotel uses, together with privately-owned parking garage facilities that will serve both the users of the Development and the public (the “Garage Project”), as discussed in the Plan; and

WHEREAS, the Garage Project is anticipated to be composed of three garages with approximately 715 total parking spaces (there are two parking garages located on Parcel 1 identified on Exhibit A to the Development Agreement, the northly garage being the “North Garage,” and the southerly one being the “South Garage,” and the third garage located on Parcel 2 identified on Exhibit A to the Development Agreement being the “Parcel 2 Garage,”); and

WHEREAS, the Company will, at its sole cost and expense, and in accordance with City approved construction plans, construct all necessary on-site water, sewer, stormwater and other utility infrastructure and extensions necessary to serve the needs of the Development (the “Infrastructure Improvements”), and the cost of the Garage Project portion of the Development and the Infrastructure Improvements will be subject to reimbursement as set forth herein; and

WHEREAS, the Company has agreed to proceed with the Development pursuant to the terms of a certain Mixed-Use Development Agreement, dated \_\_\_\_\_, 2023, and any further amendments thereto (said agreement, as amended from time to time, being the “Development Agreement”), by and between the Company and the City, which Development Agreement is incorporated herein by reference; and

WHEREAS, in order to make the Garage Project and the Infrastructure Improvements financially feasible, the Board shall, pursuant to Section 312(h) of the IDB Act and the TIF Uniformity Act, use a portion of the TIF Revenues (as such term is defined in the Plan) to reimburse the Company for a portion of the Eligible Costs as defined in the Plan pursuant hereto or to pay debt service on any debt obligations in accordance with the Plan; and

WHEREAS, it is the intent of the Board to formalize its intentions by entering into this Agreement with the Company.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereinafter set forth in detail, the parties do hereby mutually agree as follows:

1. Definitions. Terms that are used herein that are not defined in this Agreement shall have the meaning ascribed thereto in the Plan.

2. Commitments.

(a) Company Covenants.

(i) The Company shall cause an architect or engineer licensed in Tennessee to prepare design development and construction plans for the completion of the Development, including the buildings, site preparation, Infrastructure Improvements and Garage Project, and submit them to the City Manager in addition to the other applicable City departments in accordance with the City’s normal requirements (the approved plans that are the basis for the final building and other permits, as applicable, are defined as the “Construction Plans”).

(ii) The Company shall construct and equip the Development pursuant to the Development Agreement and pursuant to the Construction Plans.

(iii) The Company will (x) close on the purchase of the Property as set forth in the Development Agreement, the PSA and its purchase and sale contract with WGNS radio, (y) satisfy the requirements of Sections 5.b and 5.c of the Development Agreement, and (z) make the applications, commence the demolition, demonstrate the financial commitments, start construction (defined as having received the applicable governmental permits and commenced the foundation work), as applicable, of the buildings as required under Sections 11.a, 11.b, 11.c, 11.d or 11.e of the Development Agreement (the date of the commencement of each item in (x), (y) and (z) of this subsection being its “Commencement of Work”), on or before the date with respect thereto on the Schedule attached to the Development Agreement as Exhibit C, as applicable

(each being a “Required Commencement Date”), subject to the Force Majeure provision set forth in Section 22 below. If the applicable Commencement of Work does not occur by the Required Commencement Date therefor, then upon the written request of the City Manager, upon approval of the City’s governing body, the Board shall terminate the Plan and this Agreement as to the portion of the Annual Incentive Amounts funded from the City’s property taxes (the “City Financial Obligation”), and upon the written request of the County Mayor, upon approval of the County’s governing body, the Board shall terminate the Plan and this Agreement as to the portion of the Annual Incentive Amounts funded from the County’s property taxes (the “County Financial Obligation”), and if both the City Financial Obligation and the County Financial Obligation are so terminated, then this Agreement and the Plan shall terminate. In addition, if cessation of construction as described in Section 11.f of the Development Agreement occurs, then upon the written request of the City Manager, upon approval of the City’s governing body, the Board shall terminate the Plan and this Agreement as to the City Financial Obligation, and upon the written request of the County Mayor, upon approval of the County’s governing body, the Board shall terminate the Plan and this Agreement as to the County Financial Obligation, and if both the City Financial Obligation and the County Financial Obligation are so terminated, then this Agreement and the Plan shall terminate. The foregoing decisions to request that the Board terminate the Plan and this Agreement shall be made in the sole and absolute discretion of each such person or governing body, as applicable. The City and the County are third-party beneficiaries under this Agreement and shall be entitled to enforce the termination provisions under this section.

(iv) The “Required Work” is the (i) demolition of the City buildings located on Parcel 1 (the “Demolition Requirement”), (ii) the completion of the construction and issuance of conditional or final certificates of occupancy or conditional or final certificates of completion (each being an “Occupancy Permit”) for the construction work for the new WGNS radio building, and said radio station has vacated its current premises and taken occupancy of its new replacement building (the “WGNS Requirement”), (iii) the completion of the construction and grant of an Occupancy Permit for the hotel described in Section 2.a.iv of the Development Agreement (the “Hotel”) and its opening for business to the public (the “Hotel Requirement”), (iv) the completion of the Infrastructure Improvements and approval thereof by the City (the “Infrastructure Requirement”), (v) the completion of the construction and issuance of an Occupancy Permit for the North Garage (the “North Garage Requirement”), (vi) the completion of the construction and issuance of an Occupancy Permit for the South Garage (the “South Garage Requirement”), and (vi) the completion of the construction and issuance of an Occupancy Permit for the Parcel 2 Garage (the “Parcel 2 Garage Requirement”), provided, however, if the City has denied issuing an Occupancy Permit for any of the facilities comprising the Garage Project on the sole basis that the top floor of such Garage Project is being used for fall protection or construction staging during the construction of a neighboring component of the Development, such facility comprising the Garage Project shall be deemed to be complete for purposes of this Agreement. As used herein, the “Date of Completion” is the date that all of the foregoing are satisfied. The Company will cause the Date of Completion to occur

and make at least \$135,000,000 in capital expenditures and necessary and appropriate soft costs for the construction and equipping of the Required Work to construct and equip the Development on or before January 1, 2028, subject to the Force Majeure provision set forth in Section 22 below, and to unforeseen delays in governmental approvals that are attributable to the governmental agency, provided that such extension for any governmental delays are approved by the City Manager or the City Council, in his or their sole and absolute discretion..

(v) The Company shall not permit any of the following uses (the “Prohibited Uses”) within in the Plan Area.

- (1) Child care facilities (retail), unless expressly approved by the City;
- (2) Fuel and lubricant sales (retail);
- (3) Laundry, cleaning and dry-cleaning facilities (retail);
- (4) Plant Nurseries (retail);
- (5) Repair services for small appliances, bicycles, watches, musical instruments and similar items (retail);
- (6) Vehicle sales and leasing (retail);
- (7) Vehicle parts and accessories sales (retail);
- (8) Vehicle service facilities, including car washes (retail)
- (9) Second-hand store whose principal business is selling used merchandise;
- (10) Tattoo parlor or body piecing salon, or business primarily selling vape and/or tobacco products;
- (11) Pawn shop, head shop or store selling marijuana, whether for legalized use otherwise, or other cannabidiol (CBD) products.
- (12) Payday loan provider, check cashing provider (other than within or incidental to the operation of the Hotel), provided the foregoing shall not prohibit a bank, federal credit unions or mortgage loan origination office;



- (13) Adult video store, adult book store, or adult entertainment club; and
- (14) Car wash, auto body shop, auto rental business (other than within or incidental to the operation of the hotel), or junk yard.

(b) Tax Increment Incentive. From and after the Date of Completion, the allocation of TIF Revenues shall commence in accordance with and subject to the terms of the Plan; provided, however, that no allocations of TIF Revenues may be used to reimburse the Company for Eligible Costs or to pay debt service on debt obligations described in the Plan unless the Company shall have submitted a certificate (the “Investment Certificate”) in form and substance reasonably acceptable to the Board and the City Manager certifying the total amount of the capital expenditures and necessary and appropriate soft costs that the Company has made for the construction and equipping of the Garage Project (the “Eligible Costs”), and also certifying that the capital expenditures and necessary and appropriate soft costs that the Company has made for the construction and equipping of the Required Work equals or exceeds \$135,000,000, together with reasonable evidence (such as receipts, cancelled checks, etc.) that it has paid or incurred said Eligible Costs, if requested by the Board.

(i) Upon receipt of the Investment Certificate and demonstration that the promised capital expenditures have been made for the Garage Project and the Development as provided in Sections 2(a)(ii), (iii) and (iv), the Company may submit to the Board one or more written requests for the reimbursement of Eligible Costs or for the payment of debt service on debt obligations described in the Plan in form and substance reasonably acceptable to the Board and setting forth the Company’s wiring instructions for the payment thereof (the “Requisition(s)”), which Requisitions shall be subject to review and reasonable approval by the Board and the City Manager, not to be unreasonably withheld, conditioned, or delayed (said Requisitions, as approved by the Board and City Manager, being the “Approved Requisitions”). Notwithstanding the foregoing, the Company may submit a combined Investment Certificate and Requisition in the form attached hereto as **Exhibit A**, which form is acceptable to the Board, in satisfaction of the foregoing requirements in this Section and Section 2(a).

(ii) The Board shall promptly, but in any event within thirty (30) days from the later of its receipt of (i) the Annual Incentive Amount, and (ii) one or more Approved Requisitions, reimburse the Company for the Eligible Costs or pay debt service on debt obligations described in the Plan, up to a total of the TIF Maximum Amount, by wire transfer of collected funds per the Requisitions, until the end of the term of this Agreement.

(iii) The term of this Agreement shall end when the allocation of the TIF Revenues terminates as set forth in Section 9 of the Plan, after which time all property taxes will be collected by the City and County in the normal course.

(iv) If the Garage Project ceases to be utilized as a facility open to the public at any time prior to January 1, 2046, subject to the Force Majeure provision set forth in Section 22 below, then any further annual payments of the Annual Incentive Amount, above, after the Garage Project ceases to be utilized as a facility open to the public will cease. The Board may bring an action to seek injunctive relief to require the Garage Project to be open to the public. The Garage Project shall be considered to be a facility open to the public so long as members of the public can park in a portion of the Garage Project as approved by the City in accordance with its applicable rules and procedures, subject to payment of parking fees, time limitations, and other parking restrictions that may be adopted by the Company or its successors. The gating of the garage, charging of parking fees at no greater than market rates, and adoption and enforcement of time limitations and other parking restrictions are permissible and will not constitute the Garage Project ceasing to be utilized as a facility open to the public. Additionally, the use of the top floor of the Garage Project for fall protection and the use of a portion of the Garage Project for construction staging during construction of a neighboring component of the Development will also not constitute the Garage Project ceasing to be utilized as a facility open to the public.

3. Board Representations. The Board hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Board: (i) was legally created and exists under the provisions of the IDB Act; (ii) has the power under the provisions of the IDB Act and the TIF Uniformity Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder; and, (iii) has been duly authorized, by proper action, to execute, deliver and perform this Agreement and the Plan; and

(b) That the Garage Project constitutes a “project” within the meaning of the IDB Act, and that the Board is entering into this Agreement and the Plan to aid in the funding of the Garage Project to accomplish the public purposes of the IDB Act in order to induce and cause the Company to provide the Garage Project, thereby maintaining and increasing employment opportunities, and furthering the welfare of the residents of the City and the County and of the State; and

(c) That the execution and delivery of this Agreement will be valid and binding on the Board and that neither the execution nor delivery of the foregoing documents, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will violate any applicable law or conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Board is now a party or by which it is bound; and

(d) That there is no action, suit, proceeding or, to the Board’s knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Board’s knowledge, threatened against or affecting the Board or the Board’s property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of this Agreement; and

(e) That the Board will not pledge the Increment or otherwise encumber the same unless approved in writing by the Company.

4. Company Representations. The Company hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Company: (i) is a limited liability company duly organized and existing under the laws of the state of Tennessee, and is duly qualified to do business in the State of Tennessee, (iii) has the power and authority to enter into this Agreement; and (iv) has duly authorized the execution, delivery, and performance of this Agreement and the undertaking of the Development, including the Garage Project; and

(b) That the execution and delivery of this Agreement will be valid and binding on the Company and that neither the execution nor delivery of the foregoing documents, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will violate any applicable law or conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Company is now a party or by which it is bound; and

(c) The Company will not knowingly take, permit to be taken, fail to take, or permit to fail to be taken, any action which would cause the Garage Project not to constitute a “project” within the meaning of the IDB Act; and

(d) That there is no action, suit, proceeding or, to the Company’s knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Company’s knowledge, threatened against or affecting the Company or the Company’s property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of the this Agreement, or the Company’s ability to provide and operate the Garage Project.

5. Board Breach.

(a) A default by the Board under this Agreement (a “Board Breach”) shall occur if the Board fails to comply with any other provision of this Agreement and does not cure such failure within thirty (30) days after receipt of written notice from the Company; provided that if (i) such breach cannot be cured within such thirty (30) day period, (ii) the Board notifies the Company in writing stating the reasons for delay prior to expiration of such thirty (30) day period, (iii) the Board promptly commences curative actions within such thirty (30) day period, and (iv) the Board thereafter diligently and continuously pursues cure efforts, then the period for cure shall be extended for such period of time as shall reasonably be required under the circumstances, except that the Board shall not be entitled to any extension if the breach is monetary in nature.

(b) Upon the occurrence of a Board Default, the Company may pursue such remedies as may be available at law or in equity.

6. Company Breach.

(a) A breach by Company under this Agreement (a “Company Breach”) shall occur if the Company defaults under the Development Agreement and such default is continuing after any applicable notice and cure period thereunder or if the Company fails to comply with any other provision of this Agreement and does not cure such failure within thirty (30) days after receipt of written notice from the Board; provided that if (i) such breach cannot be cured within such thirty (30) day period, (ii) the Company notifies the Board in writing stating the reasons for delay prior to expiration of such thirty (30) day period, (iii) the Company promptly commences curative actions within such thirty (30) day period, and (iv) the Company thereafter diligently and continuously pursues cure efforts, then the period for cure shall be extended for such period of time as shall reasonably be required under the circumstances, except that the Company shall not be entitled to any extension if the breach is monetary in nature.

(b) Upon the occurrence of a Company Breach, the Board may cease all payments and performance hereunder, under the Purchase and Sale Agreement and under the Development Agreement and may terminate this Agreement upon written notice to the Company or pursue such other remedies as may be available at law or in equity.

7. Cooperation. The Company and the Board agree that:

(a) Each party shall cooperate with the other party to provide such assistance as may reasonably be requested in connection with the fulfillment of each of its respective obligations under this Agreement; provided that the Company acknowledges that the City and County are independent from the Board and that the Board cannot guarantee the cooperation of the City and County, but will work in good faith to obtain the same. Each party shall keep the other party informed of its actions taken in connection with this paragraph.

(b) Each party agrees that in exercising any rights of approval or consent it may have under this Agreement, it shall act in good faith.

8. Governing Law. This Agreement shall be governed and construed under and in accordance with the laws of the State of Tennessee and may not be modified or amended except in writing signed by all parties. Any legal venue for claims or actions arising from this Agreement shall be in Rutherford County, Tennessee.

9. Notices. All notices, certificates, and other communications hereunder shall be in writing, and shall be sufficiently given and shall be deemed given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date of delivery or first attempted delivery if sent by certified or registered mail (in each case, return receipt requested, postage pre-paid), addressed as follows:

To the Board	The Industrial Development Board of Rutherford County, Tennessee 119 East Main Street Murfreesboro, TN 37130
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Attention: Chairman

With a copy to: Bouldin & Bouldin, PLC  
119 East Main Street  
Murfreesboro, TN 37130  
Attention: G. Sumner R. Bouldin, Jr.

With a copy to: City of Murfreesboro  
11 West Vine Street  
Murfreesboro, Tennessee 37130  
Attention: City Manager

To the Company: HRP Residential, LLC  
5100 Maryland Way  
Brentwood TN 37027  
Attention: Dean Montgomery and Ryan Little

With a copy to: Jeff Reed  
16 Public Square  
Murfreesboro, Tennessee 37130

10. Limitation of Liability. Anything in this Agreement to the contrary notwithstanding, the performance by the Board or the Company of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements, and promises made by it hereunder, and the liability of the Board and the Company for all warranties and other covenants hereunder, shall be limited solely to its interest in and right to receive the Increment and neither the Board nor the Company shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such revenues and receipts. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or under any judgment obtained against the Board or the Company, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Agreement, shall be had against any incorporator, member, employee, agent, director or officer, as such, past, present or future, of the Board or the Company, either directly or through the Board or the Company, or otherwise, for the payment of any sum that may be due and unpaid by the Board or the Company hereunder. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, employee, agent, director or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for the Board, the Company or any receiver thereof, of any sum, is hereby expressly waived and released as a condition of and in consideration for the execution of this Agreement.

11. Entire Agreement. This Agreement and the Plan constitute the final, complete and entire understanding of the Board and the Company with respect to the transactions contemplated by this Agreement.

12. Attorney Fees. In the event of any action or proceeding for enforcement of any of the terms or conditions of this Agreement, the prevailing party in such action, or the non-

dismissing party where the dismissal occurs other than by reason of a settlement, will be entitled to recover, from the non-prevailing party, its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith.

13. Severability. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

14. Further Assurances. The Board and the Company each agree to execute and deliver such further documents and instruments as may be reasonably necessary to carry out the transaction contemplated by this Agreement.

15. Interpretation. The titles, captions and section headings herein are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. Unless the context indicates otherwise, (i) the terms "hereof", "hereunder", "herein" and similar expressions refer to this Agreement as a whole, (ii) the singular shall include the plural and the masculine gender shall include the feminine and the neuter, and (iii) all references to sections and subsections shall be deemed references to the sections and subsections of this Agreement.

16. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

17. Business Day. If any date on which performance or notice is due under this Agreement should fall on Saturday, Sunday or any other day on which the City's offices are not open to the general public for business, performance or notice shall not be due until the next business day.

18. No Waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged with making the waiver. No delay or omission in the exercise of any right or remedy accruing upon any breach of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach. The waiver of any breach of this Agreement shall not be deemed to be a waiver of any other breach hereof.

19. Assignment; Financing. Except as provided herein below, this Agreement and the incentives provided for herein are not assignable by the Company prior to the Date of Completion. After the Date of Completion and compliance by the Company with the provisions of Section 2(b)(iii)(3), the Company may assign its right to receive the Annual Incentive Amount. The Company may also elect to have the Board issue its non-recourse note or notes to be repaid from the payment of the Annual Incentive Amounts, and after the Date of Completion and

compliance by the Company with the provisions of Sections 2(b)(iii) and (iv), the Company may assign or sell said note. Prior to the Date of Completion and compliance by the Company with the provisions of Sections 2(b)(iii) and (iv), the Company and Board may pledge, hypothecate, assign, or collaterally assign its right to receive the Annual Incentive Amounts or said note to a lender, provided that the proceeds of such loan are only used to pay for Eligible Costs and Initiation Expenses. Upon request by the Company, the Board agrees to provide an acknowledgement to any lender of the Company confirming the right of Company to pledge, hypothecate, assign or collaterally assign Company's right to receive the Annual Incentive Amounts to lender as provided above and certifying that Company is not in default of Company's obligations hereunder.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

21. Relationship. The relationship of the Board and the Company is solely that of independent third parties engaged in an arm's length transaction. Nothing contained herein shall be deemed or construed as creating a partnership, joint venture, agency relationship or other similar relationship between the Board and the Company.

22. Force Majeure. "Force Majeure" means any of the following that prohibits, delays or materially interferes with the development or construction of the Garage Project or the Development or any material portion thereof: strikes; lock-outs; acts of the public enemy; the enactment, imposition or modification of any applicable law which occurs after the Effective Date and precludes performance under this Agreement; confiscation or seizure by any government or public authority; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; governmental restrictions; epidemics; pandemics; landslides; earthquakes; fires; hurricanes; floods; wash-outs; explosions; failure of major equipment or machinery critical to the development or construction of the Project for their respective intended purposes; nuclear reaction or radiation; radioactive contamination; or any other cause, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the party claiming the right to delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency, or bankruptcy of such party. Failure in performance by any party hereunder shall not be deemed Board Breach or a Company Breach, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. An extension of time for the performance by any party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall excuse the Company or the Board from timely paying any money as provided in this Agreement.

*(Signatures on the Following Page)*

In witness whereof the parties hereto have entered into this Agreement as of the Effective Date.

Board:

THE INDUSTRIAL DEVELOPMENT BOARD OF  
RUTHERFORD COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Company:

HRP RESIDENTIAL, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

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



**EXHIBIT A**

**INVESTMENT CERTIFICATE AND REQUISITION FOR REIMBURSEMENT OR TO  
PAY DEBT SERVICE**

THE INDUSTRIAL DEVELOPMENT BOARD OF RUTHERFORD COUNTY ECONOMIC  
IMPACT PLAN FOR THE PROJECT KEYSTONE DEVELOPMENT AREA (THE "PLAN")

Certificate No.: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_\_

Pay to or for the account of: HRP RESIDENTIAL, LLC ("Company") [or to a lender  
designated by the Company]

Amount:       \$ \_\_\_\_\_

Purpose:       Draw under Project Agreement, dated as of \_\_\_\_\_, 2023 (the "Project  
Agreement"), by and between the Company and The Industrial Development Board of  
Rutherford County ("Board").

The undersigned hereby authorizes and requests the above stated payment and  
disbursement as provided in the Project Agreement. Capitalized terms used in this Requisition and  
not otherwise defined herein shall have the meaning assigned to such terms in the Plan or the  
Project Agreement, as applicable.

The undersigned Company hereby certifies with respect to this requisition as  
follows:

1. That a conditional or final certificate of occupancy for all of the Required  
Work has been duly issued by the City of Murfreesboro, Tennessee, and  
the Date of Completion has occurred.
2. That the Company has made at least \$\_\_\_\_\_,000,000.00 in capital  
expenditures to construct and equip the Required Work pursuant to the  
Development Agreement on or before \_\_\_\_\_, 202\_\_.
3. That obligations in the "Amount" stated above have been paid by or on  
behalf of the Company for Eligible Costs or are due with respect to the  
financing thereof and are more fully described on **Schedule 1** hereto.
4. That said requisition contains no item representing payment on account of  
any retained percentage that the Company is at the date of such requisition  
entitled to retain.
5. That there has not been filed with or served upon the Board or the Company  
notice of any lien, right to lien or attachment upon, or claim affecting the  
right of any person to receive payment of the respective amounts stated in  
such requisition which has not been released or which will not be released  
simultaneously with the payment of such obligation.

The Company:

**HRP RESIDENTIAL, LLC,**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED:**

Board:

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF RUTHERFORD COUNTY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## Schedule 1

## **COUNCIL COMMUNICATION**

**Meeting Date: 08/31/2023**

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**Item Title:** Non-Exclusive Public Right-of-Way License Agreement with Google Fiber Tennessee, LLC

**Department:** Administration

**Presented by:** Sam Huddleston, Assistant City Manager

**Requested Council Action:**

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

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**Summary**

Approve and authorize execution of Non-Exclusive Public Right-of-Way License Agreement with Google Fiber Tennessee, LLC, to install a broadband internet infrastructure network in the public right-of-way.

**Staff Recommendation**

Approve and authorize execution.

**Background Information**

Google Fiber seeks to deploy their broadband internet service in the City. The proposed license agreement establishes the parameters for the installation and maintain placed in the public right-of-way.

**Council Priorities Served**

*Expand infrastructure*

An additional broadband internet service provider will diversify the market and provide additional choice for City residents and businesses.

**Fiscal Impact**

A license fee equaling two percent of Google Fiber's gross revenue from accounts within the City will create an additional revenue stream.

**Attachments**

Proposed Right-of-Way License Agreement

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF MURFREESBORO  
AND GOOGLE FIBER TENNESSEE LLC FOR THE INSTALLATION OF NETWORK  
FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

This Non-Exclusive Public ROW License Agreement (“**Agreement**”) is by and between the City of Murfreesboro, a City organized and existing under the laws of the State of Tennessee (“**City**”), and Google Fiber Tennessee, LLC, a Tennessee limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Licensee**”).

**RECITALS**

- A. City has jurisdiction over the use of the public rights-of-way in City (“**Public ROW**”).
- B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and/or control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services, including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”), but excluding multichannel video programming services that would be subject to a video services franchise, to residents and businesses in City (“**Customers**”) or communications services classified as telecommunications services or any services that require certification by the Tennessee Public Utilities Commission (“**PUC**”).
- C. The Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”).

**AGREEMENT**

In consideration of the mutual promises made below, City and Licensee agree as follows:

**1. Permission to Use and Occupy.**

- 1.1. Permission to Use and Occupy Public ROW. City grants Licensee permission to use and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.
- 1.2. Subject to State and Local Law. This Agreement and the License are subject to City’s valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law, including, but not limited to, Chapter 31 of the Code of Ordinances of the City of Murfreesboro, Tennessee (the “**City Code**”), and this Agreement, the applicable provisions of this Agreement will prevail.



EXECUTION VERSION

Non-Exclusive Public ROW License Agreement Between Murfreesboro, TN and Google Fiber Tennessee, LLC | Page 1 of 14

- 1.3. Licensee Not Subject to Classification as Telecommunications Carrier Under Federal or State Law. Licensee does not provide any services classified as telecommunications services under federal or state laws or regulations, and does not provide any services directly regulated by the PUC. Accordingly, nothing in this Agreement and License shall be construed to authorize Licensee to provide Telecommunications Services or to be classified as a Telecommunications Carrier within the meanings of 47 U.S.C. § 153 (53) and 47 U.S.C. § 153 (51), respectively. Nor shall anything in this Agreement and License be construed to authorize Licensee to provide any services in the City which may be classified as telecommunications services under state law, or any services that require certification by the PUC.
- 1.4. Subject to City's Right to Use Public ROW. This Agreement and the License are subject and subordinate to City's prior and continuing right to use the Public ROW, including (without limitation) constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, traffic facilities, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest; No Warranty of Title. The License does not grant or convey any property interest. City makes no warranty or guaranty as to the City's title to the Public ROW into which it is agreeing that Licensee may construct and install the Network Facilities. Licensee will be responsible for obtaining any additional permits, licenses, and/or easements as may be necessary or convenient for Licensee to undertake and complete the Work.
- 1.7. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.8. Non-Discrimination. City's grant of the License will be open, comparable, nondiscriminatory, and competitively neutral and City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent providers offering facilities-based Broadband Internet Services.

## 2. Licensee's Obligations.

- 2.1. Individual Permits Required. Licensee will obtain City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City as authorized. Licensee will pay



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all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City.

- 2.2. Preliminary Plans Review. Prior to applying for a permit for a segment, section, or phase of the Work, Licensee will provide preliminary plans to appropriate City personnel, including (without limitation) City's Transportation Director, the City Engineer, and City Traffic Engineer. Within a reasonable time after receipt (and in no event longer than forty-five (45) days), City personnel will provide Licensee with comments on the preliminary plans regarding any conflicts with current or proposed infrastructure in the Public ROW; noncompliance with applicable laws, codes, or regulations; missing or incorrect information; and such other items as City personnel deem appropriate. Licensee will ensure that such comments are addressed to the reasonable satisfaction of City prior to or contemporaneous with the submission of a permit application.
- 2.3. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
- 2.4. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City. Licensee will comply with and follow all City applicable ordinances in all work it performs in the Public ROW. Licensee has obtained the necessary approvals, licenses or permits, if any, required by federal and state law to provide Broadband Internet Services consistent with the provisions of this Agreement.
- 2.5. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.6. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.7. Repair. Licensee will promptly repair, to City's reasonable satisfaction and acceptance, any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee's Work and to the extent no other Person is responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.7 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. In the event Licensee and one or more other Persons are responsible for such damage, Licensee may at its option (i) repair such damage (or participate in such repair with other responsible Persons) and be subrogated to any claim of City for compensation from other responsible Persons, or (ii) pay to City compensation in the amount of Licensee's percentage of fault as reasonably agreed by City and Licensee or as found by a court of competent jurisdiction. City will not seek a greater repair obligation or contribution to compensation from Licensee than provided under principles of comparative fault.



- 2.8. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them to City upon reasonable written request from City but not later than sixty (60) days from Licensee's receipt of such written request following the closure of each permit, subject to applicable confidentiality protections. Such drawings will at a minimum include the location, both linear and depth, of conduit and/or cable routings and the location of vaults, hand holes, junction boxes, amplifiers, power supplies, system monitor test points and other items of Network Facilities that are in, on, across, over, or under the Public ROW. The drawings shall be submitted electronically in both .dwg and/or .dgn format and .pdf format with .dwg and .dgn layers identified, and depths at ten-foot (10') intervals, to City's Geographic Information Systems (GIS) Coordinator.
- 2.9. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- 2.10. Access to Broadband Internet Services. Licensee will not deny service or access, or otherwise discriminate on the availability, rates, terms, or conditions of Broadband Internet Services provided to residential Customers on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Licensee will comply at all times with all applicable laws and regulations relating to nondiscrimination. Licensee will not deny or discriminate against any group of actual or potential residential Customers in City on access to or the rates, terms, and conditions of Broadband Internet Services because of the income level or other demographics of the local area in which such group may be located.
- 2.11. Non-Interference. Licensee will not place its Network Facilities in such a fashion as to unduly burden the present or future use of Public ROW and the Network Facilities will be installed and maintained by Licensee so as to cause the minimum interference with gas, electric, traffic, water, sewer or other utility facilities and with the rights or reasonable convenience of property owners that adjoin Public ROW.
- 2.12. Protection of Water and Sewer Mains. Specifically, and without limitation, Licensee will not place its Network Facilities or any part thereof within seven (7) horizontal feet of any water main or sanitary sewer main which is located under a street surface unless City's Water Resources Department agrees that the seven-foot (7') requirement is impractical at a particular location. In the event of a need to cross a water main or sanitary sewer main, appropriate City staff will work with Licensee and Licensee's contractor(s) to create a plan for vertical separation that will protect such water main or sanitary sewer main. Licensee's contractor will video inspect (or televise) the existing sewer mains and sewer laterals (or service connections) at all crossing locations with a Closed Circuit Television (CCTV) survey using the National Association of Sewer Service Companies' (NASSCO) Pipeline Assessment and Certification Program (PACP) format and deliver the same to appropriate City staff. All deliverables will be submitted electronically in Standard PACP database format, version 6.0 or better, and submitted in a Microsoft Access Database in accordance with PACP guidelines. Said survey will be completed on (a) sewer mains from the upstream manhole to the





downstream manhole of the line segment being crossed using manhole numbers as a reference, and (b) sewer laterals from the building cleanout to the connection at the sewer main.

- 2.13. Traffic Facilities. City represents, and Licensee acknowledges, that City's traffic facilities are not located with Tennessee One-Call pursuant to the Utility Underground Damage Prevention Act, T.C.A. § 65-31-101 et seq. Prior to any part of the Work being initiated within one hundred feet (100') of any traffic signal, Licensee will contact City's Traffic Engineer for the location of traffic facilities and will coordinate all aspects of any work within 100' of any traffic signal with City's Traffic Engineer.
- 2.14. No Access to Traffic Signal Poles. Licensee will not place its Network Facilities on any City traffic signal pole, unless expressly agreed upon in writing with the City or its designee.
- 2.15. Road Closures. In the event of a need to close any public street, traffic lane, or other portion thereof within a public street, Licensee will submit a traffic control plan and work schedule to the City's Engineer and Traffic Engineer. No closure or partial closure may be undertaken until the traffic plan is approved by City.

### 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City under this section will be separate from Licensee's obligation to pay the License Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as (without limitation) the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, traffic facility, curb, gutter, sidewalk, park, or recreational facility, or those Public ROW uses listed in Section 1.4 herein, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances,



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except that City may not require Licensee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice.

- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with (a) City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities, but may, in Licensee's discretion, negotiate the terms of such potential relocation with an affected third-party (including, but not limited to, the amount of any reimbursement to be paid by such third party to Licensee).
- 3.4. Non-Discrimination. City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent holders of local or state franchise authority offering facilities-based broadband Internet access services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee, after the removal or relocation of the Network Facilities, at its own cost, will repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City.

#### 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf, subject to the provisions of this Agreement.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A ("Authorized Individuals")**. City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. License Fee. Licensee will pay City a fee ("**License Fee**") to compensate City for Licensee's use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee's use and occupancy of Public ROW and other City property as authorized. The License Fee will begin accruing on the Effective Date (as defined herein) and will be calculated as set forth in Section 5.1.

- 5.1. License Fee. Licensee will pay City two percent (2%)(the "**Revenue Percentage**") of Gross Revenues for a calendar quarter, remitted within forty-five (45) days of the end of each calendar quarter, commencing on the first date on which Licensee receives any Gross Revenues (as defined below). The payment will be accompanied by a



report showing the basis for the computation and such other relevant facts as may be required by City to determine the accuracy of the payment.

5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Licensee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;
- (vii) any revenue derived from Services other than Broadband Internet Services, including without limitation, any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (viii) any revenue derived from referral or marketing agreements with third party providers of online services which Licensee may make available to Customers;
- (ix) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement);
- (x) any forgone revenue from Licensee’s provision, in Licensee’s discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to



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receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and

- (xi) sales of capital assets or sales of surplus equipment.

- 5.2. Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the License Fee.
- 5.3. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within sixty (60) days from the specified due date will be assessed interest at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.
- 5.4. Change in Law. Notwithstanding anything to the contrary herein, in the event of a change in applicable law that (i) prohibits collection by any City or franchising authority of any fee, including franchise fees, from any provider of video programming or communications services, including broadband Internet services, or (ii) reduces the percentage of revenue on which the fee, including franchise fee, paid by any provider of video programming or communications services is based to a percentage that is lower than the Revenue Percentage, then Licensee will have no obligation to pay the License Fee or to pay a License Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which such fees may be based, the Revenue Percentage will be commensurately reduced.

## 6. Defense and Indemnity.

- 6.1. Obligations. Licensee will defend City, its officers, elected representatives, and employees, and indemnify them against any (a) settlement amounts approved by Licensee; and (b) damages and costs finally awarded against the indemnified party by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").
- 6.2. Exclusions. Section 6 (Defense and Indemnity) will not apply to the extent the underlying allegation (a) arises from or is related to the negligence or willful misconduct of an indemnified party or (b) is made by City's employee and covered under applicable workers' compensation laws.
- 6.3. Conditions. Section 6.1 (Obligations) is conditioned on the following: (a) City must promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegation(s) that preceded the Third Party Legal Proceeding no later than fifteen (15) days after City became aware of the Third Party Legal Proceeding; (b) City must reasonably cooperate in the defense at Licensee's request; and (c) City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or



refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

**7. Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

**8. Continuing Performance Bond.** Licensee will, promptly after the Effective Date, provide City with a continuing performance bond, in a form approved by City, in the amount of one hundred thousand dollars (\$100,000) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement. The continuing performance bond will remain in full force during the Term of this Agreement.

**9. Insurance.**

9.1. Licensee will carry and maintain (or cause to be carried and maintained):

9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, and officers as additional insureds.

9.1.2. Contractor's or other appropriate insurance with policy limits not less than \$500,000 for each occurrence for property damage, including coverage for damage cause by blasting, collapse or structural injury, and/or damage to underground facilities, protecting Licensee against and in respect to all matters, liabilities, contingencies, and responsibilities created, referred to, or touched upon by this Agreement.

9.1.3. Workers' Compensation insurance in compliance with the laws of the State of Tennessee and employer's liability insurance with policy limits not less than \$500,000.

9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to City's insurance compliance representative upon City's written request.

**10. Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Agreement will expire automatically on the twentieth (20<sup>th</sup>) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement will automatically renew for successive five (5) year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.

**11. Termination.**



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11.1. Termination by City. City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and one hundred eighty (180) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.

11.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

**12. Abandoned Network Facilities**. If Licensee abandons any portions of its Network Facilities ("Abandoned Network Facilities"), Licensee will notify City and will remove any aboveground facilities at its own expense at City's request within a commercially reasonable period of time. City and Licensee will discuss whether underground facilities should be abandoned in place or transferred to City, at City's option. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.

**13. Survival**. The defense and indemnity provisions of this Agreement will survive for two (2) years after the expiration or termination of this Agreement with respect to causes of action arising during the Term of this Agreement.

**14. Assignment**. Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

14.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City and without the need for City consent, assign this Agreement or any or all of its rights and obligations under this Agreement:

14.1.1. to any Affiliate (as defined below) of Licensee;

14.1.2. to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

14.1.3. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

14.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with



Licensee; and (b) “control” means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

- 15. Notice.** All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City’s signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Licensee’s e-mail address for notice is [googlefibernotices@google.com](mailto:googlefibernotices@google.com), with a copy to [legal-notices@google.com](mailto:legal-notices@google.com).

- 16. Meet and Discuss.** Notwithstanding any other provision contained herein, before City or Licensee brings an action or claim before any court or regulatory body arising out of a duty or right arising under this Agreement, Licensee and City will first make a good-faith effort to resolve their dispute by discussion.

- 17. Waiver.** The failure of either party to this Agreement to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions. No officer (other than the City Manager and/or Mayor upon approval of the City Council), employee, or agent of City has the power, right, or authority to waive any of the conditions, or to change, vary, or waive any of the provisions of this Agreement, nor shall any custom with or without the knowledge of such party have the effect of changing, modifying, waiving, or foregoing any conditions or provisions to this Agreement.

- 18. Partial Invalidity.** If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Agreement is for any reason held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, but shall be deemed as a separate, distinct, and independent provisions. Any such holding will not affect the validity of the remaining portions of the Agreement, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant, and portion of this Agreement will be valid and enforceable to the fullest extent permitted by law.

- 19. General Provisions.** This Agreement is governed by the laws of the state of Tennessee. Venue for any dispute between the parties will be in the Circuit or Chancery Courts of Rutherford County, Tennessee, except that any dispute which may only be brought in federal court will be in the Middle District of Tennessee at Nashville. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement



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between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that the parties may use electronic signatures.

**20. Corporate Authority.** Licensee represents and warrants that the person signing on its behalf has full corporate authority to enter into this Agreement and that upon execution of this Agreement it will be fully binding on Licensee, its successors and assigns.

**21. Council Approval.** This Agreement will have no force or effect until expressly approved by the Murfreesboro City Council, which shall be evidenced by the City's execution hereof.

*[Signature page follows]*



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Signed by authorized representatives of the parties on the dates written below.

**Google Fiber Tennessee, LLC**

**City of Murfreesboro, Tennessee**

*Philipp Schindler*  
Philipp Schindler  
Authorized Signatory

2023.08.07

16:09:30

-07'00'

(Authorized Signature)

(Name)

(Name)

(Title)

(Title)

Address:  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

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

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

(with a copy to)  
Attn: City Attorney  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

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

APPROVED AS TO FORM:

DocuSigned by:

*Adam Tucker*

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Adam F. Tucker, City Attorney



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**EXHIBIT A  
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

City of Murfreesboro, Tennessee

[Addressee]

[Address]

Re: Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Non-Exclusive Public ROW License Agreement dated \_\_\_\_\_ between City of Murfreesboro, Tennessee and **Google Fiber Tennessee, LLC** (“**Google Fiber**”), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to City on behalf of Google Fiber.

*[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]*

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by City.

Kind regards,

[Name]

Manager, Google Fiber Tennessee, LLC



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## COUNCIL COMMUNICATION

**Meeting Date: 08/31/2023**

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**Item Title:** Development Agreement and Purchase and Sale Agreement –  
Project Keystone—Broad Street Redevelopment Project

**Department:** Administration

**Presented by:** Sam Huddleston, Assistant City Manager

**Requested Council Action:**

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

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**Summary**

Development Agreement and Purchase and Sale Agreement for Project Keystone—  
Broad Street Redevelopment Project

**Staff Recommendation**

Approved the Development Agreement and the Purchase and Sale Agreement with HRP Residential L.L.C.

**Background Information**

Council has been presented with an economic development proposal, Project Keystone, for a mixed-use development along NW Broad Steet between Vine and Church Streets. Project Keystone is a \$150m investment into Downtown Murfreesboro. It is designed to be compatible with the general architectural aesthetic of the Downtown area. The size and scope of the Project will significantly enhance the business and residential aspects of Downtown and provide an improved entrance into the City Center from Church and Broad Streets.

The Keystone Project is a 7-acre development that includes 30,000 square feet of commercial space for retail, office, restaurant, and entertainment uses. It will incorporate an 80-100 room Upscale hotel. The Project will also offer 80 and 100 highly amenitized condominiums and 239 rental residential units and will be fully parked on-site.

There are several conditions that must be fulfilled to initiate the Project. The developer, HRP Residential, must agree with WGNS to relocate its studio across Church Street. The project will be partial financed by Tax Incremental Financing (TIF), commonly used incentives that allow projects requiring significant infrastructure and parking requirements to be constructed. TIF programs are approved through the Industrial Development Board of Rutherford County (IDB). Approval of the IDB, the County, and the City is required for the Project’s TIF. Additionally, the Project’s plan must be approved by the Planning Commission and Council.

The TIF is capped at \$26m over 20 years. The actual valuation of the TIF will vary during its term depending on the assessed value of the development and the property

tax rates of the City and County. It is projected that the City will recover over the City's portion of the TIF in direct and indirect tax revenues deriving from the Project, exclusive the revenue enhancements that accrue to the City and County from further development in the area associated with the Project.

The proposed agreements contain provisions that address these conditions. Additionally, the Development Agreement sets development milestones that must be met and provides the City with remedies in the event the Developer does not comply with the terms of the agreements.

### **Council Priorities Served**

#### *Improve economic development*

Redevelopment of Broad Street between Main Street and Church Street is a major economic development enhancement that will assist in redevelopment of the Historic Bottoms Area as well as attracting additional downtown development projects.

#### *Establish strong City brand*

Redevelopment of the Downtown and the Bottoms areas will be instrumental in establishing a positive City brand.

### **Fiscal Impact**

The Project is expected to produce more than \$531,000 in City property tax per year and will allocate \$435,000 to the TIF. The City will receive \$450,000 annually in estimated direct and indirect revenue.

### **Attachments**

1. Development Agreement
2. Purchase and Sale Agreement

## **DEVELOPMENT AGREEMENT PROJECT KEYSTONE**

This Development Agreement (“Agreement”), by and between the City of Murfreesboro (“City”) and HRP Residential, LLC (“Developer”), (each sometimes a “Party” and together sometimes the “Parties”) is to be effective as of the Effective Date provided in Section 12. n. below.

**WHEREAS** the following facts exist:

A. The City owns all but one parcel (currently owned and occupied by Rutherford Group, Inc., “RG,” the operators of WGNS radio) of the property identified as Parcel 1 and Parcel 2 on the attached **Exhibit A** (altogether, the “Property”), which parcels total 7.08+/- acres, subject to a final survey, and which the City desires to have redeveloped as a mixed-use project.

B. Parcel 1 contains several vacant buildings, RG’s offices, and two buildings currently occupied by City personnel for which replacement facilities are being constructed.

C. Redevelopment of the Property is instrumental in the redevelopment of NW Broad Street (State Route 41), a major thoroughfare bordering the City’s historic downtown, will complement the City’s daylighting of Town Creek creating an urban park across NW Broad Street, and will enhance and encourage the redevelopment of the Historic Bottoms District that was studied and identified for redevelopment in 2017.

D. Developer has proposed to acquire the Property for a mixed-use development containing office, restaurant/entertainment, retail, hotel, and for-sale and rental residential units identified as Project Keystone (the “Project”), including the acquisition of the RG parcel and provision of replacement facilities for RG on Parcel 2.

E. Development and operation of the Project will require certain off-site road and access improvements in order for the Project to be successful.

F. This Agreement will be accompanied by a Purchase and Sale Agreement, and other ancillary agreements as appropriate.

**NOW THEREFORE**, for good and valuable mutual considerations, including but not limited to the undertakings contained herein, the receipt and sufficiency of all of which is hereby irrevocably acknowledged and confirmed, the Parties agree as follows:

### **1. Sale of Land**

- a. City and Developer are contemporaneously entering into a Purchase and Sale Agreement (the “PSA”) for the purchase by Developer of Parcel 1 and Parcel 2 containing approximately 7.08 +/- acres of land (the “Property”) from the City as shown on **Exhibit A**.
- b. In consideration of the economic benefits that the Project brings to the City, the City will sell the Property for the sum of \$5,000,000.
- c. Developer will enter into an agreement with RG for the purchase of RG’s parcel (306 South Church Street, approximately 0.07 acres) upon terms and conditions agreed upon by these parties. A fully executed purchase and

relocation agreement with RG with terms consistent with this Agreement is a condition to closing of the PSA with the City.

## 2. Project Keystone

- a. Developer will design and construct the Project which will consist of the following elements:
  - i. Not less than 30,000 sf of commercial space for retail, office, and/or restaurant/entertainment uses.
  - ii. Between 80 and 100 for-sale residential condominiums with amenities equal to or greater than those listed in **Exhibit B**. Construction of 100 will require a fifth floor to be added to Building 2 to accommodate 100 total residential units. The for-sale residential condominiums that are not pre-sold during the pre-sale period will be master leased, maintaining the ability for these units to be sold throughout the life of the Project. Said condominium units will be sold based on a floor-by-floor basis from the top floor down. Developer shall have no obligation to convert any units on a floor to condominiums until a minimum of eighty percent (80%) of the units on that respective floor are under contract to be purchased by purchasers.
  - iii. Not more than 239 rental residential apartments with amenities equal to or greater than those listed in **Exhibit B**.
  - iv. Not less than 80 key hotel, comparable in design, style, quality, services, and amenities of not less than an Upscale Chain according to Smith Travel Resources Chain Scales - North America and Caribbean, with architecture specifically approved by the Planning Commission or Planning Director, in accord with the provisions of the Zoning Ordinance and the City-wide Design Guidelines.
  - v. Parking will be provided in accord with the schedule contained in **Exhibit C**. Parking for the for-sale residential condominiums may be adjusted if purchasers acquire multiple units and combine them into one residence.
  - vi. Required and related infrastructure, including that listed in Section 2 below.
- b. The Project will be designed and constructed substantially as shown in the drawings attached hereto as **Exhibit B**, as **Exhibit B** may be amended or modified from time to time. Changes or revisions to the drawings attached as **Exhibit B** that are contained in a Pattern Book or Amended Pattern Book approved by the City Council as part of the anticipated Planned Development Zoning for the Project shall, upon approval by the City Council, be deemed to be incorporated into this Agreement as **Amended Exhibit B**.
- c. The City Manager, in consultation with the Executive Director of Development Services, shall have authority to approve non-substantial variances to the

drawings attached as **Exhibit B**, as may be amended. “Non-substantial” variances shall include items such as modifications to facades, re-arrangement of structures, increases or decreases in committed square footages of not more than 10%.

- d. Substantial variances must be approved by Planning Commission and City Council.

**3. Infrastructure Improvements and Off-site Roadway, and Related Facilities.**

- a. Developer will, at its sole cost and expense, and in accordance with City-approved construction plans, construct all necessary on-site water, sewer, stormwater, and other utility infrastructure necessary to serve the needs of the Project (the “Infrastructure Improvements”). Developer will be solely responsible for all utility extensions and connections from the property lines, including normal tap and connection fees.
- b. Developer will construct the following off-site roadway and related facilities, substantially as illustrated on **Exhibit D** and in accord with construction plans provided by Developer and approved by the City and TDOT, and dedicate same to the City for public use:
  - i. An additional thru-lane from the South Church entrance to the City Hall Parking Garage to Northwest Broad Street and a new right-turn lane onto Northwest Broad Street, along with any necessary utility installations and relocations, curb and gutter, a 4 ft. grass strip and a not less than 10 ft. sidewalk.
  - ii. A new right-turn lane from SE Broad Street onto South Church Street.
  - iii. Realign the intersection of West Vine Street, South Front Street, and Northwest Broad Street (“Front / Vine Intersection”) as a 4-lane intersection, along with any necessary utility installations and relocations, curb and gutter, a 4 ft. grass strip and a not less than 10 ft sidewalk on both sides, signalize the intersection and install required landscape and streetscape elements.
  - iv. Participate in design and planning for a pedestrian bridge over Northwest Broad Street to be located near the northwest corner of the redesigned and reconstructed South Church – Broad Street intersection, across NW Broad Street near South Church Street substantially as shown on **Exhibit E**.
  - v. The construction contemplated in Subsections i, ii, and iii above shall be accomplished pursuant to one or more Construction Contracts approved by the City containing standard City-required terms and conditions.
- c. The City will reimburse Developer from the General Fund for the construction itemized in subsection “b” above based on certified quantities and unit prices provided by the Developer’s Engineer of Record after review and acceptance

by the City Engineer. Reimbursement will occur not more often than every 90 days.

- d. The City will:
  - i. Provide sufficient drainage infrastructure to handle stormwater drainage from the Property, without any requirement for detention or water quality treatment on site, excepting as may be required by TDOT permits or regulations;
  - ii. Provide traffic signalization changes, crosswalks, and crosswalk signage as determined necessary in accordance with City's traffic management standards; and
  - iii. In accordance with City Code, § 16-1, apply offsets to impact fees assessed to the Project for qualifying improvements, dedications, and contributions.

#### 4. **Public Financing**

The City will support Developer's application to the Industrial Development Board of Rutherford County for a tax increment financing agreement (TIF) utilizing City and County property taxes to finance the costs of the off-street parking facility and Infrastructure Improvements listed above. The TIF will have a term of not more than 20-years commencing on the issuance of a Certificate of Occupancy for the first building completed, but not later than December 2027. If the TIF is not established, Developer may terminate this Agreement.

#### 5. **Scheduling**

- a. A general Construction Schedule is attached as **Exhibit F**.
- b. Developer will apply for an asbestos inspection / interior demolition permit for the unoccupied buildings within 30 days after approval of the PUD zoning, will commence interior demolition, and will continue with overall demolition as promptly as reasonably practicable.
- c. Developer will begin construction of each element of the Project in accordance with the Schedule attached as **Exhibit F**.
- d. The City will relocate the City offices currently located in City buildings within the Project area as soon as reasonably practicable after closing, but in any event by the deadline shown on **Exhibit F**
  - i. Developer will allow continued occupancy of these buildings after Closing without rent or other compensation and the City will be responsible for utilities, maintenance and any required repairs of any kind as long as they are occupied by City.
  - ii. In the event relocation of these offices are delayed beyond the deadline shown on **Exhibit F** and such delay impedes the Project schedule, an equitable adjustment will be made to the Construction schedule until the properties are fully vacated by the City.



- e. Developer will construct the additional lane and right-turn lane along South Church Street and the right- turn lane from SE Broad onto South Church will begin as soon as the required right-of-way and easements are acquired, design is completed, right-of-way has been dedicated, appropriate construction plans are approved, and necessary permits issued.
- f. Developer will construct the realigned Front St / Vine Street Intersection will begin as soon as the required right- of-way and easements on the south side of Northwest Broad Street have been acquired, any existing buildings or structures that would interfere with the construction have been removed, design is completed, right-of-way has been dedicated, appropriate construction plans are approved, and necessary permits issued.
- g. Developer will maintain access to the City Hall Parking Garage during construction to the fullest extent reasonably practicable, and at least one access to both floors of the City Hall Parking Garage shall be available at all times.
- h. Unless and to the extent otherwise authorized by the City Manager, Developer will not, and will require all Contractors and subcontractors to not, park or store any personal or construction vehicles or equipment in any portion of the City Hall Parking garage.

**6. Force Majeure.**

“Force Majeure” means any of the following that prohibits, delays or materially interferes with the development or construction of the Project or any material portion thereof: strikes; lock-outs; acts of the public enemy; the enactment, imposition or modification of any applicable law which occurs after the Effective Date and precludes performance under this Agreement; confiscation or seizure by any government or public authority; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; governmental restrictions; epidemics; pandemics; landslides; earthquakes; fires; hurricanes; floods; wash-outs; explosions; failure of major equipment or machinery critical to the development or construction of the Project for their respective intended purposes; nuclear reaction or radiation; radioactive contamination; or any other cause, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the party claiming the right to delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency, or bankruptcy of such party. Failure in performance by any party hereunder shall not be deemed a Default by Developer or a default by the City, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. An extension of time for the performance by any party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall excuse the Developer or the City from timely paying any money as provided in this Agreement.

**7. Automatic Termination.**

In the event that the contemporaneous PSA related to the Property fails to close for any reason, this Development Agreement shall automatically terminate, and neither party shall have any further obligation to the other with respect to or arising out of this Development Agreement.

**8. Representations and Warranties.**

- a. Developer represents and warrants to the City the following:
  - i. Developer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Tennessee;
  - ii. Developer is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required, including the State of Tennessee, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;
  - iii. Developer has the full right, corporate power, and authority to enter into this Agreement and to be bound to and perform the obligations set forth herein;
  - iv. The execution of this Agreement by the individual or individuals whose signature or signatures appear below and the delivery of this Agreement has been duly authorized by all necessary corporate actions on the part of Developer;
  - v. The execution, delivery, and performance of this Agreement by Developer does not violate, conflict with, require consent under or result in any breach or default under Developer's organizational documents (including its certificate of incorporation and by-laws or with or without notice or lapse of time or both, the provisions of any material contract or agreement to which Developer is a party or to which any of its material assets are bound ("Developer Contracts"));
  - vi. This Agreement has been executed, and delivered by Developer and constitutes the legal, valid, and binding obligation of Developer, enforceable in accordance with its terms;
  - vii. The Agreement is in material compliance with all applicable Laws and Developer Contracts relating to this Agreement and the operation of its business;
  - viii. Developer has obtained or will timely obtain all licenses, authorizations, approvals, consents, or permits required by applicable Laws (including the rules and regulations of all authorities having jurisdiction over the sale of alcoholic beverages) to conduct its business generally and to perform its obligations under this Agreement;

- ix. Developer has the requisite resources, skill, experience, and qualifications to perform all of the obligations under this Agreement in a professional manner; and
  - x. Developer has secured or will timely secure the full right, power, and authority (by ownership, license, or otherwise) to use patents, copyrights, trademarks, or other intellectual property embodied in the services or goods used in performing the services required under the terms and conditions of this Agreement.
- b. The City represents and warrants to Developer the following:
- i. The City is a municipal corporation chartered under a Private Act of the General Assembly of the State of Tennessee;
  - ii. The City, upon the approval of this Agreement by the City Council in a duly noticed public meeting, has the right and authority to enter into this Agreement and to perform its obligations hereunder;
  - iii. This Agreement, contingent upon the condition set forth in (b), constitutes the legal, valid, and binding obligation of the City; and
  - iv. The City is vested with good and marketable title to the Property.
- c. Neither party, nor any other person on such party's behalf, has made or makes any express or implied representation or warranty, either oral or written, whether arising by law, course of dealing, course of performance, usage, trade, or otherwise, all of which are expressly disclaimed, and the parties acknowledge they have not relied upon any representation or warranty made by the other party, or any other person on such party's behalf, except as specifically provided in herein.

## 9. Notices

- a. Notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and are deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email, provided receipt is confirmed, and if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the date of delivery or first attempted delivery if sent by certified or registered mail (in each case, return receipt requested, postage pre-paid).
- b. Notices must be sent to the respective parties at the following addresses (or at such other address for a party as specified in a Notice given in accordance with this section):

If to City:

City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130  
[ctindall@murfreesborotn.gov](mailto:ctindall@murfreesborotn.gov)

With a copy to:

City Attorney  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130  
[atucker@murfreesborotn.gov](mailto:atucker@murfreesborotn.gov) and  
[dives@murfreesborotn.gov](mailto:dives@murfreesborotn.gov)

If to Developer:

HRP Residential, LLC  
Attn: Dean Montgomery and Ryan Little  
5100 Maryland Way  
Brentwood TN 37027  
[ryan@hrpresidential.com](mailto:ryan@hrpresidential.com) and [dean@hrpresidential.com](mailto:dean@hrpresidential.com)

**10. Assignment.**

- a. Developer may not assign any of its rights or delegate any of its obligations under the Agreement to any entity not owned by, or under common control with Developer without the prior written consent of the City; provided, however, notwithstanding the City's consent, if given, this Agreement remains binding upon and inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns and, therefore, no assignment or delegation relieves the assigning or delegating party of any of its obligations hereunder. Notwithstanding anything herein or elsewhere to the contrary, the City acknowledges and agrees that the development obligations of Developer will be financed by a third-party lender, that nothing herein may limit or restrict the right of Developer to pledge Parcel 1 and or Parcel 2 as collateral for such financing, and that the City (upon request) will execute and deliver such subordination documents as may be reasonably requested by such lender in connection therewith.
- b. Any purported assignment or delegation in violation of this section is null and void.

**11. City Right of Repurchase.**

- a. If Developer fails to submit an application for PUD approval to the City's Planning Commission within 30 days after the Effective Date as defined in Section 12.n. below, or if Developer fails to apply for an asbestos inspection / demolition permit at least 30 days prior to the date for the demolition of the vacant City Buildings as set forth in the Schedule contained on **Exhibit F** attached hereto, in either event the City will have the right, but not the obligation, to repurchase the City Development Land for the price paid.
- b. If Developer fails to commence demolition of the vacant City buildings in accord with the schedule contained in **Exhibit F**, the City will have the right, but not the obligation, to repurchase the City Development Land for the price paid.

- c. If Developer fails to start construction of the WGNS building by the Construction Commencement Date in accord with the schedule contained in **Exhibit F**, the City will have the right, but not the obligation, to repurchase the City Development Land for the price paid and reasonable demolition costs incurred by Developer, if any. In the event of a repurchase of Parcel 1 pursuant to this Subdivision c, Parcel 1 will include the RG parcel as owned by RG at the Effective Date of this Agreement.
- d. If, after a written request delivered by the City Manager to Developer on or about September 15, 2024, Developer fails to demonstrate to the satisfaction of the City that it has sufficient financial commitments to complete the construction of Building 3, the City will have the right, but not the obligation, to repurchase the City Development Land for the price paid and reasonable demolition costs incurred by Developer, if any. In the event of a repurchase of Parcel 1 pursuant to this Subdivision c, Parcel 1 will include the RG parcel as owned by RG at the Effective Date of this Agreement.
- e. If Developer fails to start construction of the first Parcel 1 building by the Construction Commencement Date in accord with the schedule contained in **Exhibit F**, the City will have the right, but not the obligation, to repurchase Parcel 1 of the City Development Land for the price paid and reasonable demolition costs incurred by Developer on Parcel 1, if any. In the event of a repurchase of Parcel 1 pursuant to this Subsection e, Parcel 1 will include the RG parcel as owned by RG at the Effective Date of this Agreement at no additional cost.
- f. If at any time the Developer ceases construction in accord with the Schedule contained in **Exhibit F** on the Project for more than 180 days, then the City shall have the right, but not the obligation, to require Developer to convey all of the Property back to the City for an amount equal to the amount paid by Developer plus actual out of pocket expensed incurred by Developer for demolition or other physical work on the Property, if any, less any repair or remedial work required to make the Property suitable for continued development. In the event of a repurchase of Parcel 1 pursuant to this Subsection f, Parcel 1 will include the RG parcel as owned by RG at the Effective Date of this Agreement.
- g. In no event will Developer be entitled to recover design, engineering, architectural, legal, or other such professional / planning expenses related to the Project.
- h. In the event of a failure as described in Sections 11.a, 11.b, 11.c, 11.d. or 11.e. above, or a cessation of construction as described in Sections 11.f above, the City shall have the right, at its sole option, and as an alternative to or in addition to the City's rights under these provisions, including but without limitation the right to declare Developer in Default hereunder, subject to the notice and cure provisions of Section 12.o below, to cause the IDB to terminate the City's Financial Obligation as provided in Section 2(a)(iii) of the Funding Agreement to be executed by and between the IDB

of Rutherford County and the Developer in furtherance of the Project. In addition, if for any reason the IDB terminates the County's Financial Obligation as described in Section 2(a)(iii) of the Funding Agreement, the City shall have the right, at its sole option, to request that the IDB terminate the City Financial Obligation in accordance with Section 2(a)(iii) of the Funding Agreement.

**12. Miscellaneous.**

- a. This Agreement and all related Exhibits constitute the sole and entire agreement of the parties with respect to the subject matter address herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter.
- b. This Agreement sets forth the terms and condition of a commercial transaction and the City does not waive or alter any of its governmental authority to address matters under federal or state statute and regulations, the City's ordinances, or the City's police powers.
- c. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- d. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.
- e. No waiver by any party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by a duly authorized individual on behalf of the waiving party. No waiver by any party operates or may be construed as a waiver in respect of any failure, breach, or default not expressly identified by a written waiver, whether of a similar or different character, and whether occurring before or after the waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof; nor does any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- f. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
- g. This Agreement is for the sole benefit of the parties hereto and Developer's permitted successors and permitted assigns and nothing herein, express or implied, is intended to or confers upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

- h. This Agreement and all matters arising out of or relating thereto are governed by and construed in accordance with the laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule.
- i. Any legal suit, action, or proceeding arising out of this Agreement or the transactions contemplated thereby may only be instituted in the state courts of Rutherford County, Tennessee, and Developer irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Developer irrevocably and unconditionally waives any objection to venue of any suit, action, or proceeding in such courts and irrevocably waives and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- j. In the event that either party institutes any legal suit, action, or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement or arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other damages to which it may be entitled, the reasonable costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.
- k. Nothing herein will be construed to create a joint venture or partnership between the parties hereto or an employer-employee or agency relationship. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.
- l. If any date on which a party is required to make a payment or a delivery pursuant to the terms hereof is not a Business Day, then such party will make such payment or delivery on the next succeeding Business Day.
- m. Time is of the essence with respect to this Agreement.
- n. This Agreement shall be effective as of the date of the last Party to sign (the "Effective Date"), provided that this Agreement shall be of no force or effect until affirmatively approved by the Murfreesboro City Council.
- o. A breach by Developer under this Agreement (a "Default") shall occur if the Developer defaults under the Purchase and Sale Agreement or the Funding Agreement and such default is continuing after any applicable notice and cure period thereunder or if the Developer fails to comply with any other provision of this Agreement and does not cure such failure within thirty (30) days after receipt of written notice from the City; provided that if (i) such breach cannot be cured within such thirty (30) day period, (ii) the Developer notifies the City in writing stating the reasons for delay prior to expiration of such thirty (30) day period, (iii) the Developer promptly commences curative actions within such

thirty (30) day period, and (iv) the Developer thereafter diligently and continuously pursues cure efforts, then the period for cure shall be extended for such period of time as shall reasonably be required under the circumstances, except that the Developer shall not be entitled to any extension if the breach is monetary in nature. Upon the occurrence of a Default, the City may cease all payments and performance hereunder, under the Purchase and Sale Agreement and cause the Board to terminate the Funding Agreement upon written notice to the Developer or pursue such other remedies as may be available at law or in equity.

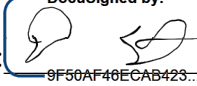
**CITY OF MURFREESBORO, TENNESSEE**

**HRP RESIDENTIAL, LLC**

By: \_\_\_\_\_

Shane McFarland, Mayor

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

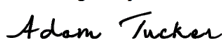
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By:   
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Name/Title: Dean Montgomery, Managing Member  
Date: 8/30/2023

ATTEST

By: \_\_\_\_\_

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

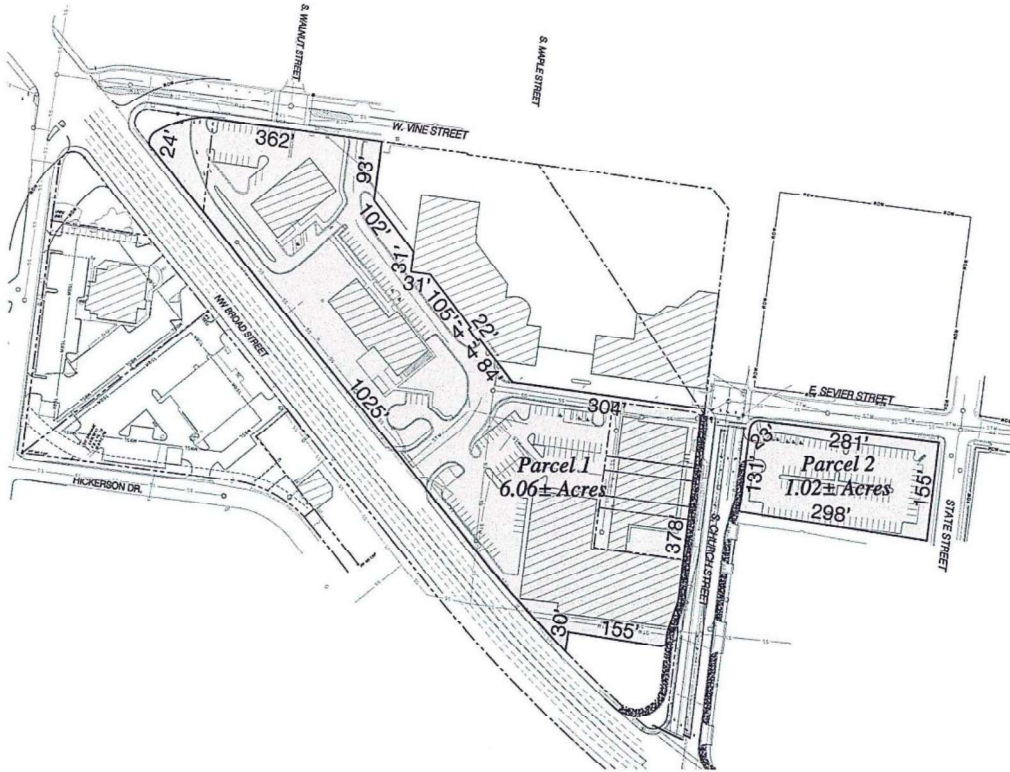
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By:   
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Adam Tucker, City Attorney

APPROVED BY CITY COUNCIL: \_\_\_\_\_



**Exhibit A**

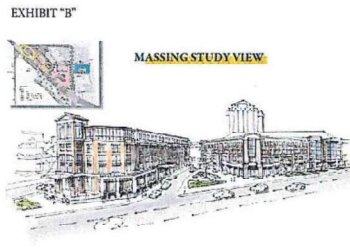
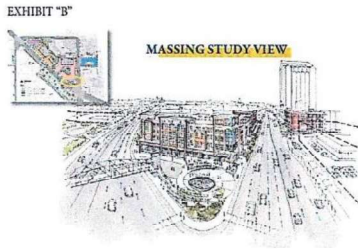
**KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT**  
**Exhibit A - Development Area Plan**



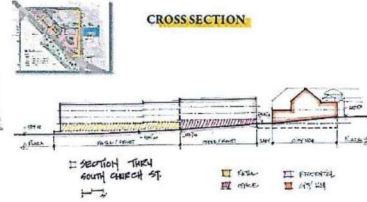
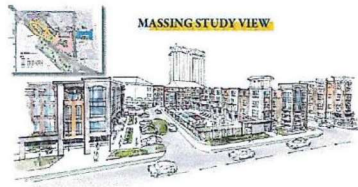
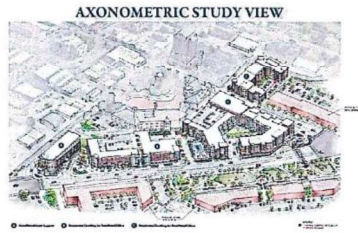
## Exhibit B

# KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT

## Exhibit B - Site Plan, Massing Images Overall Development Amenities



- EXHIBIT "B"
- OVERALL AMENITIES & DEVELOPMENT GOALS**
- The project will create a gateway development for the City that will set the trend for future growth along Town Creek/NW Broad Street. The project will strengthen the financial condition of the downtown area through pedestrian connectivity, new retail, hospitality, office, and for sale/lease housing. This development aligns with the goals established in the Bottoms Planning Study completed by the City of Murfreesboro.
  - Development will include parking structures for retail, office and residential.
  - Reduction in rent and for sale product for "Local Heroes"
  - Walkable Community
  - Pedestrian bridge recommended to improve connectivity
  - Hotel located on site. Exterior guidelines will be in place to keep the look of the development in line with City and Development Team goals.



- |  |   |
|--|---|
| <p><b>FOR SALE RESIDENTIAL AMENITIES</b></p> <ul style="list-style-type: none"> <li>• Grilling Station and Firepit</li> <li>• Fitness Room</li> <li>• EV Charging Stations</li> <li>• Shared Dog Park</li> <li>• Central Mailroom with Parcel</li> <li>• Pending Boxes</li> <li>• Access Control</li> <li>• Ground Floor Retail</li> <li>• Structured Parking</li> </ul> | <p><b>FOR LEASE RESIDENTIAL AMENITIES</b></p> <ul style="list-style-type: none"> <li>• Grilling Station and Firepit</li> <li>• Resort Style Pool with Sun Ledge and Poolside Cabana</li> <li>• Outdoor Gaming Area</li> <li>• Shared Dog Park</li> <li>• Community Space and Game Room</li> <li>• Dog Wash Station and Salon</li> <li>• Shared Business Center</li> <li>• Central Mailroom with Parcel</li> <li>• Pending Boxes</li> <li>• EV Charging Stations</li> <li>• Ground Floor Retail</li> <li>• Structured Parking</li> <li>• Access Control</li> <li>• Fitness Center</li> </ul> |
|--|---|

## Exhibit C

# KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT

## Exhibit C - Parking Requirements

### EXHIBIT G: Parking Requirements

1. Total number of current parking spaces to be eliminated with this development: 205
2. The total number of parking spaces required by the Zoning Ordinance for this development, without credits or adjustments.

**Total Parking breakdown for development:**  
 Required Parking for dwelling units: 493 spaces  
 Public, Retail, and Hotel Parking: 287 spaces  
**Total Parking 780 spaces**

Parking Calculations by building and use: The below parking count is based on exhibit "B". If the design changes during the PUD approval process, the parking quantities will be per the below requirements for each use. Handi Cap parking spaces are counted towards required Parking.

#### **Building 1 (leased dwelling unit building with retail below):**

**Required Parking = 353 spaces**

Parking quantities for retail: For every 250 sf of retail, we have provided one parking space  
 Parking quantities required for dwelling units and retail:

- Amount of Retail provided = 25,977 sf retail / 250 sf = 104 parking spaces required
- Current dwelling unit breakdown for this building
  - Total number of dwelling Units 169, the total number of parking spaces required per below unit breakdown 249
    - o 1 Br = 83 units = 83 parking spaces
    - o Studio = 6 units = 6 parking spaces
    - o 2 Br = 80 units = 160 parking spaces

**Provided Parking = 369 spaces**

- On Street public Parking and surface parking within the development: 21
- Parking within the Parking structure = 348 space

#### **Building 2 (for sale dwelling unit building with retail below, note parking for both Hotel and Building 2 reside in building 2)**

**Required Parking = 167 spaces**

Parking quantities for retail: For every 250 sf of retail, we have provided one parking space  
 Parking quantities required for dwelling units and retail:

- Amount of Retail provided = 5,037 sf retail / 250 sf = 20 parking spaces required
- Current dwelling unit breakdown for this building
  - Total number of dwelling Units 100: 142 parking spaces required
    - 1 Br = 47 units = 47 parking spaces
    - Studio = 11 units = 11 parking spaces
    - 2 Br = 42 units = 84 parking spaces

#### **Hotel (Parking located in Building 2):**

**Required Parking = 126 spaces**

Parking quantities for the Hotel: based on one (1) space per hotel room plus ten parking spaces for every 15 employees

Parking quantities required for Hotel units:

- Total number of Hotel rooms: 116 rooms
- Number of Employees: 15 employees

**Provided Parking for Building 2 and Hotel = 293 spaces**

- On Street public Parking and surface parking within the development: 28 spaces
- Parking within the Parking structure = 265 spaces.

#### **Building 3 (for lease dwelling unit building including WGNS Radio Station and Retail)**

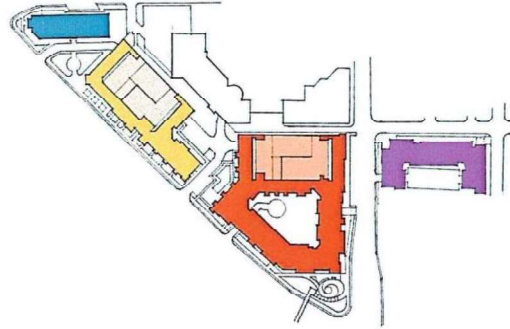
**Required Parking = 118 spaces**

Parking quantities for retail: For every 250 sf of retail, we have provided one parking space  
 Parking quantities required for dwelling units and retail:

- Amount of Retail provided = 4,000 sf retail / 250 sf = 16 parking spaces required
- Current dwelling unit breakdown for this building
  - Total number of dwelling Units 70: 102 parking spaces required
    - 1 Br = 38 units = 38 parking spaces
    - 1 Br loft = 6 units = 12 parking spaces
    - 2 Br = 26 units = 52 parking spaces

**Provided Parking for Building 3 = 118 spaces**

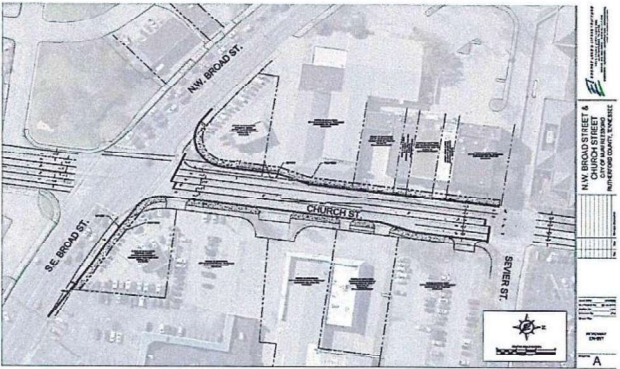
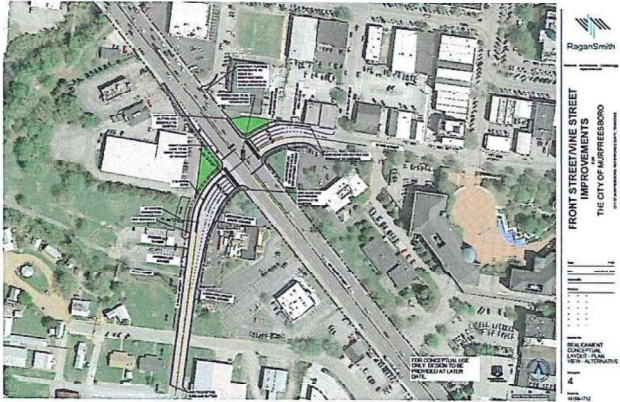
- Note: 16 spaces located in building 1 parking garage
- Parking within the Parking structure = 102 spaces



## Exhibit D

# KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT

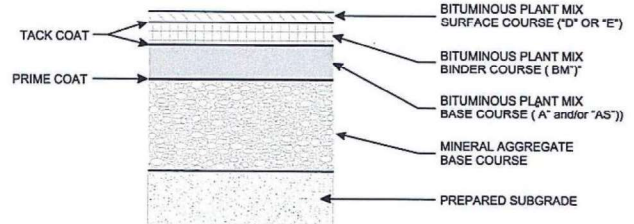
## Exhibit D - Roadway Improvements



**COMBINATION ASPHALT CONCRETE  
AND AGGREGATE BASE  
(MINIMUM REQUIRED THICKNESS \*)**

CLASSIFICATION	MINERAL AGGREGATE BASE COURSE	ASPHALT PAVEMENT					TOTAL THICKNESS
		BASE/BINDER			SURFACE COURSE		
		"AS"	"A"	"BM"	"D"	"E"	
RESIDENTIAL COLLECTORS, SUB-COLLECTORS AND LOCAL STREETS	6"	-	-	2.5"	-	1.5"	10"
COMMUNITY COLLECTORS AND COMMERCIAL COLLECTORS	8"	-	3"	2"	1.5"	-	14.5"
MAJOR ARTERIALS AND MINOR ARTERIALS	8"	3"	3"	2"	1.5"	-	17.5"

\* THE CITY ENGINEER MAY REQUIRE PERFORMANCE GRADE ASPHALT BASED ON PROJECTED TRAFFIC LOADINGS. ADDITIONAL THICKNESS OR A DETAILED PAVEMENT DESIGN BASED ON A GEOTECHNICAL ANALYSIS MAY ALSO BE REQUIRED.



### Exhibit E

# KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT Exhibit E - 2023 TAP Grant

Mayor Shane McFarland  
City Council Members  
Marilyn McLaughlin  
Vicki Hester  
Rick Lanning  
Bill Basklett  
Ruff Wade  
Renee Martin  
Karin Wright

**The City of Murfreesboro**  
Office of the Mayor

111 West Vine Street  
Post Office Box 1139  
Murfreesboro, TN 37133-4139

Office: (615) 849-2629  
Fax: (615) 849-2079  
Email: [smcfarland@murfreesborotn.gov](mailto:smcfarland@murfreesborotn.gov)

November 10, 2021

Mr. Joe Galbraith  
Historic Commission  
Tennessee Dept  
James K. Polk  
300 Donelson  
Nashville, TN

RE: 2022 TAP

Dear Mr. Galbraith:

On behalf of the submission Alternatives E Council, we are a overall concept constructed in Murfreesboro

We thank you for your assistance as a grantee for

Respectfully,

**BILL KETRON**  
COUNTY CLERK

November 20, 2021

Honorable Shane McFarland, Mayor  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

RE: 2022 Transportation Alternatives Program Grant Application

Dear Mayor McFarland:

I am writing this letter in support of the City of Murfreesboro's request for a 2022 Transportation Alternatives Program (TAP). The Broad Street project provides enhanced pedestrian safety in a dense urban area and is crossing Broad Street. As this street is a heavily traveled seven Murfreesboro, implementation of this project will provide a

**CITY of MURFREESBORO**  
Development Services Division  
111 West Vine Street  
P.O. Box 1139  
Murfreesboro, TN 37133  
Phone: 615-893-6441  
[www.murfreesborotn.gov](http://www.murfreesborotn.gov)

November 20, 2021

Honorable Shane McFarland, Mayor  
City of Murfreesboro  
111 West Vine St  
Murfreesboro TN 37130

RE: 2022 Transportation Alternatives Program Grant Application

Dear Mayor McFarland:

We are pleased to offer our support for Transportation Alternatives Program (TAP) provide a much safer pedestrian route & Historic Business and the Downtown

The Broad Street Pedestrian Bridge was Study (adopted March 2017). During public and stakeholders in reviewing all changes and associated small work was enhanced and developed by those currently approved by Broad Street. It

We request TMDT for affirmatively public to local community that

**Tennessee State Senate**  
NASHVILLE

**DAWN WHITE**  
STATE SENATOR  
1ST DISTRICT

November 9, 2021

The Honorable Shane McFarland  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

Dear Mayor McFarland:

I am pleased to write in support of the City of Murfreesboro's request for a 2022 Transportation Alternatives Program (TAP). Downtown Murfreesboro is a proposed pedestrian bridge would create ease of access for citizens

The Broad Street Pedestrian Bridge project will provide enhanced pedestrian and will accommodate pedestrian crossing Broad Street. As this street roadway in downtown Murfreesboro, implementation of this project will provide a much safer pedestrian route & Historic Business and the Downtown

I offer my wholehearted support of the city's TAP funding request, and I will support this project. Thank you for your time and consider assistance, please do not hesitate to contact me.

Sincerely,  
*Dawn White*  
Dawn White  
State Senator  
1<sup>st</sup> District

**CHARLIE BAUM**  
STATE REPRESENTATIVE  
17TH DISTRICT  
NASHVILLE

November 12, 2021

Honorable Shane McFarland  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

RE: 2022 Transportation Alternatives Program Grant Application

Dear Mayor McFarland:

I am writing this letter in support of the City of Murfreesboro's request for a 2022 Transportation Alternatives Program (TAP). Downtown Murfreesboro is a proposed pedestrian bridge would create ease of access for citizens

The Broad Street Pedestrian Bridge project will provide enhanced pedestrian and will accommodate pedestrian crossing Broad Street. As this street roadway in downtown Murfreesboro, implementation of this project will provide a much safer pedestrian route & Historic Business and the Downtown

I offer my wholehearted support of the city's TAP funding request, and I will support this project. Thank you for your time and consider assistance, please do not hesitate to contact me.

Sincerely,  
*Charlie Baum*  
Charlie Baum  
State Representative - 17<sup>th</sup> District

**Tennessee House of Representatives**

November 23, 2021

The Honorable Joe Lusk  
Commissioner of Transportation  
Tennessee Department of Transportation  
525 Davidson Street, Suite 700  
Nashville, Tennessee 37243

RE: 2022 Transportation Alternatives Program Grant Application

Dear Commissioner Galbraith:

I am pleased to offer this letter of support for the City of Murfreesboro's Transportation Alternatives Program (TAP) application on behalf of the Greater Nashville Regional Council's Transportation Policy Board. The City's proposal to improve pedestrian connectivity on Broad Street will improve safety for pedestrians and ensure connectivity of the community's active transportation network.

GNRC is recognized by the State of Tennessee Department of Transportation (TMDT) and the United States Department of Transportation Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) as the federally-designated Metropolitan Planning Organization (MPO) for the seven county Nashville metropolitan planning area which includes Davidson, Henry, Robertson, Rutherford, Sumner, Williamson, and Wilson counties.

The Nashville area continues to experience rapid population growth, worsening congestion, physical inactivity, and increasingly unsafe roadways. The construction of a new pedestrian bridge over Broad Street will improve pedestrian safety and from the downtown/south square area to west of Broad Street. In addition, the project will provide a new repaired facility to the City's growing active transportation network, integrating overall network connectivity for pedestrians.

The project will be designed to accommodate all users and ensure safe access through a heavily congested area. It will also advance GNRC's Regional Transportation Plan by advancing the goal to improve safety for the traveling public. GNRC supports the City's commitment to integrating healthy community design strategies to promote active transportation in their community.

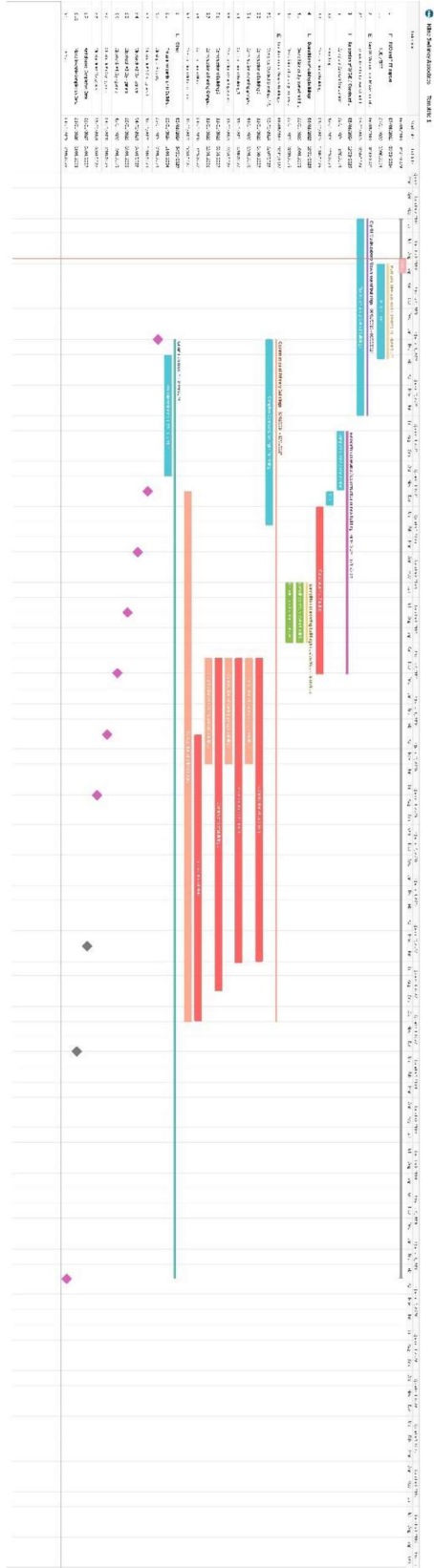
Thank you for your consideration of the City of Murfreesboro's grant application.

Sincerely,  
*Sean Hultzer*  
Sean Hultzer  
Transportation Planning Manager  
Greater Nashville Regional Council

Connecting Communities. Empowering People.  
220 Adams Hwy S, Ste 210 • Nashville, TN 37203 • GNRC.org



# Exhibit F



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("PSA") is by and between the CITY OF MURFREESBORO, TENNESSEE, a municipal corporation ("City"), and HRP RESIDENTIAL, LLC ("Developer") (each sometimes a "Party" and together sometimes the "Parties").

This PSA is being entered into pursuant to, in conjunction with, and contemporaneously with a Development Agreement (the "Development Agreement") between the Parties with respect to the Property. The terms, conditions, and commitments contained in the Development Agreement, including certain rights of the City to require reconveyance of the Property to the City in certain events, shall survive Closing of this PSA and remain in full force and effect according to their terms.

### **1. CONVEYANCE; SURVEY; TITLE COMMITMENT**

In consideration of the covenants contained herein, and other good and valuable mutual considerations, the receipt and sufficiency of which are hereby irrevocably acknowledged and confirmed, City agrees to convey and Developer agrees to accept that certain real estate located on the North side of NW Broad Street, the West side of S. Church Street, and South of the City Hall Plaza and W. Vine Street, together with a vacant lot south of E. Sevier Street between S. Church Street and S. Spring Street, in the City of Murfreesboro, Rutherford County, Tennessee, containing approximately 7.08 +/- acres total, subject to final survey, and identified as "Parcel 1" and "Parcel 2" on the document attached hereto and incorporated herein as **Exhibit A**, together with all appurtenances, rights, privileges, easements and advantages belonging thereto (altogether, the "Property").

Developer shall cause a boundary survey or Alta Survey of the Property (herein referred to as the "Survey"), to be made by a surveyor selected by Developer and approved by the City and duly licensed to perform said services within the State of Tennessee, to determine the true and accurate boundary lines and legal description and square feet contained in the Property. It is the intent and expectation of Developer that the entire 7.08 +/- acre Property will be developed as a single development and not in "phases."

Said Survey should be made and delivered to Developer and City within thirty (30) days of the Effective Date as defined in Section 16. Said Survey shall be prepared in a manner satisfactory to a title company reasonably selected by Developer to issue title insurance on the Property (the "Title Company") to delete the standard survey exception.

Developer shall also order a Title Commitment (the "Commitment") from a Title Company of Developer's choosing. Developer shall promptly advise the City in writing of any objections to

any encumbrances revealed by the Commitment. If all of such objections are not resolved to the satisfaction of Developer prior to the Closing Date, Developer may treat the failure as a Default before Closing and invoke the remedies of Section 10.

Without limiting the foregoing, Developer acknowledges the current existence of utilities and easements on the Property. Developer further acknowledges that the Property has been redeveloped numerous times over the years and that a variety of easements, utilities, structures and debris may be discovered upon excavation and construction of the intended improvements, and that existing utilities may need to be replaced or re-routed.

## **2. CONSIDERATION**

The consideration for the conveyance of the Property by the City shall be the following payment, covenants and commitments of Developer:

A. Developer shall pay the amount of FIVE MILLION DOLLARS (\$5,000,000) in good funds to the City for the Property at Closing.

B. Developer shall design and construct improvements in accord with the Development Agreement. This covenant shall survive the Closing.

## **3. CLOSING**

The closing ("Closing") of the conveyance of the Property shall be held on or before the 10th day following PUD and TIF approval as provided in the Development Agreement. This date, together with any extensions thereof, shall be referred to as the "Closing Date." The Closing shall be held in the offices of the City Attorney for the City of Murfreesboro at 111 West Vine Street, Murfreesboro, Tennessee, or such other location as shall be mutually agreed upon by City and Developer. On the Closing Date all papers legally required to carry out the terms of this PSA with respect to the Property shall be executed and delivered.

Real and personal property ad valorem taxes upon the Property assessed for the year in which the Closing Date occurs, regardless of when due and payable, shall be prorated as of the date of the Closing. If the amount of such taxes for the year in which the Closing Date occurs cannot reasonably be determined, the apportionment of such taxes shall be based upon the amount thereof for the next preceding tax year which shall be readjusted when the amount of such taxes is finally determined.

## **4. RESERVED**

## **5. CONVEYANCE DOCUMENTS**

On the Closing Date, City and Developer, as applicable, shall execute and deliver to each other the following documents and such other documents and instruments of assignment and transfer



as each party may reasonably require from the other in form and substance reasonably acceptable to the party from whom same is requested.

A. City shall execute and deliver to Developer a good and valid Special Warranty Deed in form and substance reasonably acceptable to the City and to Developer, conveying to Developer good and marketable fee simple title to the Property, without exceptions except as such exceptions may be approved by Developer. If Developer does not approve the exceptions, its sole remedy shall be to terminate this PSA and the Development Agreement.

B. City shall execute and deliver to Developer an owner's affidavit or other documentation sufficient to allow title to the Property to be insured to Developer without exceptions for liens for services, labor or materials, or for rights or claims of parties in possession not shown by the public records.

C. Developer shall execute a Lien to Secure Performance that will be recorded by the City to memorialize Developer's obligations with respect to the Property as contained in the Development Agreement and the rights of the City in the event such obligations are not satisfied. The City understands and agrees that Developer will execute a Deed of Trust at the Closing to secure certain anticipated financing, and that such Deed of Trust will be recorded prior to the Lien to Secure Performance, and that all of the City's rights and powers, whether reflected in such Lien to Secure Performance or otherwise contained in this PSA, the Development Agreement, or any other agreement, and whether considered "liens," "reversions," "reverters," or otherwise, will be subordinate to such Deed of Trust.

D. The parties acknowledge that as the Site Plan for the Property is finalized, easements will need to be created both from the City's remaining property to Developer and from Developer to the City for drainage, access, water, sanitary sewer and possibly other utilities and functions. Developer and the City agree to negotiate in good faith with respect to the location, size and other matters related to such easements, and to execute such easements as are reasonably necessary to facilitate the development of the Property.

## **6. CLOSING COSTS**

City shall be responsible for the payment of: all fees, costs and expenses incurred by City in connection with or relating to City's performing and satisfying all terms, conditions and provisions hereof to be performed or satisfied by City, except as specified herein; and, City's attorneys' fees.

Developer shall be responsible for the payment of: the costs of any title binder obtained by Developer and the premiums for any policy of title insurance issued pursuant thereto; all costs incurred by Developer in preparation for the Development Agreement and this PSA; all recording

fees, costs, taxes and charges incurred in connection with recording the deed from City to Developer; except as otherwise set forth herein, all fees, costs and expenses incurred by Developer in connection with or relating to Developer's performing and satisfying all terms, conditions and provisions hereof to be performed or satisfied by Developer; and Developer's attorneys' fees.

**7. REAL ESTATE COMMISSIONS AND FEES**

Under no circumstances shall City or Developer be responsible in whole or in part for any real estate commission or fee in connection with the conveyance of the Property. Each party represents and warrants to the other that no real estate broker or agent other than as set forth in this Section 6 is entitled to the payment of a commission or other compensation with respect to the actions of such party in connection with the execution of this PSA or the conveyance of the Property. Each party shall indemnify and save the other party wholly harmless against any loss, cost or other expense, including reasonable attorney's fees that may be incurred by such other party by reason of any breach of the foregoing warranty.

**8. CONDITIONS TO DEVELOPER'S OBLIGATION TO CLOSE**

The obligation of Developer to close the acquisition of the Property from the City is subject to the following conditions precedent:

- A. On the Closing Date, City shall have performed all covenants and agreements of City contained herein, and all representations and warranties of City contained herein shall be true and accurate;
- B. On or before the Closing Date, Developer shall have closed the purchase of real property from the Rutherford Group;
- C. On or before the Closing Date, PUD Zoning for the Property shall have received final approval from the City Council; and
- D. On or before the Closing Date, the TIF shall have received final approval from all necessary parties.
- E. On the Closing Date, there shall not be any litigation, claim, demand, order, decree, action, proceeding, statute, rule or regulation passed, adopted, issued or proposed by, or pending or threatened by or before, any legislative body or judicial or administrative court or government or governmental agency or other regulatory or administrative authority which could materially and adversely affect Developer's ability to accept the Property and to develop the Property, provided, however, that this condition precedent shall not be affected by City's imposition of any special taxing district or agreement which does not increase the amount of tax to be paid by Developer or subsequent owners or tenants of the Property; and

F. On the Closing Date, the Title Company shall be prepared to issue a title policy insuring Developer's interest in the Property subject only to those matters that Developer has approved.

**9. CONDITIONS TO CITY'S OBLIGATION TO CLOSE**

The obligation of City to close the acquisition of the Property by the Developer is subject to the following conditions precedent:

A. On the Closing Date, Developer shall have performed all covenants and agreements of Developer contained herein, and all representations and warranties of Developer contained herein shall be true and accurate;

B. On or before the Closing Date, Developer shall have closed the purchase of real property from the Rutherford Group;

C. On or before the Closing Date, PUD Zoning for the Property shall have received final approval from the City Council;

D. On or before the Closing Date, the TIF shall have received final approval from all necessary parties; and

E. On the Closing Date, there shall not be any litigation, claim, demand, order, decree, action, proceeding, statute, rule or regulation passed, adopted, issued or proposed by, or pending or threatened by or before, any legislative body or judicial or administrative court or government or governmental agency or other regulatory or administrative authority which could materially and adversely affect City's ability to convey the Property to Developer.

**10. AUTOMATIC TERMINATION**

The Parties agree that if either the PUD Zoning for the Property or the TIF for the Project have not been finally approved by all necessary parties by December 31, 2024, unless this date has been extended by mutual agreement, this PSA shall automatically terminate.

**11. COVENANTS, REPRESENTATIONS AND WARRANTIES OF CITY**

City covenants, represents and warrants to Developer that:

A. City has not received or issued any actual notice that the Property is not in compliance with any applicable statute, ordinance, rule, regulation, requirement or code.

B. City has not and is not presently using, and, to the best of City's actual knowledge, based solely upon the information contained in the Phase I Environmental Report supplied to Developer, no other person or entity has used the Property for the storage, disposal, treatment or release of hazardous substances, hazardous waste or hazardous material, as such terms are defined in any applicable statute, ordinance, rule, regulation, requirement or code, the removal of which is

required or the maintenance of which is prohibited or penalized thereby, and the Property is free of all such hazardous substances, waste and material.

C. There are no encumbrances, liens or charges of any kind upon the Property which will not be satisfied and discharged in full by City and released, on or before or as soon as reasonably possible after the Closing Date, in form reasonably satisfactory to Developer.

D. After the Effective Date, City will not enter into any contract, agreement or other arrangement, written or oral, relating to the ownership, use or operation of the Property, which will unreasonably interfere with Developer's intended use of the Property.

E. There is no pending nor, to the best of City's actual knowledge, threatened litigation that does or will materially and adversely affect the Property or its value or that does or will materially and adversely affect City and its ownership of the Property.

F. There are no taxes or assessments on the Property which are presently due and payable.

G. The Property is not located within a special sanitary sewer assessment district and is not subject to the payment of a sewer assessment fee.

H. The City will take, or cause to be taken, all action necessary to cause the foregoing warranties and representations to remain true and correct in all respects from the date hereof through the Closing Date and will refrain from taking any action which would cause, or threaten to cause, any such warranties and representations to become incorrect or untrue at any time during such period, unless this PSA contemplates the taking of such action and the consequent modification of certain warranties and representations.

I. City agrees that the truthfulness of each of the foregoing representations and warranties in all material respects, as of the Effective Date and as of the Closing date, is a condition precedent (*i.e.*, a Closing Condition) to the performance by Developer of its obligations under this Agreement. If any of the foregoing representations and warranties is not true when made in all material respects, Developer may consider such misrepresentation to be a default under this Agreement, entitling Developer to pursue the remedies set forth in Section 10. If any of the foregoing representations and warranties is true as of the Effective Date, but is not true as of the Closing Date as a result of a matter, circumstance or event beyond the reasonable control of City, then Developer shall not be entitled to consider the untruth of the representation or warranty as an event of default under this Agreement, but instead Developer may, at its election and as its sole remedy, terminate this Agreement by delivery of written notice to City, and thereafter this Agreement shall be null and void and neither party shall have any further obligations or liabilities hereunder, except for the those that expressly survive termination. The representations and warranties of City set forth in this Section 8 shall survive the Closing for a period of six (6) months.

J. Except as expressly set forth in this Agreement, the Property is being sold and conveyed “AS IS” and “WITH ALL FAULTS” and City has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability or zoning of the Property, or with respect to use and occupancy restrictions, compliance with Environmental Laws, and all legal requirements affecting or relating to the Property. Developer acknowledges that, except as expressly set forth in this Agreement, no such representations or warranties, express or implied, have been made. The terms and covenants of this paragraph shall survive the Closing and the delivery of the Deed for the Property or any termination of this Agreement.

## **12. COVENANTS, REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Developer covenants, represents and warrants to City that:

A. Developer intends to use the Property for the purposes described in the Development Agreement.

B. Developer understands that, at any time, the Property may be made subject to a governmental district, zone or agreement dedicating or allocating sales taxes, property taxes or other tax proceeds generated on or from the Property or uses thereof, for a special use or uses and Developer agrees for itself and, by inclusion of a provision in all subsequent deeds or leases of the Property, for any and all future owners and tenants of its Property to consent and raise no objection to any such district, zone or agreement, provided said action does not prevent Developer from developing the Property for its intended purpose and provided further that said action does not increase the amount of tax paid by Developer or subsequent owners or tenants of the Property.

C. Developer acknowledges that City shall have no obligation in its capacity as a municipal government to take any action, or to refrain from taking any action, or to waive any fee or procedure to which Developer’s proposed use or development of the Property would be subject if the Property were being sold by a private person or entity rather than a municipal government. Approval of this PSA or any of its terms or provisions shall not in any way function as a substitute for any approval of any use or development of the Property by Developer which is otherwise required by local, state or federal law.

D. By executing this PSA Developer is representing that he is not directly or indirectly owned by any member of the Murfreesboro City Council, by any member of the Murfreesboro Gateway Commission, or by any officer of the City (said term to include the City Manager, City

Recorder, City Treasurer, City Judge and City Attorney) or by any of the City's negotiators or representatives, including but not limited to the Rutherford County Chamber of Commerce Economic Development Director and the Assistant City Manager. Developer represents and commits that no compensation, kickback, gratuity, or other payment or gift of value has been or will be made by Developer or any intended owner or tenant of the Property to any of the individuals hereinabove mentioned; ordinary campaign contributions are not hereby prohibited.

E. Developer will take, or cause to be taken, all action necessary to cause the foregoing warranties and representations to remain true and correct in all respects from the date hereof through the Closing Date and will refrain from taking any action which would cause, or threaten to cause, any such warranties and representations to become incorrect or untrue at any time during such period, unless this PSA contemplates the taking of such action and the consequent modification of certain warranties and representations.

F. The covenants, warranties and provisions set forth in the foregoing provisions are clearly intended to survive the closing, shall not merge into the documentation from this transaction, and shall survive the closing of this transaction and shall remain effective until substantial completion of the Project as defined in the Development Agreement. Developer shall notify City of any material change which occurs in or pertaining to the foregoing warranties and representations from the date hereof through the Closing Dates.

### **13. DEFAULT PRIOR TO CLOSING**

If either party breaches this PSA, or any of the provisions herein, or if any representation or warranty made by a party in this PSA is untrue, false or incorrect, or if a party shall not have performed any of that party's obligations herein set forth prior to the Closing Date, then the other party shall be entitled, as its sole and exclusive remedy at law or in equity, to:

A. Close the contemplated transaction, thereby waiving such breach, default or failure;  
or

B. Postpone closing hereunder for thirty (30) days, or such longer period of time as the non-breaching party may designate (not to exceed 90 days unless further extended by mutual agreement), during which time any such breach, default or failure shall be cured by the breaching party and if not then cured, the non-breaching party may elect either Section 10.A. above or terminate this PSA. If Developer elects to terminate, City and Developer shall be released from further liability to each other under this PSA.

**14. CONDEMNATION**

If on or before the Closing Date a Substantial Portion, as hereinafter defined, of the Property becomes the subject of a pending or threatened condemnation or similar proceeding or is taken through any power of eminent domain, this PSA shall be null and void, and City and Developer shall be released from further liability to each other under this PSA. The term "Substantial Portion" shall mean a portion of the Property which will render the Property unsuitable for development as intended by Developer under the Development Agreement, if taken by a governmental entity and dedicated to the public use that is the basis for such taking.

If on or before the Closing Date less than a Substantial Portion of the Property becomes the subject of a pending or threatened condemnation or similar proceeding, or is taken through any power of eminent domain, Developer shall have the option, exercisable by written notice to City on or before the earlier of: (a) the Closing Date; or (b) the expiration of thirty (30) calendar days after Developer's receipt of notice of such taking or pending or threatened condemnation or similar proceeding, either: (i) to terminate this PSA in which event City and Developer shall be released from further liability to each other under this PSA; or (ii) to close the purchase of the Property under the terms hereof, in which event City shall: (a) assign to Developer all of City's right, title and interest in and to such pending or threatened condemnation or similar proceeding and all sums payable to City in connection therewith; and (b) fully cooperate with Developer in Developer's defense and settlement of such pending or threatened condemnation or similar proceeding.

**15. APPLICABLE LAW**

The validity, construction, interpretation and performance of this PSA shall always be governed in accordance with procedural and substantive laws of the State of Tennessee, notwithstanding any choice of law, principle or rule of law to the contrary, and venue for any action concerning any aspect of this PSA or either party's performance hereunder shall be in the Circuit or Chancery Courts for Rutherford County, Tennessee.

**16. TIME**

Time is of the essence of this PSA. Should the day for performing any act hereunder fall on a Saturday, Sunday or legal holiday, performance of the act on the next business day shall be timely. In the event a Force Majeure event impacts City's or Developer's ability to timely perform an element of this PSA, each agrees it shall consider a reasonable extension of the time of performance.

**17. REPRESENTATION BY COUNSEL**

Developer acknowledges that it is and has been represented by legal counsel in the negotiation and preparation of this PSA. Therefore, this PSA shall not be construed in favor of

Developer on the basis that it was drafted by City or on the basis that City is a governmental entity. It shall be construed, in the event interpretation is necessary, with due consideration for the representations made by Developer, both oral and written, to City and to City's representatives, the Murfreesboro Gateway Commission, and the Murfreesboro City Council. Developer shall be deemed to be fully familiar with City's laws and regulations applicable to the Property and City shall have no special duty to specifically disclose or discuss its laws and regulations applicable to land development with Developer.

**18. NOTICES TO CITY AND DEVELOPER**

A. Notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and are deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email, provided receipt is confirmed, and if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the date of delivery or first attempted delivery if sent by certified or registered mail (in each case, return receipt requested, postage pre-paid).

B. Notices must be sent to the respective parties at the following addresses (or at such other address for a party as specified in a Notice given in accordance with this section):

**CITY**

City Manager  
City of Murfreesboro  
11 W. Vine Street  
Murfreesboro, TN 37130  
[ctindall@murfreesborotn.gov](mailto:ctindall@murfreesborotn.gov)

**WITH A COPY TO**

City Attorney  
City of Murfreesboro  
111 W. Vine Street  
Murfreesboro, TN 37130  
[atucker@murfreesborotn.gov](mailto:atucker@murfreesborotn.gov) and  
[dives@murfreesborotn.gov](mailto:dives@murfreesborotn.gov)

**DEVELOPER**

HRP Residential, LLC  
Attn: Dean Montgomery and Ryan Little  
5100 Maryland Way  
Brentwood TN 37027  
[ryan@hrpresidential.com](mailto:ryan@hrpresidential.com) and [dean@hrpresidential.com](mailto:dean@hrpresidential.com)

**WITH A COPY TO**



**19. EFFECTIVE DATE**

This PSA shall take effect and become legally binding upon both parties on the date the last party to sign (the "Effective Date") provided that this PSA shall have no force or effect until approved by the Murfreesboro Planning Commission and the Murfreesboro City Council.

IN WITNESS WHEREOF, this PSA has been executed by City and Developer on the dates set forth below their respective signatures hereto.

**CITY OF MURFREESBORO**

**HRP RESIDENTIAL, LLC**

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

By \_\_\_\_\_  
Printed name: \_\_\_\_\_

ATTEST:

title: \_\_\_\_\_

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

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

APPROVED AS TO FORM:

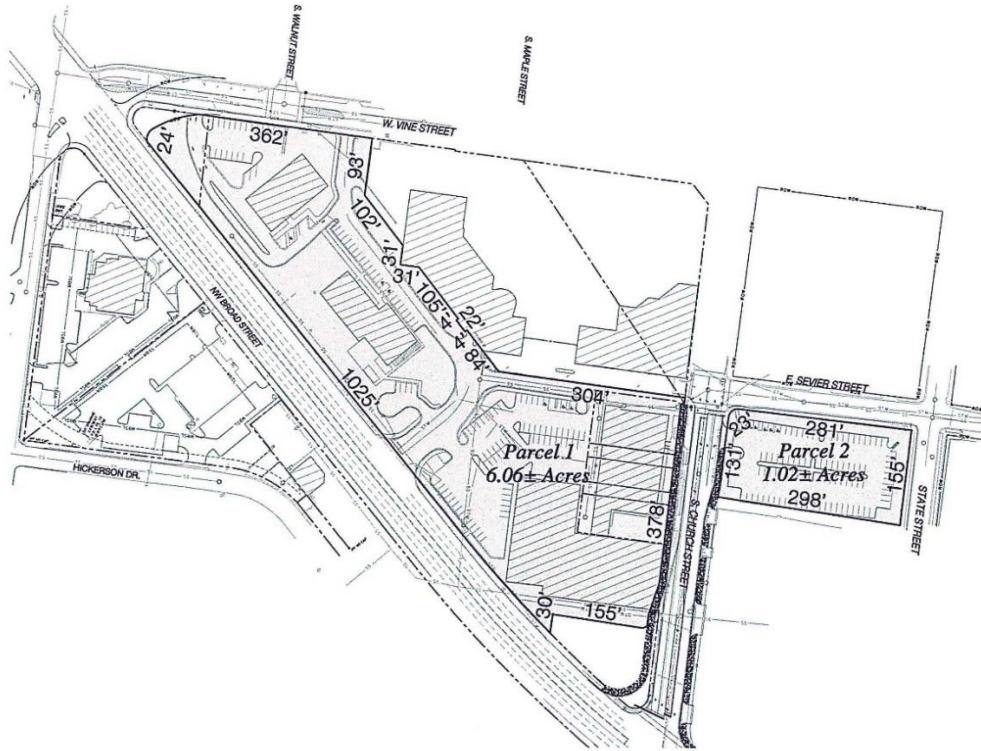
\_\_\_\_\_  
Adam F. Tucker, City Attorney

Approved by Murfreesboro Planning Commission: \_\_\_\_\_, 2023.

Approved by Murfreesboro City Council: \_\_\_\_\_, 2023.

**Exhibit A**

**KEYSTONE DEVELOPMENT AGREEMENT/PURCHASE SALE AGREEMENT  
EXHIBIT A: DEVELOPMENT AREA PLAN**



# COUNCIL COMMUNICATION

Meeting Date: 8/31/2023

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**Item Title:** Contract to Purchase Transit Buses  
**Department:** Transportation (Transit)  
**Presented by:** Russ Brashear, Assistant Transportation Director  
**Requested Council Action:**

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

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## Summary

Purchase of Transit buses to expand services.

## Staff Recommendation

Approve Contract with Mid-South Bus Center to purchase three Transit buses.

## Background Information

In May 2023, the City issued a Request for Competitive Sealed Proposals to purchase replacement buses. Mid-South Bus Center was the selected Vendor with a cost per bus of \$141,193. This cost was significantly lower than anticipated and left room in our budget for three additional buses to be purchased, however FTA procurement regulations would not allow the additional bus purchases because the options were not in the solicitation.

The department posted another solicitation for three buses in early July. Two proposals were received, and Mid-South came in again with the lowest price of \$141,193 per bus for a total contract price of \$423,579.

This purchase will be funded with \$384,751 in Federal and State Grants. The remaining local portion of \$38,828 will be funded out of the General Fund using the reserved prior year funds.

## Council Priorities Served

*Responsible budgeting*

Use of federal and state funds benefits the City by reducing the amount of City revenues that must be appropriated for transit-related expenses.

## Fiscal Impacts

These funds are appropriately budgeted in the FY24 Budget.

## Attachments:

Contract with Mid-South Bus Center

## **Agreement for Transit Vehicles**

This Agreement is entered into and effective as of \_\_\_\_\_ (“Effective Date”), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Mid-South Bus Center, Inc.**, a Corporation of the State of Tennessee (“Contractor”).

This Agreement consists of the following documents, all of which are incorporated into this Agreement as is fully stated verbatim herein:

- This document
- RFCSP-04-2024- Transit Vehicles issued July 11, 2023 (the “Solicitation”);
- Exhibit A- Federal and State Required Clauses for Rolling Stock purchases, as attached;
- Contractor’s Proposal, dated August 3, 2023 (“Contractor’s Proposal”);
- Contractor’s Price Proposal, dated August 3, 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, Exhibit A – Federal and State Required Clauses for Rolling Stock purchases (including all Federal and State laws and regulations referenced or implicated therein);
- Second, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Third, this Agreement;
- Fourth, the Solicitation; and
- Lastly, Contractor’s Proposal.

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

Contractor shall provide and City shall purchase three (3) Transit Vehicles based on Contractor’s Proposal, Price Proposal and the specifications set forth in “RFCSP-04-2024- Transit Vehicles.”

**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 and Delivery.**

The price for the goods and other items to be provided under this Agreement is set forth in the Price Proposal, reflecting a per unit price of \$141,193.00 (One Hundred Forty-One Thousand, One Hundred Ninety-Three Dollars). **The City shall purchase three (3) transit vehicles for a total contract price of \$423,579.00 (Four Hundred Twenty-Three Thousand, Five Hundred Seventy-Nine and 00/100 Dollars).** 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. All invoices must be submitted to: [accountspayable@murfreesborotn.gov](mailto:accountspayable@murfreesborotn.gov) with a copy to the Contact person.

- 4. 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.

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

- 6. Warranty.** The transit vehicle warranty shall be 5 years/100,000 miles; engine warranty shall be five (5) years/100,000 miles; transmission warranty shall be seven (7) years/unlimited miles. All other warranties and coverage as per specifications listed on RFCSP-28-2023 and Contractor's Proposal. Contractor shall execute any documents or take other action(s) as may be required to ensure that all manufacturer warranties are transferred to and inure to the benefit of the City.

**7. Indemnification.**

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

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

- 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:  
City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

If to Contractor:  
Mid-South Bus Center  
Attn: Jerry K. Remus  
3512 Bill Smith Drive  
Murfreesboro, TN 37129  
jremus@thebuscenter.com

**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, 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.
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 the "Effective Date" first written above.

**City of Murfreesboro, Tennessee**

**Mid-South Bus Center, Inc.**

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

DocuSigned by:  
By: Jerry K. Remus  
JERRY K. REMUS, Government Contracts Manager

Approved as to form:

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney



EXHIBIT A

**FEDERAL AND STATE REQUIRED CLAUSES  
FOR  
ROLLING STOCK PURCHASES**

The City of Murfreesboro's (the "City," "Owner," or "Agency" as appropriate) purchasing procedures are governed by the State of Tennessee, the City of Murfreesboro, and various Federal laws, executive orders, and regulations, by Office of Management and Budget Circular A-102, Executive Order 12612, Federalism and Federal Transit Administration Circular 4220.1F "Third Party Contracting Requirements". These require, among other things, that purchases (including purchases for fixed assets, materials and supplies, construction, and/or services) utilizing federal grant funds be made according to approved plans and specifications, including the Federal and State clauses set forth below:

**FEDERAL CLAUSES**

**1. No Government Obligation to Third Parties**

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**2. Pre-Award and Post-Delivery Audit Requirements**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

**3. Program Fraud and False or Fraudulent Statements and Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program

## EXHIBIT A

Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **4. Access to Records and Reports**

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **5. Federal Changes**

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **6. Termination**

#### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination.

## EXHIBIT A

The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Cause (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

## **7. Civil Rights Laws and Regulations**

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

## EXHIBIT A

- b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

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The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

### 8. Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

The contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be

## EXHIBIT A

entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

### **9. Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

### **10. Incorporation of Federal Transit Administration (FTA) Terms**

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

### **11. Debarment and Suspension**

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and

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subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

### **12. Buy America Requirements**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

### **13. Cargo Preference Requirements**

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities
- b) pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- c) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- d) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **14. Fly America**

- a) Definitions. As used in this clause—
  - 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
  - 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. – Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

**15. Violation and Breach of Contract**

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

Remedies



## EXHIBIT A

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

### Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

### Rights and Remedies

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The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**16. Notification to FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

**17. Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any

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lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

**18. Clean Air Act and Federal Water Pollution Control Act**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

**19. Contract Work Hours and Safety Standards Act**

- a) Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not

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apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- e) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

**20. Energy Conservation**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**21. Safe Operation of Motor Vehicles  
Seat Belt Use**

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The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

### **22. Prohibition on certain telecommunications and video surveillance services or equipment**

Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

## **STATE CLAUSES**

### **23. 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

### **24. Lobbying.**

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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

**25. 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.

**26. 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.

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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.

### **27. Public Notice.**

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee, Department of Transportation." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

### **28. 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 in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

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

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

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

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.

### **29. 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

EXHIBIT A

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.”



# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** Zetag 8160 Polymer Contract Amendment

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Contract amendment for the purchase of Zetag 8160 Polymer used at the Water Resource Recovery Facility (WRRF), from Solenis LLC.

**Staff Recommendation**

Approve the amendment to the existing contract for the purchase of Zetag 8160 Polymer from Solenis LLC.

**Background Information**

TDEC and the EPA require proper disposal of solids removed from the treatment process. In 2000, the WRRF began dewatering sludge, so that the solids could be disposed in the landfill. Fournier dewatering presses using Zetag 8160 Polymer as a coagulant to dewater sludge. Fournier exclusively uses Zetag 8160 Polymer, and its effectiveness has been confirmed through in-house and independent testing.

**Council Priorities Served**

*Responsible budgeting*

Prices reflect an approximate 3.5% annual increase over the three-year contract term, which are modest increases compared to many other materials. Furthermore, the three-year term allows for budget forecasting over a significant horizon.

**Fiscal Impact**

The expense, estimated at \$350,000, is funded by MWRD's FY24 operating budget.

**Attachments**

Contract Amendment with Solenis

**FIRST AMENDMENT TO  
AGREEMENT FOR PURCHASE OF POLYMER PRODUCTS**

This First Amendment to the Agreement for Polymer ZETAG 8160, dated August 20, 2020 (“Contract”) is effective as of \_\_\_\_\_, by and between the **City of Murfreesboro** (“City”), a municipal corporation of the State of Tennessee and **Solenis LLC**, a Corporation of the State of Delaware duly authorized to conduct business in the State of Tennessee (“Contractor”).

**WHEREAS**, City and Contractor entered into the Contract August 20, 2020, for the purchase of polymer products;

**WHEREAS**, pursuant to Section 2 of the Contract, the term of the Contract may be extended by mutual agreement of the parties; and

**WHEREAS**, pursuant to Section 12 of the Contract, said Contract may be modified by written amendment executed by all parties; and

**WHEREAS**, the City and Contractor have agreed on a price increase as listed on Exhibit A desire to extend the Contract term for an additional three years;

NOW, THEREFORE, City and Contractor hereby amend the Contract as follows:

1. The parties agree to the price increase as follows.

PRODUCT	Price	Effective Dates
ZETAG 8160 SSK NA 500KG	\$1.92	October 1, 2023-September 30, 2024
ZETAG 8160 SSK NA 500KG	\$1.99	October 1, 2024-September 30, 2025
ZETAG 8160 SSK NA 500KG	\$2.06	October 1, 2025-September 30, 2026

2. The parties agree to extend the term of the contract from October 1, 2023, to September 30, 2026.
3. All other terms of the Contract, remain in full force and effect and are otherwise unchanged by this First Amendment.

**CITY OF MURFREESBORO**

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

**SOLENIS LLC**

DocuSigned by:  
By: Wendy Mueller  
Wendy Mueller, Regional Pricing Director

**APPROVED AS TO FORM:**

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

Exhibit A to Amendment One



solenis.com

August 17, 2023

Mr. Greg Hicks  
City of Murfreesboro  
300 Southeast Broad Street  
Murfreesboro, TN 37130  
[ghicks@murfreesborotn.gov](mailto:ghicks@murfreesborotn.gov)

RE: Pricing for Zetag 8160

Solenis LLC is pleased to offer the following pricing for Zetag 8160:

<b>PRODUCT</b>	<b>PRICE</b>	<b>EFFECTIVE DATES</b>
<b>ZETAG 8160 SSK NA 500KG</b>	\$1.92	October 1, 2023 - September 30, 2024
<b>ZETAG 8160 SSK NA 500KG</b>	\$1.99	October 1, 2024 - September 30, 2025
<b>ZETAG 8160 SSK NA 500KG</b>	\$2.06	October 1, 2025 - September 30, 2026

Either party can terminate this agreement with 60 days of written notice.

Solenis manufactures among the highest quality, most cost-effective polymers in the world and provides reliable technical service and sales support to our customers.

Thank you for the opportunity to continue to be your polymer supplier.

Sincerely,

Jessie Dill  
Regional Sales Manager  
Midwest, NA

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** FY24 Sewer Rehabilitation Contract Approval

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

FY24 Sewer Rehabilitation Contract from SBW Constructors.

**Staff Recommendation**

Approve the construction agreement with SBW Constructors using the Alternate A Bid pricing subject to Legal's approval of surety and insurance.

**Background Information**

On October 20, 2022, Council approved the design of MRWD's 2023-2024 Rehabilitation Project. SBW Constructors was the only bidder and included in its bid an alternative rehabilitation process. The project engineer and staff recommend contracting for the alternatives process, which does not affect the unit priced bid.

It should be noted that bids for conventional sewer rehabilitation work are significantly higher than in the past, likely due to increasing in construction costs from the inflationary effect of higher fuel prices, supply chain limitations, and a flooded market due to the American Rescue Plan (ARP) grants and limited contractor pool. All factors contributing to has significant backlog of work.

Private development sewer infrastructure warranty work, totaling approximately \$390,000 will be reimbursed by Developers.

**Council Priorities Served**

*Expand infrastructure*

Sanitary sewer rehabilitation stops infiltration and inflow of groundwater into the sewer system and extends the sewer infrastructure life by prolonging the need for total replacement.

**Fiscal Impact**

The expense, \$6,942,454, will be funded through a combination of MWRD's FY24 operating budget, working capital reserves, and reimbursements from developers for warranty work.

**Attachments**

1. LJA Recommendation with Bid Tabulation
2. Construction Agreement

July 18, 2023

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

**Reference: Recommendation of Award – Murfreesboro 2023-2024 Rehabilitation Project; MWRD Project No. 22134**

Dear Ms. Smith:

Bids for the Murfreesboro 2022 Rehabilitation Project were received on April 20, 2023. In response to the project advertisement, we received one (1) bid packet. Although only one bid packet was received, there was positive participation in the bidding process from around the country as eight (8) contractors picked up plans and attended the Pre-Bid Conference.

SBW Constructors, LLC was the lone and apparent low bidder for the project. The Base Bid is \$8,681,449.00. The Alternate A (in lieu of Items 1 in the Base Bid) is \$1,620,605.00. The Base Bid Items 2 through 15 including Alternate A (in lieu of Base Bid Item 1) totals is \$6,942,454.00.

SBW Constructors, LLC, has recently completed several projects with the Murfreesboro Water Resources Department with satisfactory results. Additionally, as required in the bid package, each bidder was to submit a list of major subcontractors. There were two subcontractors listed, Inliner Solutions and Musson Brothers. Musson Brothers has performed recent work for the Murfreesboro Water Resources Department (MWRD) with satisfactory results. Inliner Solutions has not performed recent work for MWRD; however, they have performed satisfactory work elsewhere throughout the nation for others and meet the necessary manufacturer and superintendent qualifications specified.

Per Article 14.01.D in the Instructions to Bidders, MWRD at their discretion and benefit, could decide to reject or accept the Alternate A in lieu of a portion of the Base Bid. It is recommended that MWRD staff accept SBW Constructors, LLC as the successful, responsive, and responsible low bidder with Alternate A (in lieu of Base Bid Items 1) in combination with the other Base Bid Items 2 through 15 for a total contract value of \$6,942,454.00. This allows for an overall lower contract amount than just accepting the Base Bid items. Additionally, less temporary easement acquisition will be required with the associated property owners by accepting the Alternate A items.

A certified tabulation of the bid is attached for your use. We look forward to working with you on this project.

Sincerely,

**LJA Engineering, Inc.**

A handwritten signature in blue ink, appearing to read "J. Gary Heusser". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J. Gary Heusser, PE  
Project Manager

Attachment – Certified Bid Tabulation

**Murfreesboro 2023-24 HOBAS Sewer Rehabilitation Project - Certified Bid Tabulation**  
**MWRD Project No. 22134**

**SBW Contractors Inc.**

Item No.	Description	Estimated Qty	Unit	Unit Price	Total Price
<b>1</b>	<b>36-inch Gravity Sewer, Hutchinson Farms</b>				
a.	DIP 350 PSI - Open Cut Replacement from Access Point to Access Point for Sanitary Sewer Mainline - <b>LABOR ONLY</b>	1,420	LF	\$ 1,065.00	\$ 1,512,300.00
b.	DIP 350 PSI - Open Cut Replacement from Access Point to Access Point for Sanitary Sewer Mainline - <b>MATERIALS ONLY</b>	1,420	LF	\$ 890.00	\$ 1,263,800.00
c.	Mainline Sewer Point Repair - CIPP Sectional Repair up to 5-ft	6	EA	\$ 49,750.00	\$ 298,500.00
d.	72-inch Diameter Manhole with Watertight Frame and Cover	5	EA	\$ 30,000.00	\$ 150,000.00
e.	Rock Excavation	1,000	CY	\$ 135.00	\$ 135,000.00
<b>2</b>	<b>24-Inch Gravity Sewer</b>				
a.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	1	EA	\$ 7,300.00	\$ 7,300.00
<b>3</b>	<b>18-Inch Gravity Sewer</b>				
a.	10.5 mm CIPP	771	LF	\$ 251.00	\$ 193,521.00
b.	9.0 mm CIPP	773	LF	\$ 238.00	\$ 183,974.00
c.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 17,250.00	\$ 17,250.00
d.	Pre-liner for Sanitary Sewer Mainline	300	LF	\$ 8.00	\$ 2,400.00
e.	Heavy Cleaning for Mainline	300	LF	\$ 2.00	\$ 600.00
<b>4</b>	<b>15-Inch Gravity Sewer</b>				
a.	7.5 mm CIPP	67	LF	\$ 670.00	\$ 44,890.00
b.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 21,500.00	\$ 21,500.00
c.	Pre-liner for Sanitary Sewer Mainline	67	LF	\$ 7.00	\$ 469.00
d.	Heavy Cleaning for Mainline	67	LF	\$ 2.00	\$ 134.00
e.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	2	EA	\$ 6,550.00	\$ 13,100.00
<b>5</b>	<b>12-Inch Gravity Sewer</b>				
a.	Install 12-inch Carrier DIP within existing 18-inch Casing Pipe	141	LF	\$ 475.00	\$ 66,975.00
b.	9 mm CIPP	177	LF	\$ 140.00	\$ 24,780.00
c.	7.5 mm CIPP	888	LF	\$ 125.00	\$ 111,000.00
d.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 10,500.00	\$ 10,500.00
e.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Paved	1	EA	\$ 15,000.00	\$ 15,000.00
f.	Mainline Sewer Point Repair 12-foot to 18-foot Depth - Open Cut Repair up to 20 Feet in Length - Paved	1	EA	\$ 25,000.00	\$ 25,000.00
g.	Mainline Sewer Point Repair - CIPP Sectional Liner Repair up to 10 Feet	1	EA	\$ 11,000.00	\$ 11,000.00
h.	Pre-liner for Sanitary Sewer Mainline	140	LF	\$ 6.50	\$ 910.00
i.	Heavy Cleaning for Mainline	100	LF	\$ 2.00	\$ 200.00
j.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 6-foot to 12-foot Depth	1	EA	\$ 5,000.00	\$ 5,000.00
k.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	1	EA	\$ 6,600.00	\$ 6,600.00
<b>6</b>	<b>10-inch Gravity Sewer</b>				
a.	6.0 mm CIPP	1,055	LF	\$ 102.00	\$ 107,610.00
b.	12-inch Upsize PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point - 0-foot to 12-foot Depth	148	LF	\$ 430.00	\$ 63,640.00
c.	Pipe Burst from 10-inch to 12-inch HDPE DR11	236	LF	\$ 600.00	\$ 141,600.00
d.	Mainline Sewer Point Repair - CIPP Sectional Liner Repair up to 5 Feet	3	EA	\$ 6,300.00	\$ 18,900.00
e.	Heavy Cleaning for Mainline	100	LF	\$ 2.00	\$ 200.00
f.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 6-foot to 12-foot Depth	1	EA	\$ 4,750.00	\$ 4,750.00
g.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	3	EA	\$ 6,000.00	\$ 18,000.00
h.	Service Lateral Repair - CIPP Connection Only (Up to 3 Linear Feet)	1	EA	\$ 5,200.00	\$ 5,200.00
<b>7</b>	<b>8-inch Gravity Sewer</b>				
a.	7.5 mm CIPP	103	LF	\$ 320.00	\$ 32,960.00
b.	6 mm CIPP	6,932	LF	\$ 93.00	\$ 644,676.00

c.	12-inch Upsize PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point - 0-foot to 14-foot Depth	290	LF	\$ 400.00	\$ 116,000.00
d.	8-inch PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point - 0-foot to 6-foot Depth	788	LF	\$ 245.00	\$ 193,060.00
e.	8-inch PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point - 6-foot to 12-foot Depth	946	LF	\$ 285.00	\$ 269,610.00
f.	8-inch PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point - 12-foot to 18-foot Depth	535	LF	\$ 325.00	\$ 173,875.00
g.	Install Upsized 12-inch Carrier DIP within existing 18-inch Casing Pipe - Under CSX Railroad	166	LF	\$ 385.00	\$ 63,910.00
h.	Mainline Sewer Point Repair 0-foot to 6-foot Depth - Open Cut Repair up to 20 Feet in Length - Paved	1	EA	\$ 9,850.00	\$ 9,850.00
i.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Paved	4	EA	\$ 10,800.00	\$ 43,200.00
j.	Mainline Sewer Point Repair 12-foot to 18-foot Depth - Open Cut Repair up to 20 Feet in Length - Paved	2	EA	\$ 17,000.00	\$ 34,000.00
k.	Mainline Sewer Point Repair 0-foot to 6-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 4,900.00	\$ 4,900.00
l.	Mainline Sewer Point Repair 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 8,975.00	\$ 8,975.00
m.	Mainline Sewer Point Repair 12-foot to 18-foot Depth - Open Cut Repair up to 20 Feet in Length - Unpaved	1	EA	\$ 12,900.00	\$ 12,900.00
n.	Mainline Sewer Point Repair at Service Connection 6-foot to 12-foot Depth - Open Cut Repair up to 20 Feet in Length and Connect to Existing Lateral Line - Paved	2	EA	\$ 12,000.00	\$ 24,000.00
o.	Mainline Sewer Point Repair at Service Connection 12-foot to 18-foot Depth - Open Cut Repair up to 20 Feet in Length and Connect to Existing Lateral Line - Paved	1	EA	\$ 18,995.00	\$ 18,995.00
p.	Mainline Sewer Point Repair - CIPP Sectional Liner Repair up to 5 Feet	7	EA	\$ 6,250.00	\$ 43,750.00
q.	Mainline Sewer Point Repair - CIPP Sectional Liner Repair up to 10 Feet	1	EA	\$ 11,000.00	\$ 11,000.00
r.	Mainline Sewer Sectional Open Cut Repair 0-foot to 6-foot Depth - Paved	22	LF	\$ 455.00	\$ 10,010.00
s.	Mainline Sewer Sectional Open Cut Repair 6-foot to 12-foot Depth - Paved	115	LF	\$ 485.00	\$ 55,775.00
t.	Mainline Sewer Sectional Open Cut Repair 12-foot to 18-foot Depth - Paved	35	LF	\$ 570.00	\$ 19,950.00
u.	Heavy Cleaning for Mainline	300	LF	\$ 2.00	\$ 600.00
v.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 0-foot to 6-foot Depth	3	EA	\$ 3,300.00	\$ 9,900.00
w.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 6-foot to 12-foot Depth	7	EA	\$ 8,000.00	\$ 56,000.00
x.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 12-foot to 18-foot Depth	10	EA	\$ 10,600.00	\$ 106,000.00
y.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	43	EA	\$ 5,600.00	\$ 240,800.00
z.	Service Lateral Repair - CIPP Connection Only (Up to 3 Linear Feet)	21	EA	\$ 4,750.00	\$ 99,750.00
aa.	Core and Brush only	8	EA	\$ 375.00	\$ 3,000.00
<b>8</b>	<b>Vine Street 8-inch Gravity Sewer</b>				
a.	8-inch Gravity Sewer - PVC SDR 26 Mainline Sewer Open Cut Replacement From Access Point to Access Point 6-foot to 12-foot Depth	201	LF	\$ 350.00	\$ 70,350.00
b.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 0-foot to 6-foot Depth	11	EA	\$ 5,400.00	\$ 59,400.00
c.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 6-foot to 12-foot Depth	2	EA	\$ 10,400.00	\$ 20,800.00
d.	Lining 48-inch Diameter Manhole	5	VF	\$ 375.00	\$ 1,875.00
<b>9</b>	<b>Walnut Street 8-inch Gravity Sewer</b>				
a.	6 mm CIPP	205	LF	\$ 165.00	\$ 33,825.00
b.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet	2	EA	\$ 6,000.00	\$ 12,000.00
c.	Lining 48-inch Diameter Manhole	15	VF	\$ 375.00	\$ 5,625.00
d.	Install New 48-inch Diameter Precast Manhole, 6-foot to 12-foot depth	1	EA	\$ 13,600.00	\$ 13,600.00
<b>10</b>	<b>Service Laterals</b>				
a.	Service Lateral Replacement - Open Cut up to 25-Linear Feet - 6-foot to 12-foot Depth at Manhole	5	EA	\$ 9,400.00	\$ 47,000.00
b.	Service Lateral Repair - CIPP connection and up to 25 Linear Feet at Manhole	1	EA	\$ 5,625.00	\$ 5,625.00
c.	Pre CCTV Inspection of Service Laterals (All Mainline Diameters)	89	EA	\$ 500.00	\$ 44,500.00
d.	Remove Intruding Lateral Tap or Gasket	2	EA	\$ 550.00	\$ 1,100.00
e.	Remove Existing Top Hat CIPP Lateral	4	EA	\$ 550.00	\$ 2,200.00
f.	Dye Test Lateral	20	EA	\$ 300.00	\$ 6,000.00
g.	Repair Service Lateral- CIPP Beyond 25-Linear Feet	100	LF	\$ 50.00	\$ 5,000.00
h.	Replacement - 0 foot to 6 foot Depth Cut Beyond First 25-Linear Feet	100	LF	\$ 115.00	\$ 11,500.00
i.	Replacement - 6 foot to 12 foot Depth Cut Beyond First 25-Linear Feet	100	LF	\$ 175.00	\$ 17,500.00
j.	Replacement - 12-foot to 18-foot Depth Cut Beyond First 25-Linear Feet	50	LF	\$ 290.00	\$ 14,500.00



k.	Replacement - 18-foot to 24-foot Depth Cut Beyond First 25-Linear Feet	50	LF	\$	435.00	\$	21,750.00
l.	New Cleanout Installation	40	EA	\$	2,350.00	\$	94,000.00
m.	Expose Existing Cleanout - 0 foot to 3 foot Depth and Install New Box - Unpaved	10	EA	\$	1,150.00	\$	11,500.00
n.	Expose Existing Cleanout - 0 foot to 3 foot Depth and Install New Box - Paved	10	EA	\$	2,000.00	\$	20,000.00
<b>11</b>	<b>Manholes &amp; Other Structures</b>						
a.	Lining 48-inch Diameter Manhole	938	VF	\$	525.00	\$	492,450.00
b.	Oil Separator Eccentric Manhole	1	LS	\$	15,000.00	\$	15,000.00
c.	Partial Lining 48-inch Diameter Manhole	20	VF	\$	375.00	\$	7,500.00
d.	Lining 60-inch Diameter Manhole	22	VF	\$	750.00	\$	16,500.00
e.	Lining 60-inch Diameter Wet Well, Evergreen Farms S6	16	VF	\$	2,275.00	\$	36,400.00
f.	Lining Mercury PS Vault (4-feet x 10-feet x 5.66-feet)	1	LS	\$	41,000.00	\$	41,000.00
g.	Install New 48-inch Diameter Precast Manhole, 0-foot to 6-foot depth	1	EA	\$	8,500.00	\$	8,500.00
h.	Install New 48-inch Diameter Precast Manhole, 6-foot to 12-foot depth, <b>INSTALL ONLY</b>	2	EA	\$	10,000.00	\$	20,000.00
i.	Remove and Install New 48-inch Diameter Precast Manhole, 6-foot to 12-foot depth	2	EA	\$	14,000.00	\$	28,000.00
j.	Prep and Reline Manhole Connection on Previously Lined Manholes	10	EA	\$	750.00	\$	7,500.00
k.	Core, Reboot Pipe/MH connection and Seal, 12-inch Pipe Diameter	3	EA	\$	6,700.00	\$	20,100.00
l.	Remove Existing Plug in Manhole	1	EA	\$	4,250.00	\$	4,250.00
m.	Excessive Leak Stop In Manhole	125	Gal	\$	450.00	\$	56,250.00
n.	Install New Watertight Frame and Cover	2	EA	\$	1,950.00	\$	3,900.00
o.	Install New Standard Frame and Cover	3	EA	\$	1,500.00	\$	4,500.00
p.	Install Inside Drop Bowl and Associated Piping	20	VF	\$	325.00	\$	6,500.00
q.	Remove Outside Drop	1	EA	\$	5,500.00	\$	5,500.00
<b>12</b>	<b>Pavement Removal and Replacement</b>						
a.	Asphalt	6,000	SF	\$	23.00	\$	138,000.00
b.	Asphalt - TDOT Requirements Along State Roadway, Including Traffic Control	1,000	SF	\$	28.00	\$	28,000.00
c.	Finished Concrete (Driveways/Sidewalks)	500	SF	\$	35.00	\$	17,500.00
d.	Concrete (Curb & Gutter)	200	LF	\$	95.00	\$	19,000.00
e.	Infrared Pavement Restoration	200	SF	\$	32.00	\$	6,400.00
<b>13</b>	<b>Cash Allowances</b>						
a.	Soils and Concrete Testing	Allowance	LS	\$			70,000.00
b.	Cured-In-Place Pipe Testing Laboratory Services	Allowance	LS	\$			5,000.00
c.	CSX Support Services Allowance	20	EA	\$	3,600.00	\$	72,000.00
<b>14</b>	<b>Additional Work if Ordered by Owner/Engineer</b>						
a.	Crushed Stone	200	CY	\$	75.00	\$	15,000.00
b.	Flowable Fill	200	CY	\$	140.00	\$	28,000.00
<b>15</b>	<b>0</b>						
a.	Construction Contingency			\$			200,000.00

**Total Base Bid (Items 1-15):**

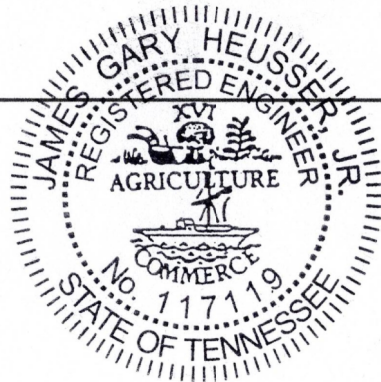
**\$ 8,681,449.00**

**ADDITIVE ALTERNATE A - (To Be Performed in Dry Weather) in leiu of Base Bid Items No.1**

1	HOBAS 36-Inch Gravity Sewer, Huthcinson Farms					
a.	039GG040_039GG030 CIPP	533	LF	\$	1,035.00	\$ 551,655.00
b.	039GG050_039GG040 CIPP	419	LF	\$	1,150.00	\$ 481,850.00
c.	039GG070_039GG060 CIPP	468	LF	\$	1,075.00	\$ 503,100.00
d.	Pre-liner for Sanitary Sewer Mainline	500	LF	\$	15.00	\$ 7,500.00
e.	Heavy Cleaning for Mainline	500	LF	\$	3.00	\$ 1,500.00
f.	Grout Leaking Joint Sections of Sewer Mainline (36-inch Diameter Pipe)	50	Gal	\$	1,500.00	\$ 75,000.00
<b>Total Alternate A Bid (Items 1):</b>						<b>\$ 1,620,605.00</b>

**Total Alternate A Bid (in leiu of Base Bid Items 1) in combination with Base Bid Items 2-12: \$ 6,942,454.00**

**I do certify that the above is a true and correct copy of the bids received:**



J. Gary Heusser, Jr., P.E.  
 4/20/2023  
 LJA Engineering, Inc.  
 Tennessee License No. 117119

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Murfreesboro, Tennessee (“Owner”) and  
SBW Constructors, LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:
- 2.02 The Project consists of the installation of a Cured-In-Place Pipe (CIPP) liner into approximately 9,700 linear feet (LF) varying from 8-inch to 18-inch gravity sanitary sewer; approximately 4,800 LF of Open Cut Replacement (OCR) varying from 8-inch to 36-inch gravity sanitary sewer; approximately 236 LF of Pipe Bursting of 10-inch gravity sanitary sewer; approximately 71 CIPP lateral repairs, approximately 32 Open Cut lateral repairs, approximately 34 Point Repairs, and approximately 1,020 vertical feet of manhole lining varying from 48-inch to 60-inch diameter manholes with a polymer or epoxy based liner. The scope of the project will include all necessary labor, tools and equipment required to complete the jobs according to the specifications.

The allotted time for construction on the base bid items is 330 calendar days for substantial completion, and 365 days for final completion.

An Additive-Alternate A is included for installation of CIPP into approximately 1,420 LF of existing 36-inch diameter HOBAS pipe. The scope of the project will include all necessary labor, tools, bypassing, and equipment required to complete the jobs according to the specifications.

**ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by LJA Engineering, Inc.
- 3.02 The Owner has retained LJA Engineering, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

## ARTICLE 4 – CONTRACT TIMES

### 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### 4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 330 days for the Base Bid items after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 365 days after the date when the Contract Times commence to run for the Base Bid items.

### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
  1. Substantial Completion: Contractor shall pay Owner \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

## ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in the attached, Contractor's Bid Form.

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 5<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 95 percent of Work completed (with the balance being retainage)

- B. 100 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage) Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 3 percent per annum.

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied any applicable: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings; and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (C-520 pages 1 to , inclusive).
  - 2. Performance bond (C-610 pages   1   to     , inclusive).
  - 3. Payment bond (C-615 pages   1   to     , inclusive).
  - 4. Other bonds – N/A
    - a.      (pages      to     , inclusive).
  - 5. General Conditions (C-700 pages   1   to  64 , inclusive).
  - 6. Supplementary Conditions Part A and Supplementary Conditions Part B.
    - a. In the event of any conflict between the Agreement and Supplementary Conditions, the terms of this Agreement shall govern.

- b. If there is any conflict between the terms of the General Conditions and the terms of the Supplementary Conditions, the Supplementary Conditions shall govern.
  - c. If there is any conflict between the terms of Supplementary Conditions Part A and Supplementary Conditions Part B, then Supplementary Conditions Part B shall control; provided, that to the greatest extent practicable, Supplementary Conditions Part A and Supplementary Conditions Part B are to be construed and interpreted in such a way as to complement one another and not create a direct conflict.
- 7. Specifications as listed in the table of contents of the Project Manual.
- 8. Compact Disc containing an interactive GIS map, Master Spreadsheet and CCTV inspection videos (not attached but incorporated by reference).
- 9. Addenda (numbers \_\_\_ to \_\_\_, inclusive).
- 10. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (C-410 pages \_\_\_ to \_\_\_, inclusive).
- 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### *10.01 Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### *10.02 Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *No damage for Delay*

- A. Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it considered this no damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

#### 10.07 *[This section intentionally omitted.]*

#### 10.08 *Indemnification.*



- A. Contractor shall defend, hold harmless and indemnify Owner, its officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (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), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.

10.09 *Amendments*

- A. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written, properly signed instrument by the parties duly authorized representative. This requirement includes all change orders, which shall not arise under any other circumstances, including verbally, cumulatively, or by any course of conduct. Such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the purpose given, and shall be valid and binding only if it is signed by all parties to this Agreement. The failure of Owner to enforce any provision of this Agreement shall not constitute a waiver by the Owner of that or any other provision.

10.10 *Choice of Law.*

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. All disputes will be resolved in accordance with Addendum B of the Supplementary Conditions. Provided, if any litigation arising under the Agreement must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the United States District Court for the Middle District of Tennessee.

10.11 *Integration.*

- A. This Agreement, which includes all Contract Documents as identified herein, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, regarding this Agreement, except as specified or referenced herein. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

10.12 *Counterparts.*

- A. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

B. IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:  
CITY OF MURFREESBORO

CONTRACTOR:

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

\_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

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

ATTEST:

ATTEST:

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

By: \_\_\_\_\_

Print: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Adam Tucker, City Attorney

Address for giving notices:

Address for giving notices:

1725 South Church Street  
Murfreesboro, TN 37130

\_\_\_\_\_

\_\_\_\_\_

With a copy to:  
Attn: City Attorney  
111 West Vine Street  
Murfreesboro, TN 37130

\_\_\_\_\_

License No.: \_\_\_\_\_

*(where applicable)*

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

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**Item Title:** EnviroSight Rovver X Sewer Inspection System

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Purchase EnviroSight's Rovver X basic mainline sanitary sewer inspection system.

**Staff Recommendation**

Approve sourcewell purchase of EnviroSight's Mainline Inspection System from Sansom Equipment.

**Background Information**

Staff is requesting approval to replace Cobra Technologies' CCTV equipment which is no longer supported with EnviroSight's Rovver X basic mainline inspection system. This same line of equipment is being installed in two other CCTV vehicles.

**Council Priorities Served**

*Expand Infrastructure*

Ensuring proper performance of inspection equipment capabilities provides for the most efficient and effective means to maintain sewer infrastructure and regain sewer capacity.

**Fiscal Impact**

The expense, \$147,517, is funded by MWRD's FY24 operating budget.

**Attachments**

Sansom Rovver Contract

**CONTRACT BETWEEN  
CITY OF MURFREESBORO  
AND  
SANSOM EQUIPMENT COMPANY**

This Contract is entered into and effective as of the \_\_\_\_\_ 2023 ("Effective Date"), by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **SANSOM EQUIPMENT COMPANY, INC**, a corporation of the State of Alabama ("Contractor").

This Contract consists of the following documents:

- *This Contract*
- *Sourcewell Contract #120721 with EnviroSight ("Sourcewell Agreement")*
- *Contractor's Sales Quotes SECQ6482 dated July 26, 2023 (Contractor's Quote)*
- *Any properly executed amendments to this Contract.*

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

- *First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)*
- *Second, this Contract*
- *Third, Sourcewell Contract #120721 with EnviroSight ("Sourcewell Agreement")*
- *Finally, Contractor's Sales Quotes SECQ6482 dated July 26, 2023 (Contractor's Quote)*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the equipment and accessories set forth in Contractor's Sales Quotes SECQ6482 dated July 26, 2023.
2. **Term.** Contractor's performance may be terminated in whole or in part:
  - a. Upon 30-day prior notice, for the convenience of the City.
  - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
  - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
  - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
  - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

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

- a. The price for the goods and other items to be provided under this Contract is set forth in the Contractor's Quote SECQ6482 dated July 26, 2023, reflecting a Purchase Price of One Hundred Forty-Six Thousand Seventeen Dollars and Fifty-Three Cents (\$146,017.53) and a Freight Price of One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00) with a **TOTAL PURCHASE PRICE of One Hundred Forty-Seven Thousand Five Hundred Seventeen Dollars and Fifty-Three Cents (\$147,517.53)** Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. Invoices should be sent to: [accountspayable@murfreesborotn.gov](mailto:accountspayable@murfreesborotn.gov).
- b. Deliveries of all items for the Water Resources Department shall be made within 90-120 days of issuance of Purchase Order to Attn: Matt Powers – Water Resources Department – 1725 South Church Street, Murfreesboro, TN 37130. Contact Person Matt Powers (tel. 615-848-3200x3220; email: mpowers@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

4. **Warranty.** Unless otherwise specified, every item quoted shall meet the warranty requirements set forth in the specifications and the manufacturer's standard warranty.

5. **Indemnification.**

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

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

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

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

If to the City of Murfreesboro:  
City of Murfreesboro  
Attn: City Manager  
P.O. Box 1139  
111 West Vine Street  
Murfreesboro, TN 37133-1139

If to the Contractor:  
Sansom Equipment Company, Inc.  
Attn: Danny Paladino  
2800 Powell Ave S  
Birmingham, AL 35233  
251-631-3766  
[danny@secequip.com](mailto:danny@secequip.com)

7. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of five (5) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
  - a) **The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
  - b) **The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative**

**action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**c) The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

15. **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 Contract, 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. **Iran Divestment Act of Tennessee**. By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
17. **Non-Boycott of Israel**. By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
18. **Assignment**. The provisions of this Contract inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Contract, neither this Contract nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
19. **Integration**. This Contract, Contractors Quote, and Sourcewell contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
20. **Force Majeure**. No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.
21. **Governing Law and Venue**. The validity, construction and effect of this Contract and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.



- 22. **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.
- 23. **Attorney Fees.** In the event any party takes legal action to enforce any provision of this Contract, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 24. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

**IN WITNESS WHEREOF**, the parties enter into this Agreement as of \_\_\_\_\_, 2023 (the "Effective Date").

**CITY OF MURFREESBORO**

**Sansom Equipment Company, Inc**

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

DocuSigned by:  
B Danny Paladino  
9E6491328694A  
D Danny Paladino, Municipal  
Sales Manager

APPROVED AS TO FORM:

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



# QUOTE

QUOTE #	SECQ6482
DATE	Jul 26, 2023
CONTRACT CUSTOMER ID #	
CONTRACT #	120721-EVS

**To:** Matt Powers  
 Murfreesboro Water & Sewer  
 1725 S Church St  
 Murfreesboro, TN 37130  
 United States

**Sales Contact:** Danny Paladino  
 615-856-0534  
 danny@secequip.com

(629) 335-1830  
 mpowers@murfreesborotn.gov

QUOTE STATUS	SHIPPING TERMS	DELIVERY IN DAYS	PAYMENT TERMS
Sourcewell (NJPA)	Customer Location	30 - 60 Days	Net Delivery

QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	Rower XPro Mainline Inspection System with Integrated Lift	\$119,893.50	\$119,893.50
1	Rackmount Computer	\$3,177.90	\$3,177.90
2	19" Tru-Vu Monitor w/mount (For Rackmount)	\$1,305.40	\$2,610.80
4	XL Rubber Wheel QC	\$625.95	\$2,503.80
4	Medium Aggressive Wheel QC	\$668.75	\$2,675.00
4	Small Aggressive Wheel QC	\$513.60	\$2,054.40
1	Aux lights with backup camera	\$5,243.00	\$5,243.00
1	upgrade to rip saw video capture card	\$411.95	\$411.95
1	Large line Carriage	\$13,451.43	\$13,451.43
1	Sourcewell Discount	-\$6,536.47	-\$6,536.47
1	Installation by Sansom	\$532.22	\$532.22
	TOTAL BEFORE DISCOUNT		\$146,017.53
1	Freight	\$1,500.00	\$1,500.00

QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
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This quote does not include any federal, state, or local taxes.  
\* In stock equipment are subject to prior sale. \*

<b>SUBTOTAL</b>	\$147,517.53
<b>TOTAL</b>	\$147,517.53

**This Quote is valid for 30 Days.**

**Please contact me if I can be of further assistance.**

**BIRMINGHAM OFFICE**

2800 Powell Avenue  
Birmingham, AL 35233  
Ph: (205) 324-3104  
Fax: (205) 324-2679

**MOBILE OFFICE**

2025 West I-65 Service Road North  
Mobile, AL 36618  
Ph: (251) 631-3766  
Fax: (251) 631-3768



**SHELBYVILLE OFFICE**

3196 Highway 231 North  
Shelbyville, TN 37160  
Ph: (615) 696-7066  
Fax: (615) 413-5323

**STONECREST OFFICE**

2601 South Stone Mountain Lithonia Road  
Stonecrest, Georgia 30058  
Ph: (706) 685-6900  
Fax: (706) 609-3491



# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

**Item Title:** Crushed Stone Contract

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

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**Summary**

Contract for crushed stone for Murfreesboro Water Resources.

**Staff Recommendation**

Award Crushed Stone Contract to lowest bidder Blue Water Industries.

**Background Information**

The current contract for crushed stone expires September 21, 2023. It was advertised July 18<sup>th</sup>, and three bids were received.

Operations and Maintenance uses the tabulated estimated tons of crushed stone on various projects throughout the year. The total estimated price delivered plus the total estimated price picked up was the basis of the bid award.

Crushed Stone	Estimated Quantity - tons	Picked up	Delivered
303.01 CI A Grade D	3,000	\$35,250	\$47,250
Graded 67	4,000	\$77,000	\$95,000
Quarter Down or #10 Stone	200	\$3,800	\$4,600
Surge Rock / Shot Rock	250	\$3,750	\$4,875
<b>Total</b>		<b>\$119,800</b>	<b>\$151,725</b>

**Council Priorities Served**

*Expand Infrastructure*

Stone is required in conjunction with MWRD's construction operations that entail extension or replacement of sanitary sewer collectors and water mains.

**Fiscal Impacts**

The expense, estimated conservatively at \$151,725, is funded by MWRD's FY24 operating budget.

**Attachments**

Blue Water Contract

**CONTRACT BETWEEN  
CITY OF MURFREESBORO  
AND  
BWI MTN II dba BLUE WATER INDUSTRIES  
FOR CRUSHED STONE**

This Agreement is entered into and effective as of \_\_\_\_\_, 2023 (“Effective Date”), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the “City”), and **BWI MTN II, INC. dba BLUE WATER INDUSTRIES**, a corporation of the State of Tennessee (“Contractor”).

This Agreement consists of the following documents:

- This document
- ITB-06-2024 – Crushed Stone issued July 18, 2023 (the “Solicitation”);
- Contractor’s Proposal, dated August 1, 2023 (“Contractor’s Proposal”);
- Contractor’s Price Proposal, dated August 1, 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.**

- a. Contractor shall provide the City with the goods specified in “ITB-06-2024 – Crushed Stone” listed under “Bid Specifications” of the ITB.
- b. In undertaking the work set forth herein, Contractor must to comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.
- c. The goods must be delivered, within 10 days of the issuance of a purchase order, to the City of Murfreesboro’s Water Resources Department’s Operations and Maintenance Facility located at 1725 South Church Street, Murfreesboro, TN 37130. The City’s contact person for this contract, Donald Hughes (615-893-1223) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday. **Deliveries and contact persons in other City departments using this contract will vary.**

- d. Deliveries of all items shall be made as stated in the ITB. Should the Contractor fail to deliver items on or before the required 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.
- e. Delivered items will not be considered “accepted” until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Invitation to Bid.
- f. Every delivery 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.
- g. **Contract pricing shall be made available to any City department wishing to utilize this contract and service.**

**2. Term.**

The term of this Agreement commences on the Effective Date and expires in one year and is **automatically renewable for two (2) additional two-year periods (for a total of five years) per mutual agreement between City and Contractor.** Should the City desire to renew the contract, a written notice will be furnished to the contractor not less than sixty (60) days prior to the expiration date of the contract, unless 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. Compensation; Method of Payment.** Contractor will be compensated upon the delivery and acceptance of the goods and services specified in Contractor's bid submitted in response to "ITB-06-2024– Crushed Stone," see table.

<b>Delivered Price</b>	<b>Unit Price (per Ton)</b>
303.01 CI A Grade D	\$15.75
Graded 67	\$23.75
Quarter Down or #10 Stone	\$23.00
Surge Rock/Shot Rock	\$19.50
<b>Picked Up Price</b>	<b>Unit Price (per Ton)</b>
303.01 CI A Grade D	\$11.75
Graded 67	\$19.25
Quarter Down or #10 Stone	\$19.00
Surge Rock/Shot Rock	\$15.00

Invoices will be sent to: Water Resources Department, 1725 S. Church St., Murfreesboro, TN 37133-1739; all other departments: [accountspayable@murfreesborotn.gov](mailto:accountspayable@murfreesborotn.gov).

- 4. 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."
- 5. Indemnification.**
- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
  - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
  - c. Copyright, Trademark, Service Mark, or Patent Infringement.
    - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the

right to effect settlement or compromise of any such action provided (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.

6. **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 the Contractor: Blue Water Industries 831 Needham Dr Smyrna, TN 37164 <a href="mailto:tdaniel@bluewaterindustries.com">tdaniel@bluewaterindustries.com</a> <a href="mailto:info@bluewaterindustries.com">info@bluewaterindustries.com</a> <a href="mailto:bricketts@bluewaterindustries.com">bricketts@bluewaterindustries.com</a>
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7. **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.

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



- 9. 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.
- 10. 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.
- 11. 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.
- 12. 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.
- 13. Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

- 14. 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.
- 15. Iran Divestment Act of Tennessee.** By entering into this agreement, Contractor certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither Contractor nor any of its subcontractors are not on the list created pursuant to T.C.A. §12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension.
- 16. Non-Boycott of Israel.** By entering into this agreement, Contractor certifies under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to T.C. A. § 12-4-119, and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
- 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**

**BWI MTN II dba Blue Water Industries**

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

DocuSigned by:  
*Jeremy Goad*  
By: \_\_\_\_\_  
A8FDA43117014EC...  
Jeremy Goad, Vice President/General Manager

Approved as to form:

DocuSigned by:  
*Adam Tucker*  
\_\_\_\_\_  
43A2036E51F9401...  
Adam Tucker, City Attorney

**No Items.**

# COUNCIL COMMUNICATION

Meeting Date: 08/31/2023

**Item Title:** Beer Permits  
**Department:** Finance  
**Presented by:** Jennifer Brown, City Recorder  
**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

## 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.

## Regular Beer Permits

Name of Applicant	Name of Business	Address	Type of Permit	Type of Business	Reason
LG Food Murfreesboro, Inc.	Bonchon Korean Fried Chicken	1718 Memorial Blvd.	On-Premises	Restaurant	New Location
Gateway Stores, Inc	Bizee Mart #107	3127 Medical Center Pkwy. Ste. B1	Off-Premises	Convenience Store	New Location
Taz 840, LLC	Taziki's Mediterranean Café	1855 Medical Center Pkwy. Ste. H	On-Premises	Restaurant	New Location

## Special Event Beer Permits

Name of Applicant	Date of Event	Type of Event	Location of Event
Interfaith Dental Clinic	10/26/2023	Fundraiser	1500 Medical Center Pkwy. Ste. 4D

**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

**Beer Application**

Summary of information from the beer application:

<b>Name of Business Entity/Sole Proprietor</b>	LG Food Murfreesboro Inc.
<b>Name of Business</b>	Bonchon Korean Fried Chicken
<b>Business Location</b>	1718 Memorial Blvd.
<b>Type of Business</b>	Restaurant
<b>Type of Permit Applied For</b>	On-Premises

**Type of Application:**

<b>New Location</b>	<u>          X          </u>
<b>Ownership Change</b>	<u>                          </u>
<b>Name Change</b>	<u>                          </u>
<b>Permit Type Change</b>	<u>                          </u>
<b>Government</b>	<u>                          </u>
<b>Corporation</b>	<u>          X          </u>
<b>Partnership</b>	<u>                          </u>
<b>LLC</b>	<u>                          </u>
<b>Sole Proprietor</b>	<u>                          </u>

**5% or more Ownership**

<b>Name</b>	Yan Qui Sun
<b>Age</b>	33
<b>Residency City/State</b>	Smyrna/TN
<b>Race/Sex</b>	Asian/F
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Fei Lin
<b>Age</b>	42
<b>Residency City/State</b>	Brooklyn/NY
<b>Race/Sex</b>	Asian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Michelle Ren
<b>Age</b>	21
<b>Residency City/State</b>	Fishing/NY
<b>Race/Sex</b>	Asian/F
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Bobby Michael Measel
<b>Age</b>	66
<b>Residency City/State</b>	Eubank/KY
<b>Race/Sex</b>	White/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Lei Jin
<b>Age</b>	27
<b>Residency City/State</b>	College Grove/TN
<b>Race/Sex</b>	Asian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Xuefang Chen
<b>Age</b>	37
<b>Residency City/State</b>	Spring Hill/TN
<b>Race/Sex</b>	Asian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

<b>Name</b>	Zuohang Gao
<b>Age</b>	45
<b>Residency City/State</b>	Clarksville/TN
<b>Race/Sex</b>	Asian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

**Application Completed Properly?** Yes

**Occupancy Application Approved?** No

The actual beer application is available in the office of the City Recorder.

\*\*\*I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

## Beer Application

Summary of information from the beer application:

<b>Name of Business Entity/Sole Proprietor</b>	Gateway Stores, Inc.
<b>Name of Business</b>	Bizee Mart #107
<b>Business Location</b>	3127 Medical Center Pkwy. Ste. B1
<b>Type of Business</b>	Convenience Store
<b>Type of Permit Applied For</b>	Off-Premises

### Type of Application:

<b>New Location</b>	<u>          X          </u>
<b>Ownership Change</b>	<u>                          </u>
<b>Name Change</b>	<u>                          </u>
<b>Permit Type Change</b>	<u>                          </u>
<b>Government Corporation</b>	<u>                          </u>
<b>Partnership</b>	<u>                          </u>
<b>LLC</b>	<u>                          </u>
<b>Sole Proprietor</b>	<u>                          </u>

### 5% or more Ownership

<b>Name</b>	Mukesh Chaudhary
<b>Age</b>	42
<b>Residency City/State</b>	Murfreesboro/TN
<b>Race/Sex</b>	Asian/Indian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
<b>Name</b>	Dipakkumar Patel
<b>Age</b>	42
<b>Residency City/State</b>	Murfreesboro/TN
<b>Race/Sex</b>	Asian/Indian/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

**Application Completed Properly?** Yes

**Occupancy Application Approved?** No

**The actual beer application is available in the office of the City Recorder.**

\*\*\*I request permission to issue the beer permit upon successful completion of all required building and codes inspections.



## Beer Application

Summary of information from the beer application:

<b>Name of Business Entity/Sole Proprietor</b>	Taz 840, LLC
<b>Name of Business</b>	Taziki's Mediterranean Café
<b>Business Location</b>	1855 Medical Center Pkwy. Ste. H.
<b>Type of Business</b>	Restaurant
<b>Type of Permit Applied For</b>	On-Premises

Type of Application:

<b>New Location</b>	<u>          X          </u>
<b>Ownership Change</b>	<u>                          </u>
<b>Name Change</b>	<u>                          </u>
<b>Permit Type Change</b>	<u>                          </u>
<b>Government Corporation</b>	<u>                          </u>
<b>Partnership</b>	<u>                          </u>
<b>LLC</b>	<u>          X          </u>
<b>Sole Proprietor</b>	<u>                          </u>

5% or more Ownership

<b>Name</b>	Armando Perez Sanchez
<b>Age</b>	31
<b>Residency City/State</b>	Murfreesboro/TN
<b>Race/Sex</b>	Hispanic/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

Application Completed Properly?                   Yes

Occupancy Application Approved?                No

The actual beer application is available in the office of the City Recorder.

\*\*\*I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

## Special Event Beer Application

Summary of information from the beer application:

<b>Name of Non-Profit Organization</b>	Interfaith Dental Clinic
<b>Organization Address</b>	210 Robert Rose Drive, Ste 2
<b>Event Location</b>	The Fountains
<b>Event Date</b>	1500 Medical Center Pkwy Ste. 4D
<b>Event Time</b>	10/26/2023
<b>Period for Beer to be Served</b>	5:30 p.m. until 8:00 p.m.
<b>Nature and Purpose of Event</b>	5:30 p.m. until 8:00 p.m.
<b>Approximate Number of Persons Expected to Attend</b>	Fundraiser/Story Behind the Smile
	200
<b>Special Event Permit Approved?</b>	N/A
<b>Application Completed Properly?</b>	Yes
<b>Internal Revenue Letter Provided?</b>	Yes

The actual beer application is available in the office of the City Recorder.

**No Items.**

