

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
April 18, 2024

PRAYER

Mr. Austin Maxwell

PLEDGE OF ALLEGIANCE

Public Comment on Actionable Agenda Items

Consent Agenda

1. Mandatory Referral for Dedication of an Electric Easement along Cason Lane (Planning)
2. Mandatory Referral for Dedication of an Electric Easement Along Overall Street (Planning)
3. Master Services Agreement with Flock Group, Inc. (Police)
4. Main Street Banner Request (Street)
5. Asphalt and Concrete Purchase Report (Street)
6. Transportation Equipment Rebate Terms and Conditions (Transportation)
7. TDOT Salem Hwy Widening Ph. 3 - Sewer Easement Offers (Water Resources)

Old Business

Ordinance

Land Use Matters

8. Ordinance 22-OZ-48 Rezoning Property Along Memorial Blvd. and Haynes Haven Lane (2nd and Final Reading) (Planning)

New Business

Resolution

9. Resolution 24-R-10 Solid Waste Fee Schedule Adjustment (Solid Waste)

On Motion

10. Patterson Park Ductwork Replacement (Facilities)
11. General Bragg Trailhead Playground Replacement (Facilities)
12. Ceiling Renovations at Hobgood Elementary School (Facilities)
13. Second Amendment of Old Fort Golf Course Renovation Project Contract (Golf)
14. Cityworks Software License Annual Renewal (IT)
15. Amendment One to Violent Crime Intervention Fund Grant Contract (Police)
16. Contract with Pen-Link, LTD for Software Purchase (Police)

Board & Commission Appointments

Licensing

Payment of Statements

Other Business

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Mandatory Referral for Dedication of an Electric Easement along Cason Lane

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider request to allow dedication of an electric easement on City-owned property located at 802 Cason Lane.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission recommend approval at its April 3, 2024 regular meeting.

Background Information

In this mandatory referral, Council is being asked to consider the approval of the dedication of an electric easement for Middle Tennessee Electric (MTE) on property that the City owns at 802 Cason Lane. The property in question is currently developed with Fire Station #9. MTE proposes to upgrade its power lines in this area in order to “provide greater reliability and capacity to the area during peak winter and summer loading.” The proposed easement will accommodate the proposed electric infrastructure to be located on the City’s property.

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

1. If approved by City Council, MTE will be responsible for providing the information necessary (including, but not limited to, any exhibits and legal descriptions) for the Legal Department to prepare legal instruments to formally dedicate the proposed easement in question. The legal instruments will be subject to the final review and approval of the Legal Department.
2. MTE will also be responsible for recording these instruments, including payment of the recording fee.
3. Any new poles will need to be located a minimum of 3’ from Atmos gas facilities. If the requested separation cannot be adhered to, then MTE will need to contact Atmos to discuss an alternative solution.
4. AT&T has buried facilities in this area. MTE will need to locate all cables before

it digs.

5. MTE will need to meet all MWRD separation requirements from existing water and/or sewer infrastructure.

Council Priorities Served

Expand Infrastructure

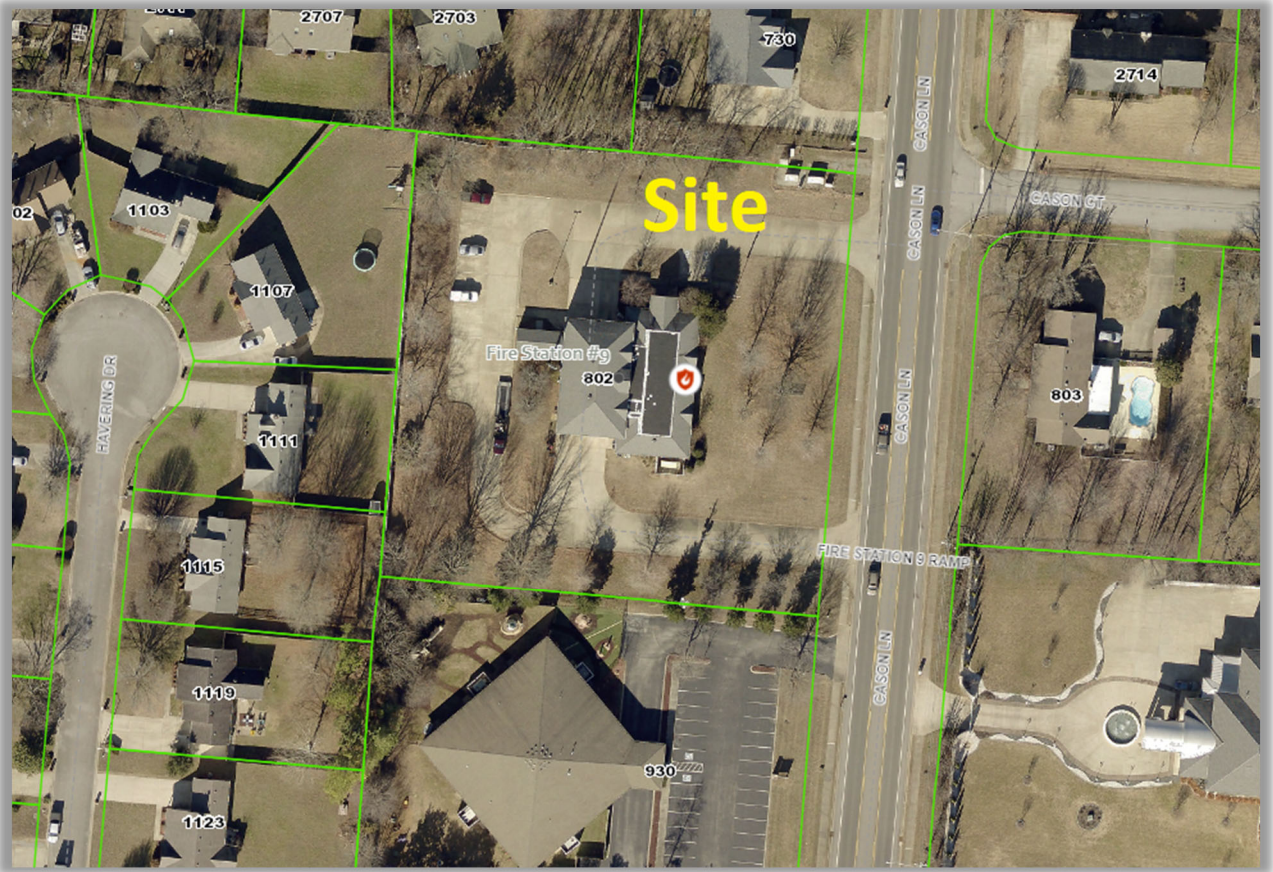
The proposed easement dedication will assist MTE in providing electric infrastructure to serve the Cason Lane area.

Attachments:

1. Planning Commission staff comments from 04/03/2024 meeting
2. Letter from MTE
3. Exhibits from MTE

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
APRIL 3, 2024
PROJECT PLANNER: MATTHEW BLOMELEY**

6.b. Mandatory Referral [2024-707] to consider the dedication of an electric easement on City-owned property located at 802 Cason Lane, Middle Tennessee Electric applicant.



In this mandatory referral, the Planning Commission is being asked to consider the approval of the dedication of an electric easement for Middle Tennessee Electric (MTE) on property that the City owns at 802 Cason Lane. The property in question is currently developed with Fire Station #9. MTE proposes to upgrade its power lines in this area in order to “provide greater reliability and capacity to the area during peak winter and summer loading.” The proposed easement will accommodate the proposed electric infrastructure to be located on the City’s property. An exhibit depicting the location of the proposed easement is included in the agenda materials. Staff recommends that the Planning Commission

recommend approval of this request to the City Council subject to the following conditions:

1. If approved by City Council, MTE will be responsible for providing the information necessary (including, but not limited to, any exhibits and legal descriptions) for the Legal Department to prepare legal instruments to formally dedicate the proposed easement in question. The legal instruments will be subject to the final review and approval of the Legal Department.
2. MTE and/or CUD will also be responsible for recording these instruments, including payment of the recording fee.
3. Any new poles will need to be located a minimum of 3' from Atmos gas facilities. If the requested separation cannot be adhered to, then MTE will need to contact Atmos to discuss an alternative solution.
4. AT&T has buried facilities in this area. MTE will need to locate all cables before it digs.
5. MTE will need meet all MWRD separation requirements from existing water and/or sewer infrastructure.



City of Murfreesboro Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: 101F C 001.00

Address (if applicable): 802 Cason Lane, Murfreesboro, TN 37129

Street Name (if abandonment of ROW):

Type of Mandatory Referral: Electrical Easement Request, Middle Tennessee Electric

Applicant Information:

Name of Applicant: Adam Longstreth

Company Name (if applicable): Middle Tennessee Electric

Street Address or PO Box: 555 New Salem Hwy

City: Murfreesboro

State: TN

Zip Code: 37129

Email Address: adamlongstreth@mte.com

Phone Number: 615-580-6238

Required Attachments:

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

Adam Longstreth

3/19/2024

Applicant Signature

Date

March 19, 2024

City of Murfreesboro
111 W Vine Street
Murfreesboro, TN 37130

RE: Cason Lane MTE Project – Murfreesboro, TN

To whom it may concern,

Middle Tennessee Electric has plans to rebuild the existing power lines on Cason Lane from Cason Trail to Rideout Lane in Murfreesboro, TN. The purpose of this project is to provide greater reliability and capacity to the area during peak winter and summer loading.

This is a request from MTE to install additional facilities on the City of Murfreesboro's property at 802 Cason Lane. The purpose for the proposed additional facilities on City property is to strengthen the physical properties of the main power line on Cason Lane. There is an existing water line in the area of the proposed pole and anchor. MTE has coordinated with MWRD on separation requirements from the water line. Please let me know if you have any questions or concerns.

You can reach me by phone at 615-580-6238 or by email at adamlongstreth@mte.com

I look forward to hearing from you,



Adam Longstreth, E.I.

Engineer

 Middle Tennessee Electric Membership Corporation

555 New Salem Hwy. | Murfreesboro, TN 37129

Phone: 615.580.6238 | Fax: 615.898.6736

Email: adamlongstreth@mte.com

Right-of-Way

Easement

This instrument prepared by: MTE
 555 New Salem Highway, Murfreesboro, TN 37129
 _____ Employee Initials



Service Location # _____ Meter Set SO # _____ WO# _____

Grantor: _____ And/by _____

Select one of the following: unmarried married business entity

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Grantor, whether one or more, does hereby grant unto Middle Tennessee Electric Membership Corporation, a Tennessee not-for-profit corporation ("Grantee" or "MTE"), its affiliates, successors or assigns, a perpetual easement (the "Easement") that, except as may be otherwise indicated on Exhibit 1, if attached, shall be twenty feet (20') from the centerline (total of 40') for any overhead transmission and/or distribution line or system, including anchoring, and ten feet (10') from the centerline (total of 20') for any underground transmission and/or distribution line or system with the right to:

- install, construct, reconstruct, rephase, operate and maintain an electric transmission and/or distribution line or system;
- inspect and make such repairs, changes, alterations, improvements, removals from, substitutions and additions to its facilities as Grantee may from time to time deem advisable, including, by way of example and not by way of limitation, the right to increase or decrease the number of conduits, wires, cables, poles, guy wire and anchors, hand holes, manholes, connection boxes, transformers and transformer enclosures;
- cut, trim and control the growth by chemical means, machinery or otherwise of trees and shrubbery within the Easement, or any tree that may interfere with or threaten to endanger the operation and maintenance of said line or system;
- prohibit, prevent and restrict the planting and/or maintenance of any trees, shrubbery or vegetation not approved in writing by Grantee (except those trees that appear on MTE's approved standard planting guide) which approval may be withheld by Grantee in its sole discretion if it determines said trees, shrubbery or vegetation may in the future interfere with or threaten to endanger the operation and maintenance of said line or system;
- prohibit the planting of any trees, shrubbery or vegetation within 15' of a pole or pad-mounted equipment;
- keep the Easement clear of all buildings, structures or other obstructions;
- license, permit or otherwise agree to the joint use or occupancy of the lines, system or, if any of said system is placed underground, of the trench and related underground facilities, by any other person, association or corporation for electrification, for other utility or commercial purposes;
- install and maintain guy additions to overhead lines if any portion of the lines or system is placed underground;

over, across; and through the land owned by Grantor as further described below (the "Property");

County _____ State of Tennessee Tax Map: _____ Group: _____ Parcel: _____

Address _____
House/building# Street/Road Name City Zip

and such Property being of record in Deed Book _____, Page _____, Register's Office of the above-named county, and as may be further described according to Exhibit 1 attached hereto and incorporated herein by reference, if attached, together with the right of ingress and egress over adjacent lands of the Grantor, and Grantor's successors and assigns for the purposes of this Easement.

The Grantor agrees that all poles, wires, and other facilities, including any main service entrance equipment, installed in, upon or under the Property at Grantee's expense shall remain the property of the Grantee and removable at the option of the Grantee. The Grantor hereby expressly releases any claims, demands, actions, or causes of action for trespass related to the Grantee's use of this Easement as described herein. The grant and other provisions of this Easement shall run with the land for the benefit of the Grantee, its affiliates, successor and assigns.

IN WITNESS WHEREOF, the Grantor has executed this instrument this _____ day of _____, 202____.

 Print Name/Title of Authorized Signatory

 Print Name/Title of Authorized Signatory

 Legal Signature

 Legal Signature

STATE OF _____

STATE OF _____

COUNTY OF _____

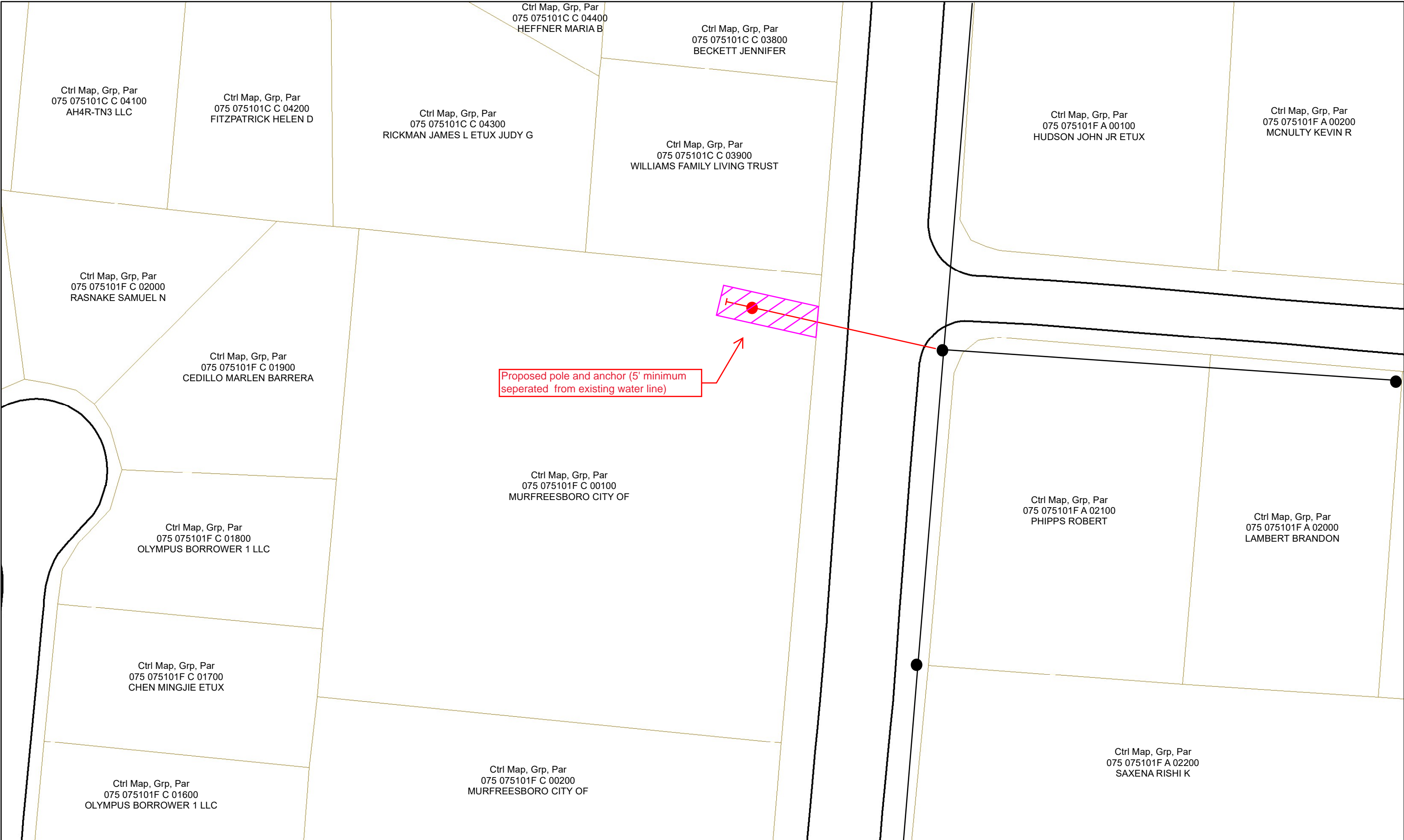
COUNTY OF _____

On the ____ day of _____, 202____, personally appeared before me, the within named bargainer(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that such person(s) executed the within instrument for the purposes therein contained.

On the ____ day of _____, 202____, personally appeared before me, the within named bargainer(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that such person(s) executed the within instrument for the purposes therein contained.

 Notary Signature My Commission Expires _____

 Notary Signature My Commission Expires _____



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075 075101C C 04100
AH4R-TN3 LLC

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075 075101C C 04200
FITZPATRICK HELEN D

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075 075101C C 04300
RICKMAN JAMES L ETUX JUDY G

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075 075101C C 04400
HEFFNER MARIA B

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075 075101C C 03800
BECKETT JENNIFER

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075 075101C C 03900
WILLIAMS FAMILY LIVING TRUST

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075 075101F A 00100
HUDSON JOHN JR ETUX

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075 075101F A 00200
MCNULTY KEVIN R

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075 075101F C 02000
RASNAKE SAMUEL N

Ctrl Map, Grp, Par
075 075101F C 01900
CEDILLO MARLEN BARRERA

Proposed pole and anchor (5' minimum
seperated from existing water line)

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075 075101F C 00100
MURFREESBORO CITY OF

Ctrl Map, Grp, Par
075 075101F C 01800
OLYMPUS BORROWER 1 LLC

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075 075101F A 02100
PHIPPS ROBERT

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075 075101F A 02000
LAMBERT BRANDON

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075 075101F C 01700
CHEN MINGJIE ETUX

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075 075101F A 02200
SAXENA RISHI K

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OLYMPUS BORROWER 1 LLC

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MURFREESBORO CITY OF

1 inch = 50 feet

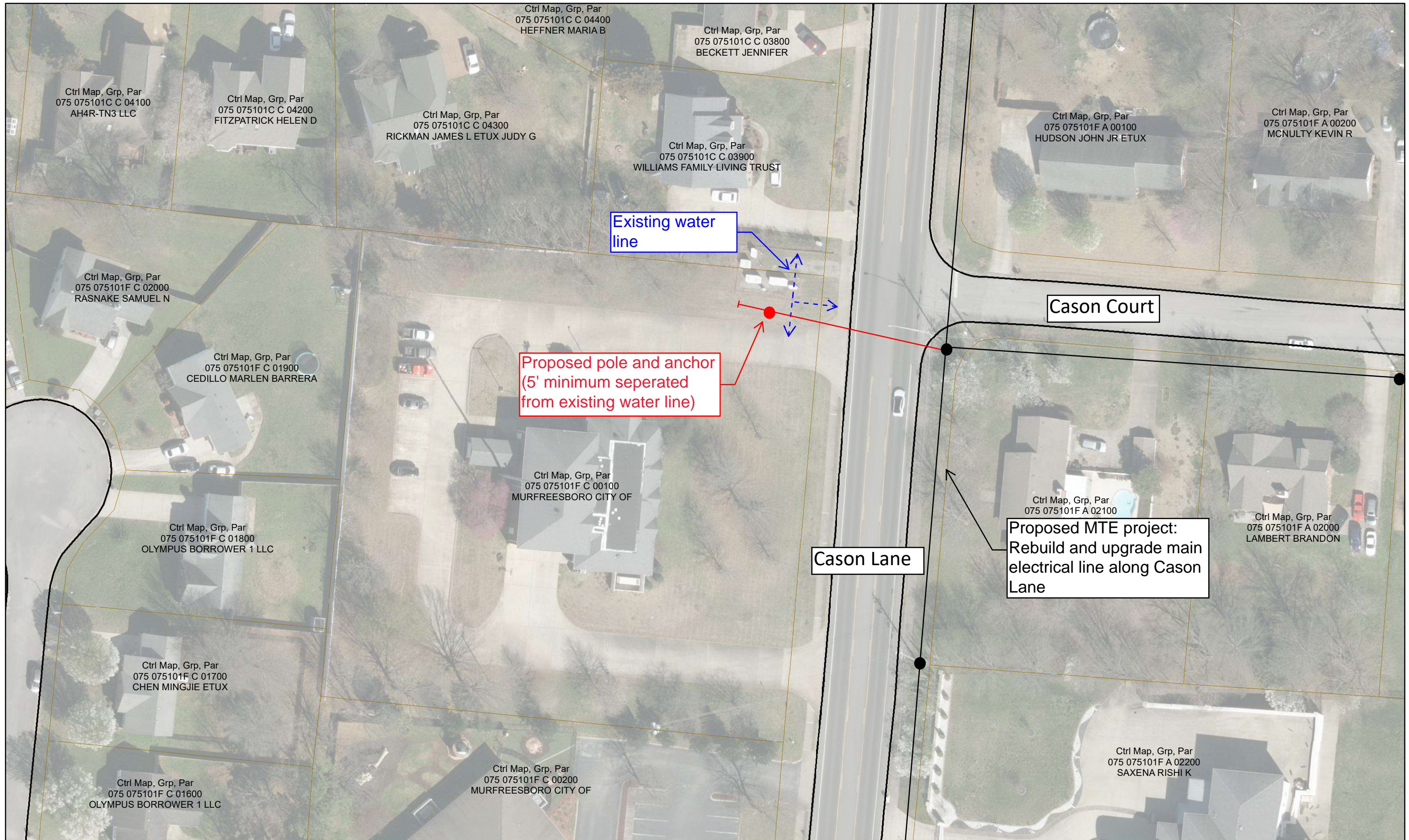


Printed: 3/5/2024



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AH4R-TN3 LLC

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FITZPATRICK HELEN D

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RICKMAN JAMES L ETUX JUDY G

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HEFFNER MARIA B

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BECKETT JENNIFER

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WILLIAMS FAMILY LIVING TRUST

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HUDSON JOHN JR ETUX

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075 075101F A 00200
MCNULTY KEVIN R

Existing water line

Proposed pole and anchor
(5' minimum seperated
from existing water line)

Cason Court

Cason Lane

Proposed MTE project:
Rebuild and upgrade main
electrical line along Cason
Lane

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RASNAKE SAMUEL N

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CEDILLO MARLEN BARRERA

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MURFREESBORO CITY OF

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LAMBERT BRANDON

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OLYMPUS BORROWER 1 LLC

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CHEN MINGJIE ETUX

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OLYMPUS BORROWER 1 LLC

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MURFREESBORO CITY OF

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SAXENA RISHI K

1 inch = 50 feet



Printed: 3/5/2024



5348-N

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COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Mandatory Referral for Dedication of an Electric Easement along Overall Street

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider request to allow dedication of an electric easement on City-owned property located along Overall Street.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission recommend approval at its April 3, 2024 regular meeting.

Background Information

In this mandatory referral, Council is being asked to consider the approval of the dedication of an electric easement for Middle Tennessee Electric (MTE) on property that the City owns on Overall Street. The property in question is currently undeveloped and is adjacent to the Lytle Creek Greenway Trail and Old Fort Park. MTE proposes to upgrade its power lines in this area in order to provide backup power to Saint Thomas Rutherford Hospital, in the event the main power source is disrupted. The proposed easement will accommodate the proposed electric infrastructure to be located on the City's property.

Planning Staff recommends that the City Council approve this request subject to the following conditions:

1. If approved by City Council, MTE will be responsible for providing the information necessary (including, but not limited to, any exhibits and legal descriptions) for the Legal Department to prepare legal instruments to formally dedicate the proposed easement in question. The legal instruments will be subject to the final review and approval of the Legal Department.
2. MTE will also be responsible for recording these instruments, including payment of the recording fee.
3. Any new poles will need to be located a minimum of 3' from Atmos gas facilities. If the requested separation cannot be adhered to, then MTE will need to contact Atmos to discuss an alternative solution.

4. Comcast has both aerial and underground facilities at this pole. MTE will need to coordinate the proposed work with Comcast.

Council Priorities Served

Expand Infrastructure

The proposed easement dedication will assist MTE in providing electric infrastructure to serve Saint Thomas Rutherford Hospital, a critical facility in the community.

Attachments:

1. Planning Commission staff comments from 04/03/2024 meeting
2. Letter from MTE
3. Exhibits from MTE

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
APRIL 3, 2024
PROJECT PLANNER: MATTHEW BLOMELEY**

6.a. Mandatory Referral [2024-706] to consider the dedication of an electric easement on City-owned property located along Overall Street, Middle Tennessee Electric applicant.



In this mandatory referral, the Planning Commission is being asked to consider the approval of the dedication of an electric easement for Middle Tennessee Electric (MTE) on property that the City owns on Overall Street. The property in question is currently undeveloped and is adjacent to the Lytle Creek Greenway Trail and Old Fort Park. MTE proposes to upgrade its power lines in this area in order to provide backup power to Saint Thomas Rutherford Hospital, in the event the main power source is disrupted. The proposed easement will accommodate the proposed electric infrastructure to be located on the City's property. An exhibit depicting the location of the proposed easement is included in the agenda

materials. Staff recommends that the Planning Commission recommend approval of this request to the City Council subject to the following conditions:

1. If approved by City Council, MTE will be responsible for providing the information necessary (including, but not limited to, any exhibits and legal descriptions) for the Legal Department to prepare legal instruments to formally dedicate the proposed easement in question. The legal instruments will be subject to the final review and approval of the Legal Department.
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4. Comcast has both aerial and underground facilities at this pole. MTE will need to coordinate the proposed work with Comcast.



City of Murfreesboro Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: **091 00900**

Address (if applicable): **910-1028 Golf Ln, Murfreesboro, TN**

Street Name (if abandonment of ROW): _____

Type of Mandatory Referral: **Not including abandonmnet of right of way**

Applicant Information:

Name of Applicant: **Christopher Weaver**

Company Name (if applicable): **Middle Tennessee Electric**

Street Address or PO Box: **555 New Salem Hwy**

City: **Murfreesboro**

State: **TN**

Zip Code: **37129**

Email Address: **ChrisWeaver@mte.com**

Phone Number: **615-566-8035**

Required Attachments:

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

Christopher W. Weaver

March 15, 2024

Applicant Signature

Date

From: [Weaver, Christopher](#)
To: dives@murfreesborotn.gov
Subject: MTE Easement for City of Murfreesboro Property
Date: Tuesday, March 12, 2024 12:06:00 PM
Attachments: [image001.png](#)
[MTE right of way easement and exhibits.pdf](#)

David,

Good afternoon. Middle Tennessee Electric is upgrading our power line along Overall and Ordway St and then down Scott St. We are upgrading this line to provide an alternate feed to the hospital in the event TVA loses power on the transmission line. We will be replacing the pole and anchor on the City of Murfreesboro property across the street from Lee Building Products on Overall St. We will be adding an additional anchor and will need to remove a tree and some vegetation around the anchors. I have attached our easement and exhibit for signature and to be notarized. The exhibit that does not have the aerial will need to be initialed. The exhibit with aerial is for informational purposes and has notes for you and the city. If you have any questions please let me know. The Easement and Exhibit can be returned to my attention.

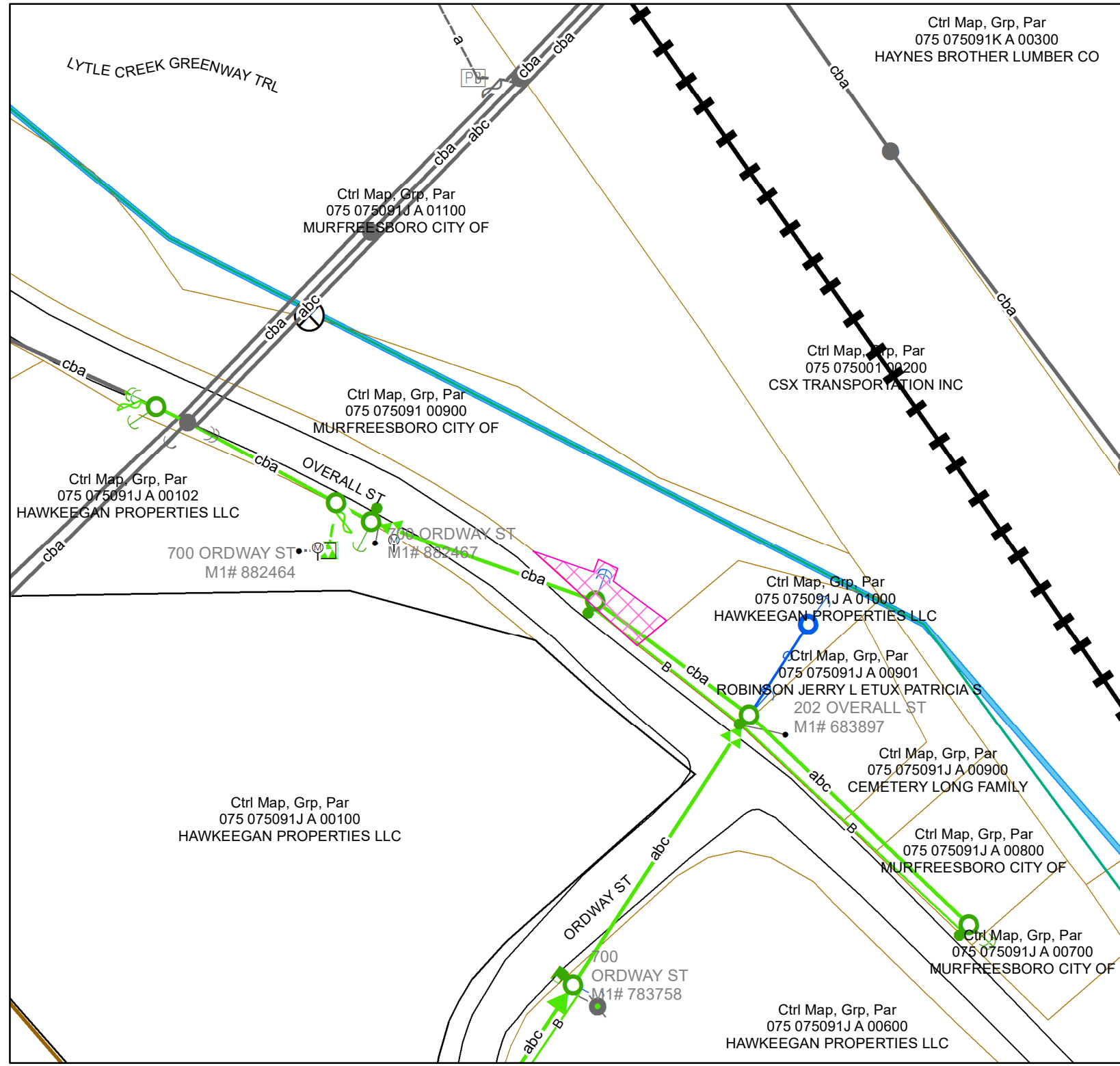
Thanks,

Christopher W. Weaver
Project Engineer

Middle Tennessee Electric
555 New Salem Highway, Murfreesboro, TN 37129
Office: 615-494-1068
Mobile: 615-566-8035



Energy. Service. Life.



- ### Legend
- Utility Lines
 - Existing Utility Pole
 - Proposed Utility Pole
 - ⊞ Manhole
 - ⊞ Vault
 - ⊞ Primary Pullbox
 - ⊞ Secondary Pullbox
 - UG Sector
 - ▶ Overhead Transformer
 - ◀ Underground Transformer
 - ← Anchor Guy
 - Span Guy

Disclaimer:
Middle Tennessee Electric Membership Corporation ("MTE") makes no representation, warranty, or certification as to map accuracy, including, but not limited to, its accuracy as to underground conductor locations, property boundaries, rights-of-ways, or placement and location of any map features or data. This exhibit is not intended to be an ALTA/ACSM, Category I Boundary, or any other type of land survey. The drawing is not to scale. The location of the easement centerline and/or easement dimensions as shown are approximate and may vary with actual construction. After actual construction, the as-built electric lines and/or equipment shall be deemed to be the centerline of the easement. MTE expressly disclaims liability for any errors or omissions.

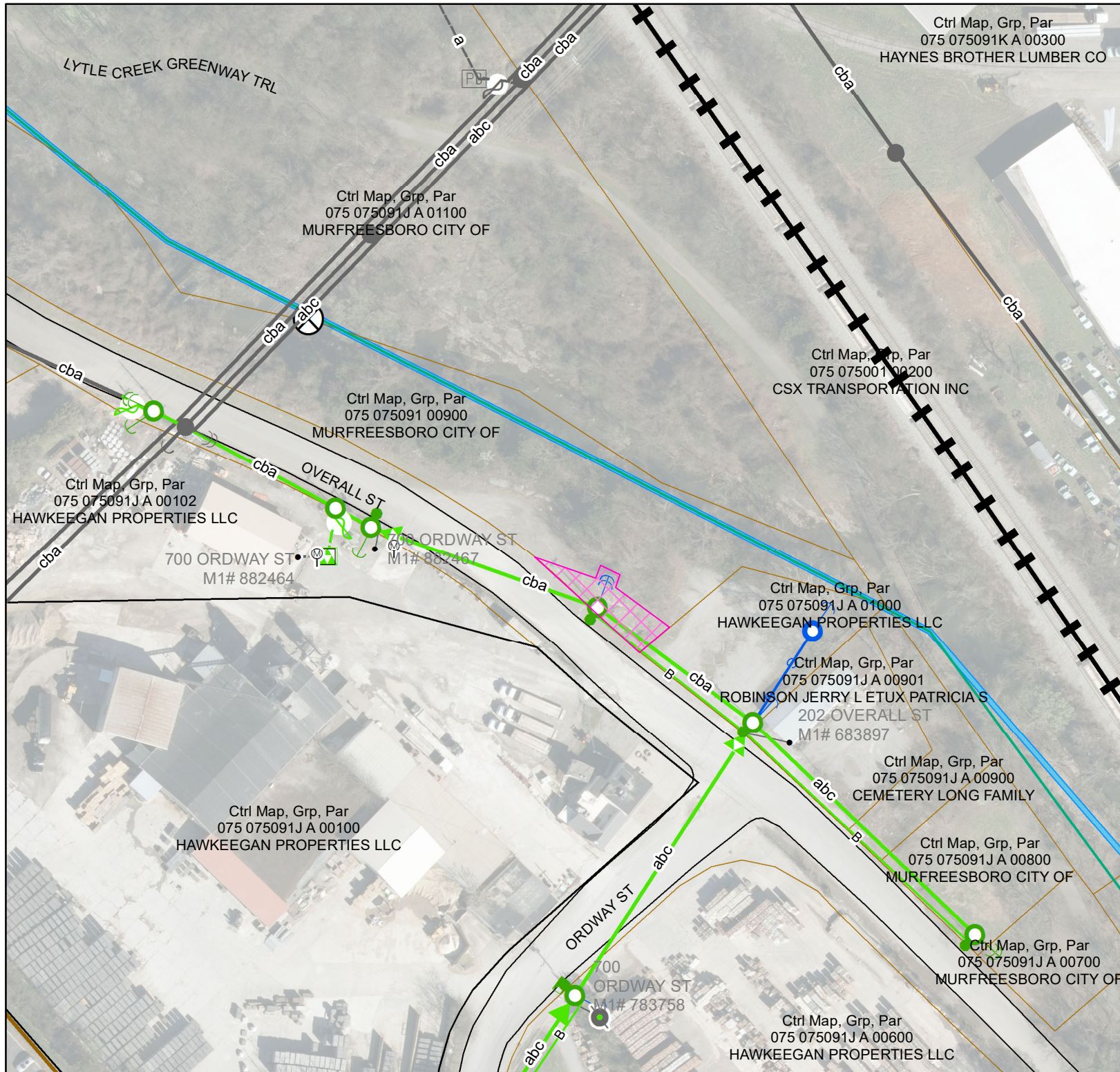
Initials: _____

Job Number: 16153639
Location: Overall - Ordway
Description:

Map: 5449-J
Scale: 1 inch = 100 feet
Print Date: 3/21/2024



Exhibit "1"



- ### Legend
- Utility Lines
 - Existing Utility Pole
 - Proposed Utility Pole
 - M Manhole
 - V Vault
 - PB Primary Pullbox
 - Secondary Pullbox
 - UG Sector
 - ▲ Overhead Transformer
 - ▣ Underground Transformer
 - ← Anchor Guy
 - Span Guy

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Initials: _____

Job Number: 16153639
 Location: Overall - Ordway
 Description:

Map: 5449-J
 Scale: 1 inch = 100 feet
 Print Date: 3/21/2024



Exhibit "1"

Right-of-Way

Easement

This instrument prepared by: MTE
 555 New Salem Highway, Murfreesboro, TN 37129
 _____ Employee Initials



Service Location # _____ Meter Set SO # _____ WO# _____

Grantor: _____ And/by _____

Select one of the following: unmarried married business entity

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Grantor, whether one or more, does hereby grant unto Middle Tennessee Electric Membership Corporation, a Tennessee not-for-profit corporation ("Grantee" or "MTE"), its affiliates, successors or assigns, a perpetual easement (the "Easement") that, except as may be otherwise indicated on Exhibit 1, if attached, shall be twenty feet (20') from the centerline (total of 40') for any overhead transmission and/or distribution line or system, including anchoring, and ten feet (10') from the centerline (total of 20') for any underground transmission and/or distribution line or system with the right to:

- install, construct, reconstruct, rephase, operate and maintain an electric transmission and/or distribution line or system;
- inspect and make such repairs, changes, alterations, improvements, removals from, substitutions and additions to its facilities as Grantee may from time to time deem advisable, including, by way of example and not by way of limitation, the right to increase or decrease the number of conduits, wires, cables, poles, guy wire and anchors, hand holes, manholes, connection boxes, transformers and transformer enclosures;
- cut, trim and control the growth by chemical means, machinery or otherwise of trees and shrubbery within the Easement, or any tree that may interfere with or threaten to endanger the operation and maintenance of said line or system;
- prohibit, prevent and restrict the planting and/or maintenance of any trees, shrubbery or vegetation not approved in writing by Grantee (except those trees that appear on MTE's approved standard planting guide) which approval may be withheld by Grantee in its sole discretion if it determines said trees, shrubbery or vegetation may in the future interfere with or threaten to endanger the operation and maintenance of said line or system;
- prohibit the planting of any trees, shrubbery or vegetation within 15' of a pole or pad-mounted equipment;
- keep the Easement clear of all buildings, structures or other obstructions;
- license, permit or otherwise agree to the joint use or occupancy of the lines, system or, if any of said system is placed underground, of the trench and related underground facilities, by any other person, association or corporation for electrification, for other utility or commercial purposes;
- install and maintain guy additions to overhead lines if any portion of the lines or system is placed underground;

over, across; and through the land owned by Grantor as further described below (the "Property");

County _____ State of Tennessee Tax Map: _____ Group: _____ Parcel: _____

Address _____
House/building# Street/Road Name City Zip

and such Property being of record in Deed Book _____, Page _____, Register's Office of the above-named county, and as may be further described according to Exhibit 1 attached hereto and incorporated herein by reference, if attached, together with the right of ingress and egress over adjacent lands of the Grantor, and Grantor's successors and assigns for the purposes of this Easement.

The Grantor agrees that all poles, wires, and other facilities, including any main service entrance equipment, installed in, upon or under the Property at Grantee's expense shall remain the property of the Grantee and removable at the option of the Grantee. The Grantor hereby expressly releases any claims, demands, actions, or causes of action for trespass related to the Grantee's use of this Easement as described herein. The grant and other provisions of this Easement shall run with the land for the benefit of the Grantee, its affiliates, successor and assigns.

IN WITNESS WHEREOF, the Grantor has executed this instrument this _____ day of _____, 202____.

 Print Name/Title of Authorized Signatory

 Print Name/Title of Authorized Signatory

 Legal Signature

 Legal Signature

STATE OF _____

STATE OF _____

COUNTY OF _____

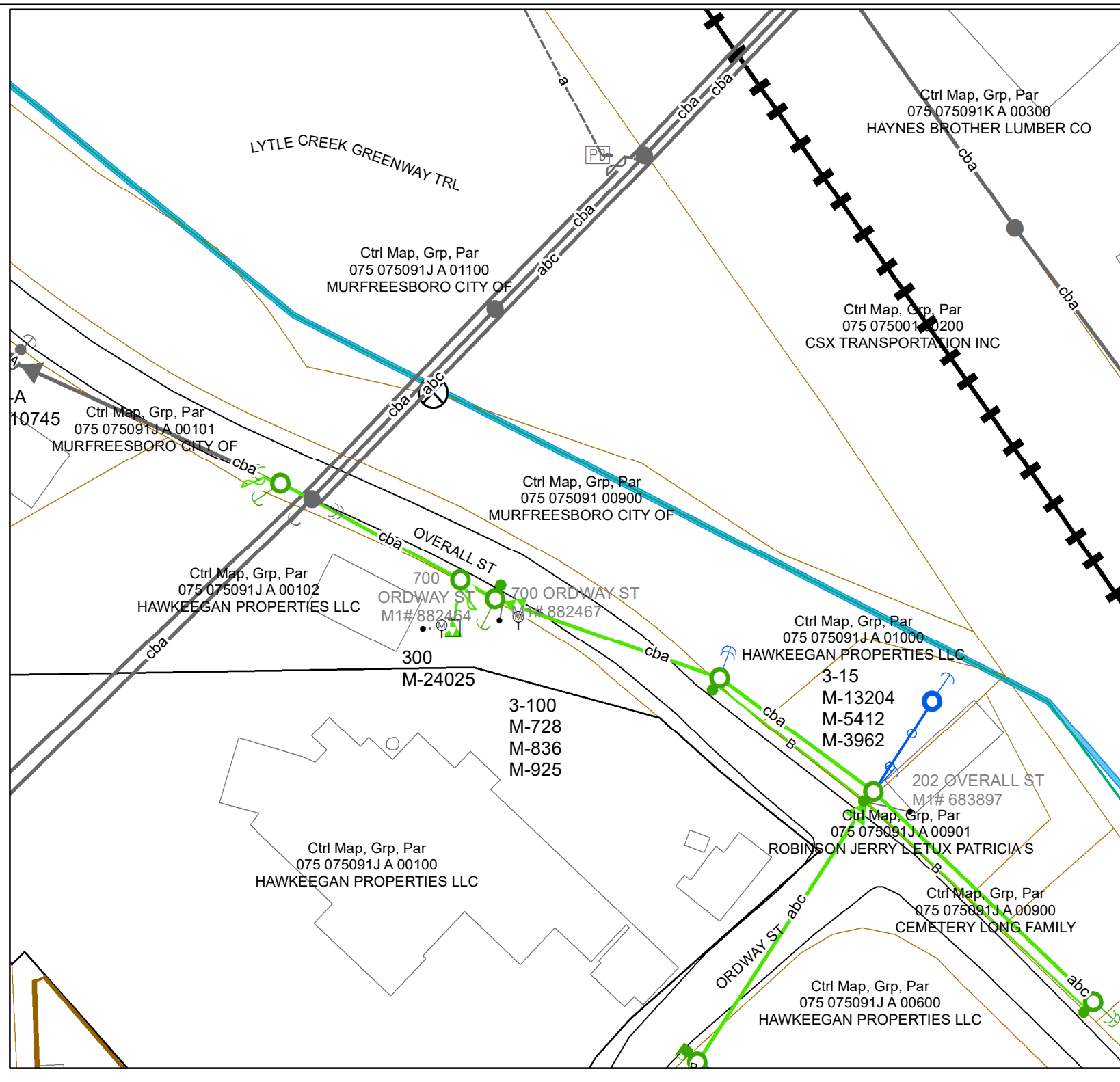
COUNTY OF _____

On the ____ day of _____, 202____, personally appeared before me, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that such person(s) executed the within instrument for the purposes therein contained.

On the ____ day of _____, 202____, personally appeared before me, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that such person(s) executed the within instrument for the purposes therein contained.

 Notary Signature My Commission Expires _____

 Notary Signature My Commission Expires _____



- ### Legend
- Utility Lines
 - Existing Utility Pole
 - Proposed Utility Pole
 - M Manhole
 - V Vault
 - PB Primary Pullbox
 - Secondary Pullbox
 - UG Sector
 - ▶ Overhead Transformer
 - ◼ Underground Transformer
 - ↔ Anchor Guy
 - Span Guy

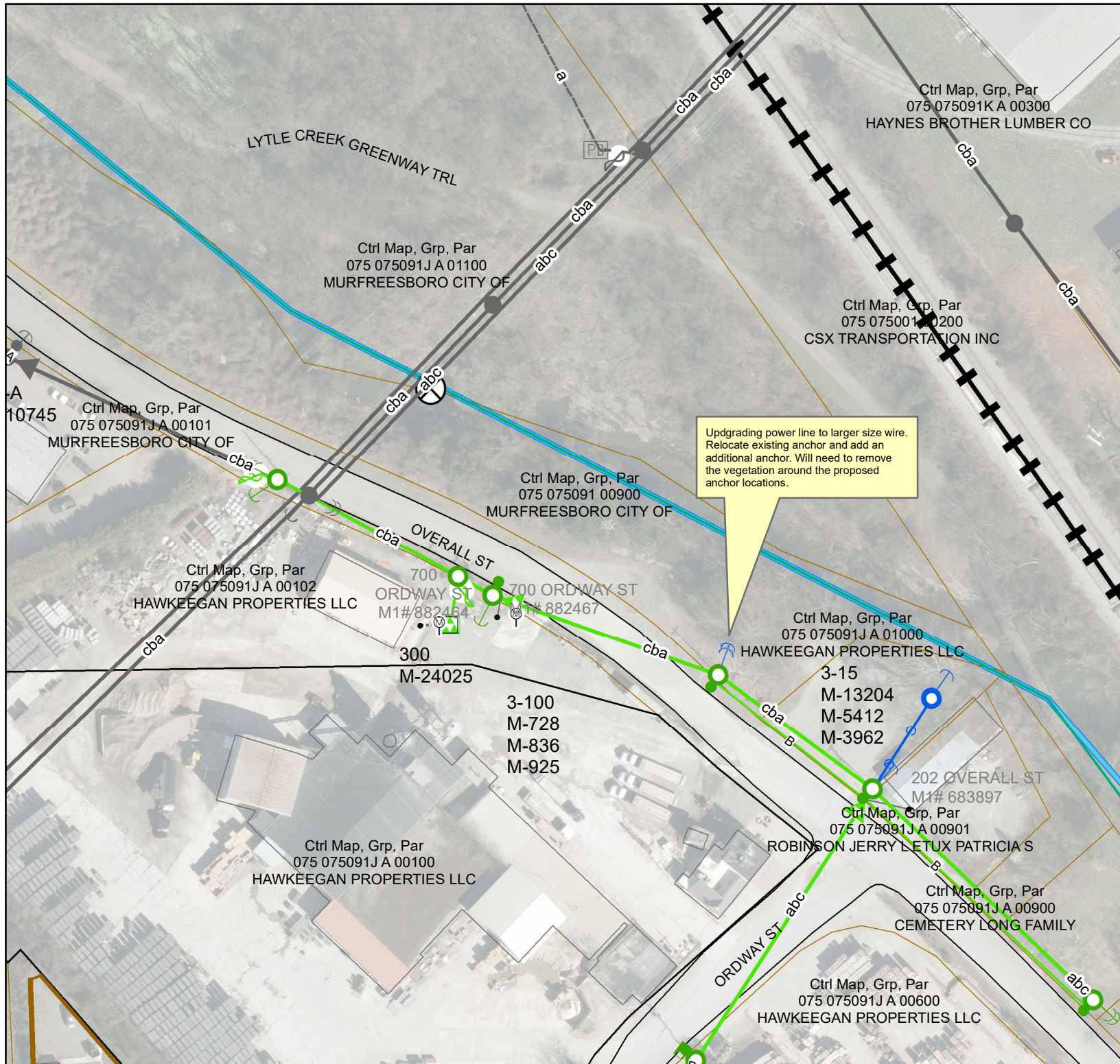
Disclaimer:
 Middle Tennessee Electric Membership Corporation ("MTE") makes no representation, warranty, or certification as to map accuracy, including, but not limited to, its accuracy as to underground conductor locations, property boundaries, rights-of-ways, or placement and location of any map features or data. This exhibit is not intended to be an ALTA/ACSM, Category I Boundary, or any other type of land survey. The drawing is not to scale. The location of the easement centerline and/or easement dimensions as shown are approximate and may vary with actual construction. After actual construction, the as-built electric lines and/or equipment shall be deemed to be the centerline of the easement. MTE expressly disclaims liability for any errors or omissions.

Initials: _____
 Job Number: 16153639
 Location: Overall - Ordway
 Description:

Map: 5449-J
 Scale: 1 inch = 100 feet
 Print Date: 3/12/2024



Exhibit "1"



- ### Legend
- Utility Lines
 - Existing Utility Pole
 - Proposed Utility Pole
 - ⊞ Manhole
 - ⊞ Vault
 - ⊞ Primary Pullbox
 - Secondary Pullbox
 - UG Sector
 - ▶ Overhead Transformer
 - ◻ Underground Transformer
 - ← Anchor Guy
 - Span Guy

Disclaimer:
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Initials: _____

Job Number: 16153639
 Location: Overall - Ordway
 Description:

Map: 5449-J
 Scale: 1 inch = 100 feet
 Print Date: 3/12/2024



Exhibit "1"

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Master Services Agreement with Flock Group, Inc.

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Master services agreement with Flock Group, Inc. for the purchase and implementation of Flock Safety Operating System (FlockOS).

Staff Recommendation

Approve the Master Services Agreement Flock Group.

Background Information

FlockOS is a technology integration platform that layers all available data streams from automated license plate readers, public safety cameras, gunshot detection, computer aided dispatch alerts, etc. into one central platform. This system will enable Real Time Crime Center personnel to receive alerts from all available technology in one place. This is a two-year contract for a total of \$87,100, billed in two annual installments.

FlockOS is the only public safety operating system compatible with the Flock Raven gunshot detection and the Flock Falcon LPR cameras and is therefore considered a sole source purchase.

Council Priorities Served

Maintain public safety

Maintaining public safety IT infrastructure is critical to effective and efficient operations.

Fiscal Impact

First year of contract, \$48,550, funded by MPD's FY24 operating budget. Second year, \$38,550, budgeted in MPD's FY25 operating budget.

Attachments

Master Services Agreement with Flock Group, Inc.

Master Services Agreement

This Master Services Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the entity identified in the signature block (“**Customer**”) (each a “**Party**,” and together, the “**Parties**”) on this the _____ day of _____ 2024. This Agreement is effective on the date of mutual execution (“**Effective Date**”). Parties will sign an Order Form (“**Order Form**”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“**Notifications**”);

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the **Order Form**. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

WHEREAS, Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, (“**Permitted Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “**Customer Hardware**” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “**Flock Hardware**” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form (“*Retention Period*”). Authorized End Users will be required to sign up for an account and select a password and username (“*User ID*”). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as “*Support Services*”).

2.4 Upgrades to Platform. Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock’s products or services to its agencies, the competitive strength of, or market for, Flock’s products or services, such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("**Service Suspension**"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock

is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as “*Customer Obligations*”).

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (“**Customer Generated Data**”). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party).

Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own

proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or

otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 Late Fees. If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

6.4 Taxes. Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and

Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Term**”). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “**Renewal Term**”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 **Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“**Cure Period**”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the **Cure Period**, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 **Survival.** The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 **Insurance.** Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 **Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT

ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's

rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance With Laws. Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("**Special Terms**"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the

terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS: 111 West Vine Street

Murfreesboro, TN 37130

ATTN: Craig Tindall, City Manager

EMAIL: ctindall@murfreesborotn.gov

EXHIBIT B
INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than “A” and “VII”. Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

**Flock Safety + TN - Murfreesboro PD-
Insight USA**

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Alex Guth
alex.guth@flocksafety.com
6154175399

flock safety

flock safety

ORDER FORM

This order form (“**Order Form**”) hereby incorporates and includes the terms of the previously executed agreement (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

This additional services Agreement will be effective when this Order Form is executed by both Parties (the “**Effective Date**”)

Customer:	TN - Murfreesboro PD- Insight USA	Initial Term:	24 Months
Legal Entity Name:	TN - Murfreesboro PD- Insight USA	Renewal Term:	24 Months
Accounts Payable Email:	8028@murfreesborotn.gov	Payment Terms:	Net 30
Address:	2701 East Insight Way Chandler, Arizona 85286	Billing Frequency:	Annual Plan - First Year Invoiced at Signing.
		Retention Period:	30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$38,550.00
Flock Safety Flock OS			
FlockOS® Elite Package	Included	1	Included
Flock Safety Video Products			
Flock Safety Wing™ VMS	Included	85	Included
Flock Safety Platform Add Ons			
FlockOS Community Program - 20 / 160	Included	160	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Professional Services - Community Program Implementation Fee - 20 / 160	\$10,000.00	1	\$10,000.00

Subtotal Year 1:	\$48,550.00
Annual Recurring Subtotal:	\$38,550.00
Discounts:	\$20,000.00
Estimated Tax:	\$0.00
Contract Total:	\$87,100.00

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “**Renewal Term**”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

Community Program will be subject to pre-payment by Customer. After 270 days, if more than 25% of the pre-paid connections have not been utilized, the outstanding connections will automatically be converted to Customer-subscribed Flock Safety Wing(s). No additional signature will be required for automatic conversion to Flock Safety Wing. In the alternative, Customer will have the option to convert unused funds from the pre-paid connections to purchase Flock Hardware (including, Flock Safety Falcon, Flock Safety Raven, Flock Safety Condor, etc.). Customer signature shall be required to convert pre-paid connections to Flock Hardware. For the avoidance of doubt, all conversions will: 1) be subject to Flock's Terms and Conditions including but not limited to the Reinstall Fee Schedule; and 2) will become part of Customer's Flock Service subscription and automatically renew for successive renewal terms of the greater of one (1) year or the length set forth on the Order Form, unless Customer gives Flock notice of non-renewal at least thirty (30) days prior to the end of the Term. Customer shall not be entitled to a refund for the Community Program, including for any unused funds or connections. Customer represents and warrants that Customer will obtain permission for Flock to install Flock Hardware related to the Community Program on any third-party property.

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$48,550.00
Annual Recurring after Year 1	\$38,550.00
Contract Total	\$87,100.00

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$20,000.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
FlockOST™	Flock Safety's situational awareness operating system.	

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

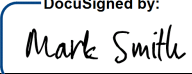
FlockOS Features	Description
Wing Gateway, Wing Cloud, Wing VMS	Unlocks access to purchase Wing.
Custom Map Layers	The FlockOS® Map is powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data.
Axon BWC (Body Worn Camera) Locations	Locate patrol officers and their BWC device statuses in one unified map view, optimizing coordination and response times.
Map PDF Attachments	
Camera Registry Program	Access a customizable, fully-hosted camera registry website to quickly identify nearby video sources during incidents. Strengthen community ties by incorporating fixed camera feeds from local schools, businesses, and neighborhoods. The interactive map lets you spot relevant cameras so you can easily contact camera owners to assist in investigations.
Automatic Vehicle Location (AVL) Connection	Boost situational awareness by displaying the Automatic Vehicle Location of patrol vehicles or other assets. This feature ensures resources are effectively allocated and response times are minimized.
Computer Aided Dispatch (CAD) Connection	Seamlessly incorporates your CAD system into FlockOS®. This crucial connection ensures that calls-for-service, locations, and actionable intelligence are displayed side-by-side, driving efficient call resolutions.
Floor Plans	Equip officers with detailed indoor layouts by layering building floor plans on the interactive ESRI-based map, enhancing tactical decision-making during incidents.
Drone Video Integration	Access live drone video feeds, locations, and device statuses in one unified map view, increasing situational awareness and driving safe responses to critical incidents.
FirstTwo Connection	Law enforcement agencies that already have an account with FirstTwo can enhance their Map by integrating vital intelligence to drive more informed responses. When there's an incident, like a License Plate Recognition (LPR) alert or a Computer Aided Dispatch (CAD) Call for Service, FlockOS will show markers on the buildings near the incident. By clicking on a building marker, information about the residents in that building will be displayed. This includes their names, ages, addresses, and a link to FirstTwo for phone numbers and additional details.
Regionalization Support	Enhance collective response and communications across your geographical region by pooling resources, technology, and intelligence. With FlockOS® Elite, you can share integrated CAD systems and cameras with neighboring agencies to coordinate quick responses to emerging threats and crime patterns, creating a safer community for residents in your broader area while maximizing resources.
Real-Time Routing	Promote safety by utilizing camera streams and vehicle history to predict a vehicle's direction of travel, minimizing the risks associated with vehicle pursuits.
SSO	Ability to sign into the Flock Safety platform via Okta Single Sign On (SSO). This increases login speed and information security.

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the previously executed agreement.

The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: TN - Murfreesboro PD- Insight USA

By: 
AC5C931454C24F3...

By: _____

Name: Mark Smith

Name: Shane McFarland

Title: Flock Safety General Counsel


Title: Mayor

Date: 4/3/2024

Date: _____

PO Number: _____

APPROVED AS TO FORM:


43A2035E51F9401...
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

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

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Request from Murfreesboro Parks and Recreation and North Boulevard Church of Christ to hang banners over East Main Street.

Staff Recommendation

Approve banners to be displayed as follows:

1. Murfreesboro Parks and Recreation, June 10,2024 to June 17, 2024, to promote their annual Juneteenth festival.
2. North Boulevard Church of Christ, May 29,2024 to June 7,2024, to promote their 4th annual SING! event

Background Information

Murfreesboro Parks and Recreation Juneteenth festival is an annual festival to celebrate the announcement of the abolition of slavery in the U.S. State of Texas. This is a community celebration that includes vendors, food trucks, poetry, performances, and games.

North Boulevard Church of Christ SING! Event is in it's 4th year and is a joint effort between two congregations from different cultures and backgrounds to bring not only their churches but the community together for a night of worship. SING! Is a celebration of unity through song and scripture.

Council Priorities Served

Establish strong City brand

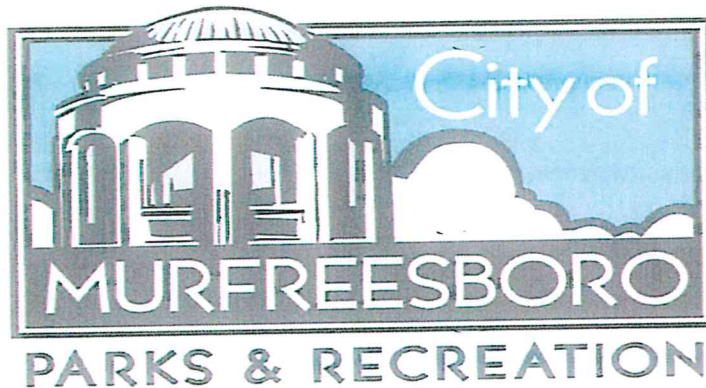
Banners hung across East Main Street engages our community in various activities and communicates special events to general public thereby enhancing the city reputation through an active community involvement.

Fiscal Impact

None.

Attachments

1. Letter of request from Murfreesboro Parks and Recreation
2. Letter of request from North Boulevard Church of Christ



To: City Council

March 4, 2024

The department of Parks and Recreation for the City of Murfreesboro would like to request permission to hang our Juneteenth banner across Main Street at Central High School during the open dates of June 10th through June 17th. Hanging the banner will generate excitement and awareness as we near the time of the Juneteenth festival. We have checked the dates to ensure they are open and available with Murfreesboro Street Department.

The 2024 Juneteenth event is set for Saturday, June 15th from 10 am to 4 pm. Juneteenth is an American holiday that commemorates the June 29, 1865 announcement of the abolition of slavery in the U.S state of Texas, the emancipation of African American slaves throughout the former Confederacy of the southern United States. This is a festival for the celebration commemorated on June 25th of this year. We will have vendors, food trucks, poetry/singing performances, and games. This event is free and open to the public.

Murfreesboro Parks and Recreation Department is dedicated to providing vibrant public spaces and inclusive programs delivered with visionary leadership and caring staff that engage the individual and strengthen the quality of life of our community.

If you have any questions or need more information, please contact me at 615.890.5333 extension 6805.

Sincerely,

Lynn Caldwell

Marketing Coordinator

Parks & Recreation Department



East Murfreesboro | Church Offices
1112 N Rutherford Blvd, Murfreesboro, TN 37130
(615) 893-1520 | northboulevard.com

March 18, 2024

Murfreesboro City Council

Dear Council Members,

We are once again writing for permission to hang our event signage across Main Street beginning on May 29 through June 7, 2024. As last year, we plan to use the banner to promote our, now 4th, annual SiNG! Event at McKnight Park on the evening of June 7 beginning at 7:00 pm featuring a night of worship with Hwy 231 Church and North Boulevard Church.

Because of a long-standing relationship built between our two churches, the SiNG! event was envisioned and then brought to fruition in 2020 as the world was coming out of the pandemic. We wanted to show our memberships how God can bring races and cultures together to make all things new. SiNG! is a celebration of unity and community through song and scripture available for all of Murfreesboro to come and enjoy.

As we begin preparation for our 4th year at McKnight Park, our goal is to reach people across Middle Tennessee with songs of joy and hope. The banner will help us spread the word that everyone is invited!

Thanks for your consideration!

Jane Herring
Senior Minister Assistant

jph

COUNCIL COMMUNICATION

Meeting Date: 4/18/2024

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

Requested Council Action:

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

Summary

Report of asphalt and concrete purchases.

Background Information

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

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

Council Priorities Served

Responsible budgeting

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

Fiscal Impacts

Asphalt purchases, \$100,000, and concrete purchases, \$60,000, are funded by the Department's FY24 Budget.

Attachments

Asphalt and Concrete Purchases Report

STREET DEPARTMENT ASPHALT PURCHASES FY 24

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/28/2023	Hawkins	411E	\$ 89.45	6.03	\$ 539.38	\$ 539.38
10/9/2023	Hawkins	411E	\$ 88.85	5.62	\$ 499.34	\$ 1,038.72
11/27/2023	Hawkins	411E	\$ 88.85	6.22	\$ 552.65	\$ 1,591.37

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/14/2023	Vulcan	411E PG 64-22	\$ 84.50	4.19	\$ 354.02	\$ 354.02
8/31/2023	Vulcan	411E PG 64-22	\$ 84.50	22.72	\$ 1,919.62	\$ 2,273.64
8/31/2023	Vulcan	307BM PG 64-22	\$ 73.00	56.72	\$ 4,140.72	\$ 6,414.36
10/17/2024	Vulcan	411E PG 64-22	\$ 84.50	11.10	\$ 937.84	\$ 7,352.20
10/20/2023	Vulcan	411E PG 64-22	\$ 84.50	22.92	\$ 1,936.53	\$ 9,288.73
10/24/2023	Vulcan	411E PG 64-22	\$ 84.50	18.73	\$ 1,582.51	\$ 10,871.24
11/17/2023	Vulcan	307BM PG 64-22	\$ 73.00	3.50	\$ 255.50	\$ 11,126.74
11/17/2023	Vulcan	411E PG 64-22	\$ 84.50	8.43	\$ 712.34	\$ 11,839.08
2/7/2024	Vulcan	411E PG 64-22	\$ 89.50	25.06	\$ 2,450.08	\$ 14,289.16
2/12/2024	Vulcan	411E PG 64-22	\$ 89.50	16.82	\$ 1,644.45	\$ 15,933.61
2/13/2024	Vulcan	411E PG 64-22	\$ 89.50	24.87	\$ 2,431.50	\$ 18,365.11
2/14/2024	Vulcan	307BM PG 64-22	\$ 78.00	19.63	\$ 1,531.14	\$ 19,896.25
2/14/2024	Vulcan	411E PG 64-22	\$ 89.50	10.30	\$ 921.85	\$ 20,818.10
2/15/2024	Vulcan	411E PG 64-22	\$ 89.50	24.13	\$ 2,359.41	\$ 23,177.51
2/16/2024	Vulcan	411E PG 64-22	\$ 89.50	24.07	\$ 2,353.54	\$ 25,531.05
2/20/2024	Vulcan	411E PG 64-22	\$ 89.50	31.04	\$ 3,035.06	\$ 28,566.11
2/22/2024	Vulcan	411E PG 64-22	\$ 89.50	15.40	\$ 1,505.81	\$ 30,071.92
2/23/2024	Vulcan	411E PG 64-22	\$ 89.50	17.66	\$ 1,726.77	\$ 31,798.69
2/26/2024	Vulcan	411E PG 64-22	\$ 89.50	18.21	\$ 1,629.80	\$ 33,428.49
2/27/2024	Vulcan	411E PG 64-22	\$ 89.50	17.27	\$ 1,545.67	\$ 34,974.16
2/29/2024	Vulcan	411E PG 64-22	\$ 89.50	17.81	\$ 1,594.00	\$ 36,568.16
3/12/2024	Vulcan	411E PG 64-22	\$ 89.50	10.19	\$ 892.75	\$ 37,460.91

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/5/2023	Wiregrass Construction	411-E	\$ 86.54	6.54	\$ 565.97	\$ 565.97
7/13/2023	Wiregrass Construction	411-E	\$ 86.54	1.14	\$ 98.66	\$ 664.63
7/26/2023	Wiregrass Construction	411-E	\$ 86.54	10.43	\$ 902.61	\$ 1,567.24
8/17/2023	Wiregrass Construction	307-BM PG 64-22	\$ 74.01	10.74	\$ 794.87	\$ 2,362.11
8/18/2023	Wiregrass Construction	411-E	\$ 86.54	4.17	\$ 360.87	\$ 2,722.98
8/22/2023	Wiregrass Construction	411-E	\$ 86.54	5.99	\$ 518.38	\$ 3,241.36
8/23/2023	Wiregrass Construction	411-E	\$ 86.54	10.34	\$ 894.82	\$ 4,136.18
8/24/2023	Wiregrass Construction	411-E	\$ 86.54	1.37	\$ 118.56	\$ 4,254.74
9/15/2023	Wiregrass Construction	411-E	\$ 86.54	6.52	\$ 564.24	\$ 4,818.98
9/18/2023	Wiregrass Construction	411-E	\$ 86.54	16.77	\$ 1,451.28	\$ 6,270.26
9/21/2023	Wiregrass Construction	411-E	\$ 86.54	14.53	\$ 1,257.43	\$ 7,527.69
9/22/2023	Wiregrass Construction	411-E	\$ 86.54	6.27	\$ 542.61	\$ 8,070.30
9/26/2023	Wiregrass Construction	411-E	\$ 86.54	11.54	\$ 998.67	\$ 9,068.97
9/27/2023	Wiregrass Construction	411-E	\$ 86.54	9.80	\$ 848.09	\$ 9,917.06
10/3/2023	Wiregrass Construction	411-E	\$ 86.54	18.00	\$ 1,557.72	\$ 11,474.78
10/4/2023	Wiregrass Construction	411-E	\$ 86.54	11.13	\$ 963.19	\$ 12,437.97
10/9/2023	Wiregrass Construction	411-E	\$ 86.54	7.60	\$ 657.70	\$ 13,095.67
10/10/2023	Wiregrass Construction	411-E	\$ 86.54	3.31	\$ 286.45	\$ 13,382.12
10/11/2023	Wiregrass Construction	411-E	\$ 86.54	18.42	\$ 1,594.07	\$ 14,976.19
10/13/2023	Wiregrass Construction	411-E	\$ 86.54	11.13	\$ 963.19	\$ 15,939.38
10/18/2023	Wiregrass Construction	411-E	\$ 86.54	4.06	\$ 351.35	\$ 16,290.73
10/23/2023	Wiregrass Construction	411-E	\$ 86.54	11.24	\$ 972.71	\$ 17,263.44
10/24/2023	Wiregrass Construction	411-E	\$ 86.54	18.37	\$ 1,589.74	\$ 18,853.18
10/27/2023	Wiregrass Construction	411-E	\$ 86.54	16.10	\$ 1,393.29	\$ 20,246.47
11/2/2023	Wiregrass Construction	411-E	\$ 86.54	3.08	\$ 266.54	\$ 20,513.01
11/3/2023	Wiregrass Construction	411-E	\$ 86.54	12.48	\$ 1,080.02	\$ 21,593.03
11/6/2023	Wiregrass Construction	411-E	\$ 86.54	11.58	\$ 1,002.13	\$ 22,595.16
11/8/2023	Wiregrass Construction	411-E	\$ 86.54	13.02	\$ 1,126.75	\$ 23,721.91
11/9/2023	Wiregrass Construction	411-E	\$ 86.54	15.10	\$ 1,306.75	\$ 25,028.66
11/15/2023	Wiregrass Construction	411-E	\$ 86.54	13.31	\$ 1,151.85	\$ 26,180.51

11/29/2023	Wiregrass Construction	411-E	\$	86.54	8.25	\$	713.96	\$	26,894.47
11/30/2023	Wiregrass Construction	411-E	\$	86.54	13.16	\$	1,138.87	\$	28,033.34
12/5/2023	Wiregrass Construction	411-E	\$	86.54	5.38	\$	465.58	\$	28,498.92
12/6/2023	Wiregrass Construction	411-E	\$	86.54	5.38	\$	465.59	\$	28,964.51
12/6/2023	Wiregrass Construction	411-E	\$	86.54	5.38	\$	465.59	\$	29,430.10
1/4/2024	Wiregrass Construction	411-E	\$	86.54	3.00	\$	259.62	\$	29,689.72
1/8/2024	Wiregrass Construction	411-E	\$	86.54	8.62	\$	745.97	\$	30,435.69
1/11/2024	Wiregrass Construction	411-E	\$	86.54	10.29	\$	890.50	\$	31,326.19
1/30/2024	Wiregrass Construction	411-E	\$	86.54	25.24	\$	2,184.27	\$	33,510.46
1/31/2024	Wiregrass Construction	411-E	\$	86.54	22.15	\$	1,916.86	\$	35,427.32
2/1/2024	Wiregrass Construction	411-E	\$	86.54	22.07	\$	1,909.94	\$	37,337.26
2/2/2024	Wiregrass Construction	411-E	\$	86.54	16.13	\$	1,395.89	\$	38,733.15
3/7/2024	Wiregrass Construction	411-E	\$	86.54	16.00	\$	1,384.64	\$	40,117.79

STREET DEPARTMENT CONCRETE PURCHASES FY 24

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/3/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.5		\$ 345.00	\$ 345.00
7/3/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.5		\$ 276.00	\$ 621.00
7/7/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.5		\$ 345.00	\$ 966.00
7/10/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1.5		\$ 207.00	\$ 1,173.00
7/11/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1		\$ 138.00	\$ 1,311.00
7/11/2023	Nashville Ready Mix	Retarder 1%	\$ 4.00	1		\$ 4.00	\$ 1,315.00
7/11/2023	Nashville Ready Mix	Full Fibers	\$ 5.00	1		\$ 5.00	\$ 1,320.00
7/26/2023	Nashville Ready Mix	4000 PSI Chips	\$ 140.00	1.5		\$ 210.00	\$ 1,530.00
	Nashville Ready Mix	Full Fibers	\$ 5.00	1.5		\$ 7.50	\$ 1,537.50
7/31/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1.5		\$ 207.00	\$ 1,744.50
8/1/2023	Nashville Ready Mix	4000 PSI Chips	\$ 140.00	3.5		\$ 490.00	\$ 2,234.50
	Nashville Ready Mix	Min Load Charge	\$ 75.00	1		\$ 75.00	\$ 2,309.50
	Nashville Ready Mix	Fuel Surcharge		1	\$ 50.00	\$ 50.00	\$ 2,359.50
	Nashville Ready Mix	Full Fibers	\$ 5.00	3.5		\$ 17.50	\$ 2,377.00
8/2/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 2,653.00
8/9/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 2,929.00
8/21/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1.5		\$ 207.00	\$ 3,136.00
8/24/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 3,412.00
8/29/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 3,688.00
9/5/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1		\$ 138.00	\$ 3,826.00
9/6/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 4,102.00
9/7/2023	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2		\$ 276.00	\$ 4,378.00
9/8/2023	Nashville Ready Mix	3500 PSI AE	\$ 137.00	1.5		\$ 205.50	\$ 4,583.50
9/11/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	2		\$ 276.00	\$ 4,859.50
9/12/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	1		\$ 138.00	\$ 4,997.50
9/13/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	1.5		\$ 207.00	\$ 5,204.50
9/14/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	1		\$ 138.00	\$ 5,342.50
9/19/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	3		\$ 414.00	\$ 5,756.50
9/20/2023	Nashville Ready Mix	3500 PSI AE	\$ 137.00	1		\$ 137.00	\$ 5,893.50
9/25/2023	Nashville Ready Mix	3500 PSI AE	\$ 138.00	3		\$ 414.00	\$ 6,307.50
9/26/2023	Nashville Ready Mix	4000 PSI Chips AE	\$ 140.00	2		\$ 280.00	\$ 6,587.50
	Nashville Ready Mix	Full Fibers	\$ 5.00	2		\$ 10.00	\$ 6,597.50
9/28/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5		\$ 207.00	\$ 6,804.50
11/1/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2.5		\$ 345.00	\$ 7,149.50
11/2/2023	Nashville Ready Mix	4000 PSI Chips AE	\$ 140.00	16		\$ 2,240.00	\$ 9,389.50
	Nashville Ready Mix	Fuel Surcharge	\$ -		\$ 100.00	\$ 100.00	\$ 9,489.50
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	16		\$ 224.00	\$ 9,713.50
	Nashville Ready Mix	Full Fibers	\$ 5.00	16		\$ 80.00	\$ 9,793.50
11/3/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3		\$ 414.00	\$ 10,207.50
	Nashville Ready Mix	Full Fibers	\$ 5.00	3		\$ 15.00	\$ 10,222.50
11/13/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2.5		\$ 345.00	\$ 10,567.50
11/20/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 10,843.50
11/27/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 11,119.50
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	2		\$ 28.00	\$ 11,147.50
	Nashville Ready Mix	Hot Water	\$ 4.00	2		\$ 8.00	\$ 11,155.50
11/28/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5		\$ 207.00	\$ 11,362.50
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 7.00	1.5		\$ 10.50	\$ 11,373.00
12/4/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1		\$ 138.00	\$ 11,511.00
12/4/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1		\$ 138.00	\$ 11,649.00
	Nashville Ready Mix	Full Fibers .75lb dose	\$ 5.00	1		\$ 5.00	\$ 11,654.00
12/7/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2.5		\$ 345.00	\$ 11,999.00
12/8/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5		\$ 207.00	\$ 12,206.00
12/11/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1		\$ 138.00	\$ 12,344.00

12/12/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 12,758.00
12/13/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5	\$ 207.00	\$ 12,965.00
12/14/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 13,241.00
12/18/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 137.00	1	\$ 137.00	\$ 13,378.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	1	\$ 14.00	\$ 13,392.00
12/19/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5	\$ 207.00	\$ 13,599.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	1.5	\$ 21.00	\$ 13,620.00
	Nashville Ready Mix	Hot Water	\$ 4.00	1.5	\$ 6.00	\$ 13,626.00
12/20/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 14,040.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	3	\$ 42.00	\$ 14,082.00
	Nashville Ready Mix	Hot Water	\$ 4.00	3	\$ 12.00	\$ 14,094.00
12/21/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 14,508.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	3	\$ 42.00	\$ 14,550.00
	Nashville Ready Mix	Hot Water	\$ 4.00	3	\$ 12.00	\$ 14,562.00
12/27/2023	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3	\$ 414.00	\$ 14,976.00
	Nashville Ready Mix	Hot Water	\$ 4.00	3	\$ 12.00	\$ 14,988.00
1/2/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 15,264.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	2	\$ 28.00	\$ 15,292.00
	Nashville Ready Mix	Hot Water	\$ 4.00	2	\$ 8.00	\$ 15,300.00
1/3/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5	\$ 207.00	\$ 15,507.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	1.5	\$ 21.00	\$ 15,528.00
	Nashville Ready Mix	Hot Water	\$ 4.00	1.5	\$ 6.00	\$ 15,534.00
1/5/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1	\$ 138.00	\$ 15,672.00
	Nashville Ready Mix	Non-Chloride Accelerator	\$ 14.00	1	\$ 14.00	\$ 15,686.00
1/10/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5	\$ 207.00	\$ 15,893.00
	Nashville Ready Mix	Non-Chloride Accelerator 1%	\$ 7.00	1.5	\$ 1.50	\$ 15,894.50
2/5/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2	\$ 276.00	\$ 16,170.50

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
10/27/2023	Orgain Ready Mix	Flowable Fill	\$ 127.00	2		\$ 254.00	\$ 254.00

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
	Smyrna Ready Mix						

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Equipment Rebate Terms and Conditions

Department: Transportation

Presented by: Karen Lampert, Grant Manager

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Award Terms and Conditions for a Department of Energy, Energy Efficiency and Conservation Block Grant (EECBG) allocation to be used toward City street lighting improvements.

Staff Recommendation

Approve Terms and Conditions for the acceptance of the awarded amount of \$190,230.

Background Information

The City received a federal funding allocation of \$190,230 from the Department of Energy's EECBG funding. This allocation assists local governments in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency.

The grant will fund an existing CIP project to upgrade 145 streetlights at I-24/New Salem and I-840/Broad St intersections by retrofitting LED technology. In addition to improving energy usage, the project will improve night visibility for enhanced safety.

Total project costs are estimated at \$240,845. This cost will be offset by the \$190,230 in EECBG Voucher Program funds and an additional \$14,927 in TVA energy credits that will be credited to City on its electric bills. The cost to the City is approximately \$35,688.

Council Priorities Served

Responsible budgeting

Use of federal appropriations and incentives reduces the need for local funds.

Maintain Public Safety

Improved street lighting reduces vehicle and pedestrian related accidents due to increased visibility.

Fiscal Impact

The City's contribution to the project, \$35,688, is funded by State Street Aid.

Attachment

Equipment Rebate Terms and Conditions

Special Terms and Conditions

Entity Name: City of Murfreesboro (“Recipient”), which is identified in the Assistance Agreement, and the Office of State and Community Energy Programs (“SCEP”), and Energy Efficiency and Conservation Block Grant Program (“EECBG”), an office within the United States Department of Energy (“DOE”), enters into this Award, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Special Terms and Conditions
Attachment 1	Federal Assistance Reporting Checklist (FARC) ¹
Attachment 2	NEPA Determination ²

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- National Policy Requirements (November 12, 2020) at <http://www.nsf.gov/awards/managing/rtc.jsp>.
- The Recipient’s application/proposal as approved by SCEP.
- Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).

¹ The FARC will be provided at a later date.

² The NEPA Determination is attached to your application in the EECBG Program Voucher Application Portal

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Subpart A. General Provisions

Term 1. Legal Authority and Effect

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically The EECBG Program Voucher Portal (<https://doerebates.my.site.com/eecbgvouchers/s/>), constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via the EECBG Program Voucher Portal by the Recipient's authorized representative constitutes the Recipient's electronic signature.

Term 2. Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award, as applicable to all subcontractors as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all sub contractors and to require their strict compliance therewith.

Term 3. Compliance with Federal, State, and Municipal Law

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

Term 4. Inconsistency with Federal Law

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

Term 5. Federal Stewardship

SCEP will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

Term 6. NEPA Requirements

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, SCEP has made a

NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Application approved by the Contracting Officer and the DOE NEPA Determination. The Recipient is thereby authorized to use Federal funds for the defined project activities, except where such activity is subject to a restriction set forth elsewhere in this Award.

This authorization is specific to the project activities and locations as described in the Application approved by the Contracting Officer and the DOE NEPA Determination.

If the Recipient later intends to add to or modify the activities or locations as described in the approved Application and the DOE NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

Condition(s):

NEPA Logs if conducting potentially ground disturbing activities.

Term 7. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 8. Reporting Requirements

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

Term 9. Lobbying

By accepting funds under this Award, the Recipient agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 10. Publications

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of State and Community Energy Programs (SCEP) under the Energy Efficiency and Conservation Block Grant (EECBG) Program Application # XXXXXXXXX”
- *Full Legal Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

Abridged Legal Disclaimer: “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

Term 11. No-Cost Extension

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

Term 12. Property Standards

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

Term 13. Insurance Coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

Term 14. Real Property

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Term 15. Equipment

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as

described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. See also 2 CFR 200.439 Equipment and other capital expenditures.

Term 16. Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Term 17. Property Trust Relationship

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

Term 18. Record Retention

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

Term 19. Audits

A. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference

with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

Term 20. Indemnity

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

Term 21. Foreign National Participation

If the Recipient (including any of its contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE's request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national's participation in the Award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs or personnel.

Term 22. Post-Award Due Diligence Reviews

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

Subpart B. Financial Provisions

Term 23. Maximum Obligation

The maximum obligation of DOE for this Award is the total “Funds Obligated” stated in Block 13 of the Assistance Agreement to this Award.

Term 24. Refund Obligation

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

Term 25. Allowable Costs

SCEP determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subcontractors, and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to SCEP. Such records are subject to audit. Failure to provide SCEP adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

Term 26. Decontamination and/or Decommissioning (D&D) Costs

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient’s facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

Term 27. Use of Program Income

If the Recipient earns program income during the project period as a result of this Award, the

Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

Term 28. Payment Procedures

A. Method of Payment

Payment will be made by reimbursement by CFO through ACH. Equipment rebate voucher applications will be approved for payment by DOE once the equipment has been installed and all required documentation has been provided.

B. Payments

All payments are made by electronic funds transfer to the bank account identified attached to the Recipient's UEI and identified in the Recipient's SAM.gov account.

C. Unauthorized Drawdown of Federal Funds

For each budget period, the Recipient may not spend more than the Federal share authorized to that award, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent in excess of the authorized amount.

A. Supporting Documents for Agency Approval of Payments

DOE may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, proof of installation and other expenditure explanations that justify the payment requests.

Term 29. Budget Changes

A. Budget Changes Generally

The Contracting Officer has reviewed and approved the budget in Attachment 1 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

B. Transfers of Funds Among Direct Cost Categories

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost stated in the budget on the recipient's application.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, stated in the budget on the recipient's application.

Subpart C. Miscellaneous Provisions**Term 30. Environmental, Safety and Health Performance of Work at DOE Facilities**

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H requirements.

The Recipient is required apply this provision to its contractors.

Term 31. System for Award Management and Universal Identifier Requirements**A. Requirement for Registration in the System for Award Management (SAM)**

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, tThe Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

B. Unique Entity Identifier (UEI)

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information

is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.
- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

C. Definitions

For purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:
 1. A Governmental organization, which is a State, local government, or Indian Tribe.
 2. A foreign public entity.
 3. A domestic or foreign nonprofit organization.
 4. A domestic or foreign for-profit organization.
 5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- iv. Subaward:
 1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients*

and Contractors and/or 2 CFR 910.501 Audit requirements, (f) Subrecipients and Contractors).

3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.
- v. Subrecipient means an entity that:
 1. Receives a subaward from the Recipient under this Award; and
 2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 32. Nondisclosure and Confidentiality Agreements Assurances

- A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
 - i. *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*
 - ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity,

other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Term 33. Contractor Change Notification

Except for contractors specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified contract agreements, including naming any To Be Determined contractors. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the service to be provided or the equipment to be purchased.
- An assurance that the process undertaken by the Recipient to solicit the contractor complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected contractor and that the Recipient's written standards of conduct were followed.³
- A completed Environmental Questionnaire, if applicable.
- An assurance that the contractor is not a debarred or suspended entity.
- An assurance that all required award provisions will be flowed down in the resulting contract agreement.

³ It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

The Recipient is responsible for making a final determination to award or modify contractor agreements under this agreement, but the Recipient may not proceed with the contractor agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the contractor documentation stipulated above, the Recipient may proceed to award or modify the proposed contractor agreement.

Term 34. Recipient Integrity and Performance Matters

A. General Reporting Requirement

If the total value of your currently active Financial Assistance awards, grants, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

4. Any other criminal, civil, or administrative proceeding if:
 - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
 - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this term:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—

1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Term 35. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as "Export Controls." The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

Term 36. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term "Investigator" means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE's interim COI Policy.

Term 37. Organizational Conflict of Interest

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to

be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included in the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the Federal government.

The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring contractor compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

Term 38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal 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.

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

Term 39. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

- 1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
- 2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects>

Term 40. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements

Term 41. Reporting, Tracking and Segregation of Incurred Costs

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

Term 42. Davis-Bacon Requirements

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair, through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts.
- (2) being responsible for compliance by any subcontractor with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, , contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal SCEP's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

Term 43. Buy American Requirement for Infrastructure Projects

**NOTE: Buy American Requirements only apply to awards over \$250,000. Please disregard this section if your total EECBG Program award is less than \$250,000.*

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or enginSCEPd wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

(A) all iron and steel used in the project are produced in the United States;

(B) the manufactured products used in the project are produced in the United States; or

(C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy - including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered "public" if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be "utilized primarily for a public purpose" if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;

- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- **Time-limited:** Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- **Targeted:** Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- **Conditional:** The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant

waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

Term 44. Affirmative Action and Pay Transparency Requirements

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients and contractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide⁴ should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

Term 45. Potentially Duplicative Funding Notice

If the Recipient have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Term 46. Transparency of Foreign Connections

⁴ See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8c6fecb6c710ec> Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or contractors:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or contractors that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

Term 47. Foreign Collaboration Considerations

- a. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- b. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published

process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

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Authorized Signature

Date

Name: Shane McFarland

Title: Mayor

Entity Name: City of Murfreesboro

DocuSigned by:
APPROVED AS TO FORM
Adam Tucker
Adam P. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: TDOT Salem Hwy Widening Ph 3 – Sewer Easement Offers

Department: Water Resources

Presented by: Darren Gore, 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"/>

Summary

Sanitary sewer easements are necessary for the sewer main extensions to serve three properties within this phase of the roadway construction.

Staff Recommendation

Approval of the easement offers with 10% added for voluntary conveyance or move to condemn should the owners not voluntary convey.

Background Information

TDOT is moving forward with the Phase III widening of Salem Hwy beginning at Cason Lane and extending to just west of Veterans Parkway. The widening project is taking three of the properties septic field lines therefore, TDOT has asked the Department to design two sewer main extensions to serve an existing convenience store, a residence, and a church to avoid having to relocate them. The Department is under contract with SEC for this design TDOT is paying for the sewer main extensions through the road widening contract, however, their policies prohibit them from purchasing the necessary sewer easements. Staff has collaborated with the proposed owners, and most are donating the necessary easements, however, there are three properties that are requesting payment. Staff has worked with the Legal Department on the \$/acre price for each property.

Council Priorities Served

Responsible budgeting

Staff requested for properties receiving a benefit from the sewer to donate to reduce the out-of-pocket costs not paid for by TDOT.

Expand infrastructure

These sewer extensions expand our system to serve these three properties, with very little cost to the Department.

Fiscal Impact

The expense, estimated at \$32,400, is funded from the Water Resources Department's working capital reserves. Final offers will be based on the \$/sf range provided by TDOT.

Attachments

1. Easement Offer Spreadsheet
2. Project Maps

200 100 0 200
Feet

Rucker-Donnell
Foundation

NEW SALEM HWY (HWY 99)

VETERANS PKWY

OV1 New Salem, LLC

Phillip Dodd

Freewill
Baptist Church

Existing Sewer
Proposed Sewer



1 Inch = 200 Feet

Murfreesboro Water Resources Department
Salem Highway - Phase 3
Sewer Main Extensions



COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Rezoning property along Memorial Blvd. and Haynes Haven Lane
[Second Reading]

Department: Planning

Presented by: Greg McKnight, Executive Director of Development Services

Requested Council Action:

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

Summary

Rezone approximately 22 acres located at the northwest corner of Memorial Boulevard and Haynes Haven Lane.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

AdamsPlace, LLC presented a zoning application [2022-420] for approximately 22 acres located at the northwest corner of Memorial Boulevard and Haynes Haven Lane to be zoned PUD (Planned Unit District), including rezoning approximately 5.4 acres to be rezoned from RS-15 (Single-Family Residential District 15) to PUD and amending the existing PUD zoning on approximately 16.6 acres. During its regular meeting on September 7, 2022, the Planning Commission conducted a public hearing on this matter and then voted to defer action. At its regular meeting on December 7, 2022, the Planning Commission considered this item under Old Business and then voted to recommend its approval.

On January 19, 2023, Council held a public hearing and then voted to defer action. On April 4, 2024, Council approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This rezoning will enable the expansion of an existing senior housing development, allowing additional inventory of housing options for seniors as Murfreesboro grows.

Attachments:

Ordinance 22-OZ-48

ORDINANCE 22-OZ-48 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the zoning of approximately 22 acres located at 1925 and 1927 Memorial Boulevard to rezone approximately 5.4 acres from Single-Family Residential Fifteen (RS-15) District to Planned Unit Development (PUD) District and to amend the use of approximately 16.6 acres of the existing Adams Place PUD; AdamsPlace, LLC, applicant, [2022-420].

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 to Planned Unit Development (PUD) District and to modify the conditions of the Planned Unit Development (PUD) District, as indicated on the attached map, for the purpose of allowing the development of 53 additional multi-family dwelling units and a new amenity center building.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations set forth in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

SEAL



Ordinance 22-OZ-48

CH

CH

PUD Amended

CH

WENDELWOOD-DR

RS-15

RS-15

KEVIN-DR

RS-15

PUD

CH

MEMORIAL-BLVD

AIRPORT-RD

Area Rezoned from RS-15 to PUD

RS-15

JAMES-DR

HAYNES-HAVEN-LN

CH

RS-15

RS-15

UPTOWN-SQ

LOVE-CT



COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Solid Waste Fee Schedule Adjustment

Department: Solid Waste

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 to adjust solid waste fees.

Recommendation

Approve Resolution 24-R-10.

Background Information

On March 14, 2024, Council reviewed the solid waste fee structure proposal. The proposed resolution implements the fees as discussed. The proposed schedule of fees adjusts weekly residential curbside pickup to \$11.50 per month. It adjusts bi-weekly commercial curbside pickup outside the City Core Overlay to \$40 per month. The fee for commercial carts inside the City Core Overlay remains at \$30 per month for bi-weekly pickup. Other items, including charges for bulk item pick-up, loose grass clippings and larger volume brush and limb pickups, solid waste cart replacement, and special event service, are not changed with this adjustment.

The current total solid waste fees generate \$6.60 million in revenue. The FY25 budget anticipates the proposed fee adjustment will provide an additional \$1.4m in revenue to cover around 70% of the estimated \$11m in solid waste operating expenses. The fee adjustment is proposed to go into effect July 1, 2024.

This long-planned increase moves the City's solid waste collection utility service toward self-supporting operations, a process that should be completed over the next seven years. During the interim, the General Fund continues to support this utility service.

Council Priorities Served

Responsible budgeting

Utilizing fee revenue to provide utility services is the most equitable method of allocating operating costs.

Fiscal Impacts

Increase of \$1.4 million in FY25 revenues.

Attachments

Resolution 24-R-10; solid waste collection and disposal fee schedule

RESOLUTION 24-R-10 adopting Solid Waste Collection and Disposal Fee Schedule.

WHEREAS, Murfreesboro City Code, Section 14-9, Fees; states that “The City Mayor and Council shall establish by resolution a schedule of fees, rates, and/or credits for the following: (1) The collection and disposal of all solid waste generated within the corporate limits of the City of Murfreesboro; (2) The collection and disposal of all solid waste generated through any solid waste authority, utility district, or other entity controlled by the City; and (3) Disposal of all solid waste in any City owned or controlled, Class 1-class 4 disposal site, transfer station, convenience center and/or recycling station or center.”

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

SECTION 1. The following Solid Waste Collection and Disposal Fee Schedule is hereby adopted:

(a) Solid Waste Collection

<i>Residential Collection: One time a week service</i>	\$11.50 per month per cart
<i>Residential Collection: “Go Back” Service</i>	\$25.00 per occurrence
<i>Residential Drop-Off: City Convenience Center</i>	\$0.00
<i>Commercial: Two times a week service</i>	\$40.00 per month per cart
<i>Commercial: Two times a week service (inside City Core Overlay District)</i>	\$30.00 per month per cart
<i>Commercial Collection: “Go Back” Service</i>	\$50 per occurrence

(b) Brush, Limb and Yard Waste Collection:

<i>Residential Curbside Collection</i>	
6’x6’x6’ (8 CY) collection or less	\$0.00
12’x6’x6’ (16 CY) collection	\$25.00 per load
1 full Boom Truck Load 22 yds of service	\$50.00 per load
Bagged Grass Clippings	\$0.00 per load
Loose Grass Clippings	\$5.00 per load
<i>Commercial Curbside Collection</i>	\$150.00 per load
<i>Residential Drop-Off at Mulching Facility</i>	
Murfreesboro City Resident	\$0.00
<i>Commercial Drop-Off at Mulching Facility</i>	
6’x6’x6’ (8 CY) or less	\$40.00 per load
12’x6’x6’ (16 CY)	\$75.00 per load
12x9x6 (24 CY)	\$100.00 per load

(c) Bulk Item Collection:

For pickup of curbside bulky items such as couches, chairs, furnishings, mattresses, and box springs, please call 24 hours in advance of your trash service day. Service charges will apply for bulk item collection at \$10 per item for the first 3 items and \$30 per item for every item over 3. Applicable charges will be applied to your utility account.

(d) Replacement Solid Waste Carts: Current Market Price

(e) Special Event or Property Clean-up Solid Waste Services: Determined by Solid Waste Director per event or occurrence

SECTION 2. This Resolution shall be effective on July 1, 2024.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

COUNCIL COMMUNICATION
Meeting Date: 04/18/2024

Item Title: Patterson Park Ductwork Replacement

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Agreement for replacing all non-insulated metal HVAC ductwork at Patterson Park Community Center.

Staff Recommendation

Approve the agreement with Trinity Geothermal, LLC.

Background Information

After review by an outside consultant, it was determined that the existing non-insulated ductwork that was installed in 2002 was designed incorrectly and needs to be replaced to eliminate moisture accumulation. This project replaces all non-insulated metal ductwork with fabric ductwork. The project was competitively bid, and Trinity was the lowest responsible bidder.

The Agreements have been reviewed and are pending approval by the city's Purchasing and Legal Departments.

Council Priorities Served

Responsible budgeting

Proactive maintenance of the City's largest asset classification is crucial to responsible budgeting and decreased CIP costs over the long-term.

Fiscal Impact

The expense, \$121,483, is funded by FY21 Patterson Park CIP budget.

Attachments

Agreement with Trinity Geothermal, LLC

SECTION 01 11 00 SUMMARY AND SCHEDULING OF WORK

1.1 SCOPE OF WORK

- A. Work under this Contract includes, but is not limited to, the following:
1. Erection of temporary fences, barricades, and other safety measures, as necessary, to protect school staff, visitors, and the public from the work and materials storage areas.
 2. Temporarily relocate existing school furnishings as required to perform the work areas to designated storage areas as required to access the work areas.
 3. Remove and store for reinstallation existing mechanical and electrical items mounted in existing suspended acoustical tile ceiling.
 4. Remove existing suspended acoustical ceiling tiles.
 5. Temporarily support existing low voltage cables laying on top of suspended acoustical tile ceilings.
 6. Temporarily support existing mechanical and electrical items attached to existing concealed spline ceilings and wood framing.
 7. Remove existing suspended acoustical tile ceiling grid.
 8. Remove existing concealed spline ceilings located above suspended ceiling, and non-structural wood framing for concealed spline ceilings.
 9. Abate existing asbestos containing water pipe insulation, and replace with new water pipe insulation.
 10. Install new steel ceiling joists at corridors for attachment of existing mechanical and electrical items previously attached to existing concealed spline ceilings and wood framing.
 11. Install existing electrical and mechanical items previously attached to existing concealed spline ceilings and wood framing at corridors to new steel ceiling joists.
 12. Support existing low voltage cables previously laying on top of existing suspended acoustical tile ceilings to a side wall or to the building structure with J hooks, cable ties, straps, clamps, or hangers, to comply with 2017 NEC Section 393.14.
 13. Renovate existing electrical work uncovered after demolition as directed by Architect that is not in compliance with applicable electrical code. This work is to be performed under the cost allowance specified in Section 01 21 13 - COST ALLOWANCES.
 14. Install new suspended acoustical tile ceiling system.
 15. Reinstall items mounted in existing suspended acoustical tile ceiling system in their original location.
 16. Install new masonry header above ceiling at one corridor opening.
 17. Relocate existing stored school furnishings to their original room.
 18. At the conclusion of work, clean building to preconstruction condition.

COUNCIL COMMUNICATION
Meeting Date: 04/18/2024

Item Title: Patterson Park Ductwork Replacement

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

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

Summary

Agreement for replacing all non-insulated metal HVAC ductwork at Patterson Park Community Center.

Staff Recommendation

Approve the agreement with Trinity Geothermal, LLC.

Background Information

After review by an outside consultant, it was determined that the existing non-insulated ductwork that was installed in 2002 was designed incorrectly and needs to be replaced to eliminate moisture accumulation. This project replaces all non-insulated metal ductwork with fabric ductwork. The project was competitively bid, and Trinity was the lowest responsible bidder.

The Agreements have been reviewed and are pending approval by the city's Purchasing and Legal Departments.

Council Priorities Served

Responsible budgeting

Proactive maintenance of the City's largest asset classification is crucial to responsible budgeting and decreased CIP costs over the long-term.

Fiscal Impact

The expense, \$121,483, is funded by FY21 Patterson Park CIP budget.

Attachments

Agreement with Trinity Geothermal, LLC

 **AIA**® Document A105® – 2017

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the ___ day of _____ in the year 2024
(In words, indicate day, month and year.)

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

City of Murfreesboro, Tennessee, a Tennessee municipal corporation
111 West Vine Street
Murfreesboro, TN 37130

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

Trinity Geothermal, LLC, a Tennessee limited liability corporation
8858 Lebanon Road
Mt. Juliet, TN 37122

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

Patterson Park Ductwork Replacement
Patterson Park Community Center
521 Dr. Martin Luther King Jr. Blvd.
Murfreesboro, TN
ITB-37-2024

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

CMTA Inc.
407 Broad Street Suite 203
Chattanooga, TN 37402

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

Init.

TABLE OF ARTICLES

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- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Engineers, dated as set forth below, and enumerated as follows:

Drawings:

Number	Title	Date
M-001	Mechanical Legend	02/16/2024
M-102	2 nd Floor Enlarged Demolition Plan	02/16/2024
M-202	2 nd Floor Enlarged Renovation Plan	02/16/2024

Specifications:

Section	Title	Pages
Patterson Park Ductwork	Mechanical Index	33

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#XMPP23

Division 20- Mechanical
Disciplines & Division 23-
HVAC

.3 addenda prepared by the Engineers as follows:

Number	Date	Pages
None		

.4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

1. Exhibit A – Supplemental Conditions
2. Exhibit B – Insurance Requirements
3. Exhibit C – Non-Collusion Affidavit
4. Exhibit D – Drug Free Workplace Affidavit
5. Exhibit E – Iran Divestment Act Affidavit
6. Exhibit F – Performance Bond
7. Exhibit G – Payment Bond
8. Exhibit H – Specifications

In the event of a conflict between the terms of this Agreement and those of either Exhibit A or Exhibit B, the exhibit's terms shall take precedence.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:

The date of commencement shall be the date
(*Paragraphs deleted*)
on which the Owner issues the Notice to Proceed.

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:
(*Check the appropriate box and complete the necessary information.*)

Not later than () calendar days from the date of Notice to Proceed.

By the following date: June 30, 2024

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

One Hundred, Twenty-One Thousand, Four Hundred Eighty-Three Dollars and No Cents (\$121,483.00), as reflected in greater detail in Contractor's Bid Form

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(*Itemize the Contract Sum among the major portions of the Work.*)

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Portion of the Work	Value
N/A	N/A

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

(Identify the accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:

(Identify each allowance.)

Item	Price
N/A	N/A

§ 3.5 Unit prices, if any, are as follows:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§3.6 The Contractor shall pay all taxes, levies, duties, and assessments of any nature, that are applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. The Contractor shall make any and all payroll deductions required by law. The Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Owner, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

(Insert below timing for payments and provisions for withholding retainage, if any.)

any undisputed amount not later than thirty (30) days after the Owner receives the Contractor's Application, provided, however, the Owner may withhold five percent (5%) of any undisputed amount as retainage

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

(Insert rate of interest agreed upon, if any.)

3.0 % per annum

ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1 and Exhibit B:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate, and Two Million Dollars (\$2,000,000.00) aggregate for products-completed operations hazard.

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

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§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at statutory limits.

§ 5.1.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 5.1.6 The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.

§ 5.1.7 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Umbrella/Excess	Three Million Dollars (\$3,000,000.00)
Contractor's Pollution Liability	One Million Dollars (\$1,000,000.00)
Equipment Property Insurance	One Million Dollars (\$1,000,000.00)

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Engineer, Engineer's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

§ 5.6 Payment and Performance Bonds.

§ 5.6.1 Unless waived by the Owner in the event of a Contract Sum less than \$100,000, the Contractor shall secure performance and payment bonds for 100% of the Contract Sum on a form acceptable to the Owner covering the faithful performance and completion of the Agreement and the payment of all obligations arising there under. Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

§ 5.6.2 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within 30 days of Notice of Award, the Contractor Bid Bond may be forfeited, and the Contract may be awarded to an alternate contractor.

§ 5.6.3 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

§ 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.2.1 Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation that cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even if it is the case that such Work could have been shown thereon. The Contract Documents are complimentary, and what is required by, or reasonably inferable, by one shall be as binding as if required by all. In the event of conflicts or discrepancies among the Contract Documents, this Agreement will take precedent over the Specifications and Drawings.

§ 6.2.2 Prior to the inspections for Substantial Completion and Final Completion, as applicable, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the event there are conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. Amendments or Change Orders, with those of later date having precedence over those of earlier date
2. The Agreement
3. Exhibits and Addenda, with those of later date having precedence over those of earlier date.
4. Drawings and Specifications
5. In the case of any conflicts or discrepancies between Drawings and Specifications or within or among the Contract Documents and not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation.

§ 6.4 Ownership and Use of Engineers' Drawings, Specifications and Other Documents

Documents prepared by the Engineers are instruments of the Engineers' service for use solely with respect to this Project. The Engineers shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Engineers.

§ 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below.

(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)

<p>To Owner: Craig Tindall, City Manager 111 West Vine Street Murfreesboro, TN 37130 ctindall@murfreesborotn.gov</p> <p>with copies to: Brad Hennessee, Facilities Manager bhennessee@murfreesborotn.gov</p>	<p>To Contractor: William D. Stalker, Member P.O. Box 1937 Mt. Juliet, TN 37121 trinitygeo@comcast.net</p>
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Any notice sent via email shall be sent requesting a delivery receipt for the message. If the party sending the notice does not receive a delivery receipt within 24 hours, the party shall send notice via Certified U.S. Mail, private courier, or hand delivery to the other party.

§ 6.5 **Non-Discrimination.** It is the policy of the Owner not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Contract, the Contractor certifies and warrants it will comply with this policy.

ARTICLE 7 OWNER

§ 7.1 **Information and Services Required of the Owner**

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges. If the Contractor's bid includes fees that the Owner has paid, or is required to pay directly, or that the Owner may waive, the Contractor shall, at the Owner's option, either pay these fees as a part of their bid or deduct fees from Contract Sum as a deductive change order.

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

§ 7.2 **Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents or is in default of its material obligations under the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made or default is cured, for which there will be no Change Order extending the Contract Time or the Contract Sum.

§ 7.3 **Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Owner. In addition, if payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner immediately upon the Owner's written demand.

§ 7.4 **Owner's Right to Perform Construction and to Award Separate Contracts**

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

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§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

ARTICLE 8 CONTRACTOR

§ 8.1 Review of Contract Documents and Field Conditions by Contractor

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Owner. Reports of errors, inconsistencies, or omissions must be made in writing and copies provided directly to the Owner.

§ 8.1.3 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 That the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 That the Contractor is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 That the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 That the execution of the Contract and its performance thereof are within the duly authorized powers of the Contractor and the signatory on behalf of the Contractor.

§ 8.1.4 Contractor shall be responsible for ascertaining correct dimensions, and Contractor is not to ascertain dimensions simply by scaling drawings unless directed to do so by the Owner or Project Engineer. In case of any discrepancy between Drawings and Specifications, Contractor shall consult the Project Engineer promptly for an interpretation before proceeding with the Work.

§ 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. Contractor must maintain an updated project schedule and if milestones are negatively impacted, Contractor must, prior to submission of the next application for payment, provide Owner with a specific plan to return the project to the project schedule.

§ 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.3.3 Layout new construction lines and verify slab slope and conditions. If discrepancies between actual lines and elevations and those indicated on plans exist, notify Project Engineer and Owner and obtain a decision before starting work.

§ 8.3.4 The Contractor shall establish and maintain reference points required for the work. Contractor shall lay out on the rough floor the exact locations of partitions, openings, etc. as a guide to all trades. Contractor shall verify elevations, lines, levels, and dimensions indicated on the drawings before commencing work.

§ 8.3.5 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

§ 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 8.4.3 Contractor agrees to keep the Project free and clear from all mechanic's liens, materialmen liens, and other liens. The Contractor shall discharge any such lien immediately but in no event more than 30 days after filing of such a lien. In the event such lien is not released or discharged within such 30 days period, the Owner shall have the right to pay all sums necessary to discharge such liens and the Owner shall have the right to deduct such amounts from any amounts due hereunder or demand immediate payment from the Contractor. In the event of any such deduction, the Contract Sum due under the Contract Documents automatically shall be reduced by the amount of such payment without the need for any Change Order. In no instance shall this provision affect any limitation or restriction imposed by law or regulation on the placement or enforcement of liens.

§ 8.4.4 Substitutions:

.1 Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Owner such materials are equal to the material specified and entirely satisfactory for use in the project. The Owner shall be the sole judge of acceptability of substitution.

.2 By making requests for substitutions, the Contractor:

- A. Represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- B. Represents that it will provide the same warranty for the substitution as it would for the product specified;
- C. Certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- D. Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

.3 When a material, equipment or system is specified by the name of one or more manufacturers, such material, equipment, or system shall form the basis of the Contract. If the Contractor desires to make a substitution, Contractor shall comply with Specification Sections 01 25 13 and 00 43 25.

.4 The Owner shall be entitled to reimbursement from the Contractor for amounts the Owner pays to an engineer or consultant for reviewing the Contractor proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 8.4.5 The use of undocumented workers is not permitted.

§ 8.4.6 The Contractor shall have the Subcontractor who installs them, correct defects in bases, surfaces, or substrates on which finishing materials are to be applied, construction is to be added, or equipment is to be mounted.

§ 8.4.7 The Contractor shall disclose the existence and extent of any financial interest, whether direct or indirect, he has in subcontractors or material suppliers which he may propose for this project.

§ 8.5 Warranty

§ 8.5.1 The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the contract documents. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty, including, manufacturer or supplier warranties, or remedy required by law or by the Contract Documents, and notwithstanding anything to the contrary contained in the Contract Documents. This warranty commences upon Final Completion. The Contractor shall promptly repair and replace, at the Contractor's sole cost and expense, any materials, equipment, or Work covered by and violating the warranty. All warranty work shall be coordinated with the Owner in order to limit the disruption of operation and completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

§ 8.5.2 Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse of Owner or Owner's invitees, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 8.5.3 Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferrable to the Owner, and shall commence in accordance with Section 12.5.

§ 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials. If the Contractor fails to clean-up as provided in the

Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor and deducted from the remaining. No on-site burning of trash is allowed.

§ 8.12 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Engineers, Engineers' consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The provisions of this Section 8.12 shall survive the completion of the Work or termination of the Agreement.

ARTICLE 9 PROJECT MANAGEMENT

§ 9.1 The Owner will provide administration of the Contract as described in the Contract Documents. The Owner will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work. Representatives of the Owner and Contractor shall meet periodically at mutually agreed-upon intervals for the purposes of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participation in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationship which may otherwise exist.

§ 9.3 The Owner will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Owner's observations and evaluations of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor.

§ 9.5 The Owner has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Owner will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Owner will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 Interpretations and decisions of the Owner will be consistent with the intent of, and reasonably inferable from the Contract Documents.

(Paragraph deleted)

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing.

§ 10.1.1 Changes in the Work may be accomplished by Change Order, Change Directive, or Field Order, all of which the Contractor shall diligently effectuate and carry out.

- .1 A Change Order is a written instrument prepared by the Owner and signed by the Owner and the Contractor, stating their agreement upon all of the following: (i) the change of the Work; (ii) the amount of the adjustment, if any, in the Contract Sum; and (iii) the extent of the adjustment, if any,

in the Contract Time. No change to the Contract Sum or Contract Time is effective without a written, signed Change Order. The Contractor's sole remedy for any changes is to secure a Change Order.

- .2 A Change Directive is a change required by the Owner that does not affect the Contract Time or Contract Sum and will be issued by the Owner in writing to the Contractor.
- .3 A Field Order is a minor change or deviation in the Specifications or Drawings and not inconsistent with the Contract that do not affect the Contract Time or Contract Sum and can be made verbally by the Owner and summarized within seven days in writing provided to the Contractor. The Contractor may request that the Owner convert a Field Order to a Change Directive.

§ 10.1.2 Should the Contractor believe a Change Directive requires a Change Order, the Contractor must make a Claim in accordance with the Agreement within 15 days of the Change Directive being issued.

§ 10.1.3 The Owner's representative shall have authority to authorize contract modifications less than \$10,000.00. Contract modifications of \$10,000.00 or greater require approval by Murfreesboro City Council.

§ 10.2 The Owner may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

§ 10.4 The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces at the fee negotiated with the owner of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by that Subcontractor's or Sub-Subcontractor's own forces, ten percent (10%) of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, five percent (5%) of the amount due the Sub-Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 10.1.1.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemization.

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract. Extensions of time will not be granted for delays caused by inadequate construction force, the failure of the Contractor to place orders for equipment or materials sufficiently in advance to ensure delivery when needed, or the failure of Contractor to protect properly the site from inclement weather.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment. If the Contractor is delayed at any time in progress of the work by an act or neglect of the Owner or its employee(s), or of a separate Contractor employed by the Owner, or by changes ordered in the work that affect the "critical path" of the work, or by labor disputes, fire, unavoidable

casualties, or other causes beyond the Contractor's control, except as defined in Articles 3 and 15, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as Owner may determine. Extended overhead, profit, and other indirect costs related to the extension of the contract time will not be allowed.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 12.2 Applications for Payment

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing. The form of Application for Payment duly notarized shall be a current authorized edition of AIA Document G702-1992 Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

§ 12.2.3 In Applications for Payment, the amount represented as total completed and stored to date shall reflect the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, and materials and equipment suitably stored in accordance with Subparagraph 4.2 and not exceed the Contract Sum less the value of incomplete work and corrections required. This total completed and stored to date shall not be construed to define completion as determined for Substantial Completion or final completion of the Work according to 12.5 or 12.6.

§ 12.2.4 Applications for Payment shall indicate retainage withheld from the total completed and stored to date as follows: Five percent (5%) until acceptance of a Certificate of Substantial Completion, and thereafter two percent (2%) until final payment. The resulting amount shall be indicated as the total earned less retainage. Applications that reduce retainage shall be accompanied by Consent of Surety.

§ 12.2.5 Applications for Payment shall indicate the total earned less retainage, and the aggregate of previous payments made subtracted therefrom, and an amount requested.

§ 12.3 Certificates for Payment

§ 12.3.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Owner determines is properly due, and notify the Contractor and Owner in writing of the Owner's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor of the Owner's reason for withholding certification in whole. If certification or notification is not made within such seven-day period, the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

Init.

§ 12.3.2 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of, but not limited to:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the Work;
- .8 failure of the Contractor to comply with applicable Codes, Laws, or Regulations;
- .9 failure to update as-built drawings or provide construction photographs with the Application for Payment as required by the Contract Documents. (If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time, the Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work.)
- .10 failure to update the CPM schedule concurrent with the request for payment; or
- .11 Any other reasonable basis to withhold certification.

§ 12.3.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in this Article.

§ 12.3.5 If any claim or lien is made or filed with or against the Owner, the Project or the Premises by any person claiming that the Contractor or any Subcontractor or other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any Subcontractor or other person under it causes damage to the Work or to any other work on the Project, or if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Owner shall withhold certification, and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Owner shall deem sufficient to:

- .1 satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgement which may be recovered thereon,
- .2 make good any such nonpayment, damage, failure or default, and
- .3 compensate the Owner for and indemnify it against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 12.4 Progress Payments

§ 12.4.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

Init.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 The Owner shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

§ 12.4.5 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall reflect such payment on the next Certificate for Payment.

§ 12.5 Substantial Completion

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficient complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when all required occupancy permits have been issued such as, but not limited to, Local Building Occupancy Permits, and copies of same have been delivered to the Owner. In order to occupy or utilize the Work for its intended use, Owner must have received complete Project Data, Operating and Maintenance Data, orientation and training, as may be required by the specifications. The work will not be considered ready for Substantial Completion if any of the following conditions exist:

- .1 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in the Owner's reasonable judgment;
- .2 Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility;
- .3 The building mechanical systems have not been tested, balanced, and accepted as being fully complete;
- .4 The building electrical and life safety systems have not been tested and accepted as being fully complete;
- .5 The building commissioning process is not complete;
- .6 Final clean-up is not complete to support the occupancy and intended use of the facility other than clean-up associated with punch list items;
- .7 Final Inspections, approvals, and temporary or final Certificates of Occupancy by regulatory officials are not received and complete;
- .8 Successful compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete; or
- .9 Any other basis for the Owner's reasonable determination that Substantial Completion has not been achieved.

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Owner and the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete, the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.5.3 Upon receipt of the Certificate of Substantial Completion, Contractor may submit a final Application for Payment that includes the retainage withheld from prior Applications pursuant to Section 4.1.

§ 12.5.4 Unless the project has phased Substantial Completion dates, the Owner will make only one such inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$1,000.00 per person per day plus expenses. The costs of these re-inspections shall be added to the contract by change order.

Init.

§ 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens, claims, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 12.6.4 Unless the project has phased Final Completion dates, The Owner will make only one such inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$1,000.00 per person per day plus expenses. The costs of these re-inspections shall be added to the contract by change order.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

§ 13.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

§ 13.2 The Contractor is responsible for compliance with any requirements included in the Contract Documents and all applicable laws, rules, and regulations regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. The Contractor shall provide the Owner with notice of all hazardous substances as regulated by the Comprehensive Environmental and Liability Act as amended and/or regulated under any other applicable law which the Contractor brings on to the site.

§ 13.3 When the storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

§ 13.4 Protect owners, persons, building components not to be demolished or modified, and building grounds from damage of any sort. Furnish necessary equipment to provide this protection during the life of the contract. Construct and maintain necessary temporary drainage to keep excavations free of water.

§ 13.5 Provide protection for the stored materials against wind, storms, cold or heat. At the end of each day's work, cover new work or stored items likely to be damaged.

§ 13.6 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.

§ 13.7 Protect, maintain and restore any benchmarks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

Init.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. This provision does not relieve the Contractor from conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes, or any regulations, whether they are observable, concealed, or in any other condition or status, nor does this provision in any way limit any warranties, service contractors, or similar agreements with third party service, equipment, or materials providers.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other. In addition, the Contractor may not assign its responsibilities, duties, obligations, and rights under this Agreement, without the express written consent of the Owner. This does not prevent the Contractor from engaging subcontractors to perform various phases of the Project, but the Contractor shall be fully responsible to the Owner for the work, actions, and omissions of all such subcontractors. No person or entity shall be deemed to be a third-party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

§ 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Owner shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents, including specifically Section 15.2.4, or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Owner requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.2.4 In addition to any test, inspections, and approvals by applicable law or elsewhere in the Contract Documents, Owner shall arrange and bear the costs for the following tests:

1. Building pad and parking lot subgrade proof-roll test
2. Concrete testing
3. Structural Steel Visual Inspection of Bolts and Connections

§ 15.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 15.4 Venue

Exclusive venue for any dispute arising from this Agreement or relating to this Project shall be in the Circuit or Chancery Courts of Rutherford County, Tennessee.

Init.

§ 15.5 Attorneys' Fees

If either party is required to bring an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.

§ 15.6 No Mandatory Arbitration

Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.7 Subject to Applicable Law; Severability

This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Tennessee or of the United States shall not affect the validity of the remainder of this Agreement.

§ 15.8 No Waiver; Cumulative Duties and Remedies

No action or failure to act by the Owner or the Contractor shall constitute a waiver of any right or duty afforded under the Contract Documents, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing. The duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or equity.

§ 15.9 Theft-Deterrence Program

The Contractor shall institute a theft-deterrence program designed to restrict construction worker access to properties of the Owner that are currently in use, to maintain supervision of the Contractor's and the Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from the Contractor's forces or the Contractor's subcontractor's forces, as charged and determined by the local authorities having jurisdiction.

§ 15.10 No Construction Against Maker of Modifications

As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 15.11 Independent Contractors

The parties agree that the contractual relationship of the Contractor to the Owner is one solely of an independent contractor in all respects and that the Contract Documents do not in any way create a partnership, joint venture, or any other relationship between the parties other than the contractual relationship as specified in the Contract.

§ 15.12 Binding on Successors and Assigns

This Agreement in its entirety shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators, or assigns.

§ 15.13 Execution

The Contract Documents may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement. Any signature of or pursuant to the Contract Documents shall be considered for all purposes an original signature and of the same legal effect as an original, provided that at the request of a party any signature sent by facsimile shall subsequently be confirmed by an original re-execution.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 Termination by the Owner for Cause

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.3 Termination by the Owner for Convenience

§ 16.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. In such case, the Owner will provide the Contractor seven days written notice of intent to terminate. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. The Contractor shall be entitled to receive payment for Work executed.

§ 16.3.2 The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Contract. If sufficient appropriations and authorizations are not made by the Owner, this Contract shall terminate, without penalty or expense to the Owner of any kind whatsoever, upon written notice being given by the Owner to the Contractor. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. The Contractor shall be entitled to receive payment for Work executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

§ 17.1 Claims and Disputes

§ 17.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 17.1.2 Notice of Claims.

- .1 Claims by either the Owner or the Contractor must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
- .2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a contractor default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 17.1.3 **Continuing Contract Performance.** Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

Init.

§ 17.1.4 Claims

- .1 **For Additional Cost.** If the Contractor makes a Claim for an increase in the Contract Sum, written notice to the Owner shall be given before proceeding to execute the Work if practical or within 15 days of any Change Directive. Prior notice is not required for Claims relating to an emergency endangering life or property.
- .2 **For Additional Time.** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice to the Owner shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions that were clearly abnormal for the period of time such that they could not have been reasonably anticipated and clearly had an adverse effect on the scheduled construction.
 - A. Claims for increase in the Contract Time shall set forth, in detail the circumstances that form the basis for the Claim, the date upon which the cause of the delay began to affect the progress of the Work, the date upon which the cause of delay ceased to affect the progress of the Work, and the number of days increased in the Contract Time claimed as a consequence of each cause of delay.
 - B. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all of the activities affected by the circumstances forming the basis of the claim. The Contractor shall not be entitled to a separate increase of the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the work, or for concurrent delays due to the fault of the Contractor.

§ 17.1.5 Initial Decision on Claims Made by Contractor

- .1 The Owner will make an initial decision on all claims submitted by the Contractor. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered.
- .2 The Owner will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the Contractor that the Owner is unable to resolve the Claim because the Owner lacks sufficient information to evaluate the merits of the Claim.
- .3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist Owner in rendering a decision.
- .4 The Owner will render an initial decision approving or rejecting the Claim or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (i) be in writing; (ii) state the reasons therefor; and (iii) notify the Contractor of any recommended Change Order.

§ 17.1.6 Mediation.

- .1 Claims, disputes, or other matters in controversy arising out of or related to the contract not resolved by the Initial Decision-Making process, nor waived under this Contract, shall be subject to mediation as a condition precedent to binding dispute resolution.
- .2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Contract. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.
- .3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- .4 Exceptions:

Init.

- A. Neither the Owner nor Contractor are not be required to mediate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.
- B. The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the first requesting mediation.
- C. This section 17.1.6 does not apply to, and may not be construed to require mediation of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building and Codes Department, Planning Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

§ 17.1.7 Binding Dispute Resolution. For any Claim subject to, but not resolved by, mediation per this agreement, the method of binding dispute resolution shall be litigated only in a Rutherford County court of competent jurisdiction.

This Agreement entered into as of the day and year first written above.
(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

OWNER (Signature)
 Shane McFarland, Mayor
(Printed name and title)

CONTRACTOR (Signature)
 William D. Stalker, Member
(Printed name and title)
 LICENSE NO.:
 JURISDICTION:

APPROVED AS TO FORM:

 Adam F. Tucker, City Attorney

Init.

COUNCIL COMMUNICATION
Meeting Date: 04/18/2024

Item Title: General Bragg Trailhead Playground Replacement

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

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

Summary

Agreements with Landscape Structures, Inc. and ForeverLawn, Inc. through Sourcewell Contract for playground replacement at General Bragg Trailhead.

Staff Recommendation

Approve the agreements with Landscape Structures and ForeverLawn, and the CIP Funds Reallocation request.

Background Information

The existing playground has outlived its usefulness to the park. The proposed purchases would provide a safer and more modern playground that meets today's standards. State statute and Council Resolution authorizes cooperative purchases. The purchase of this playground equipment will be done through the Sourcewell contracts to procure the most competitive price for the equipment..

The Agreements have been reviewed by the city's Purchasing and Legal Departments.

Council Priorities Served

Responsible budgeting

Maintaining infrastructure in a proactive manner assures safe and extended use of City assets.

Fiscal Impact

The expense, \$207,045, is funded by the FY21 General Bragg Trailhead CIP budget, including a reallocation of \$206,000 from FY21 Barfield Crescent Park Expansion CIP budget, and the FY24 operating budget.

Attachments

1. Landscape Structures Inc. Proposal
2. ForeverLawn Inc. Proposal
3. CIP Funds Reallocation Request
4. Agreement with Landscape Structures Inc.
5. Agreement with ForeverLawn Inc.



Quote Name: General Bragg Playground

Created: January 30, 2024
Modified: March 1, 2024

Prepared By: Parker Chipman
(931) 303-0227
parker@rec-concepts.com

Prepared For: Rachel Singer
(615) 642-3723
rsinger@murfreesboro.tn.gov

Bill To: City of Murfreesboro
697 Veterans Pkwy
Murfreesboro, TN 37128

Ship To: General Bragg Park
1540 W. College Street
Murfreesboro, TN 37129

Please make out purchase orders, contracts, and checks to:

Invoice Address: Landscape Structures Inc.
601 7th Street South
Delano, MN 55328

Lead Time: 22-28 Weeks
Payment Terms: 50% down at PO, 25% At Delivery
Balance upon completion

We are pleased to submit this proposal to supply the following items:
General Bragg Playground

QTY	Material No	DESCRIPTION	UNIT WT	UNIT PRICE	WEIGHT	EXTENDED AMT
1	1182235-01-01	LSI Play Booster Tree Tops & Sprig		\$ 87,306.90		\$ 87,306.90
1	Disc	Sourcewell Discount		\$ (6,984.55)		\$ (6,984.55)

**See attached equipment breakdown, color renderings specifications and warranties*

"The quality will remain long after the price is forgotten."
~Henry Royce

Subtotal	\$ 80,322.35
Freight	\$ 7,500.00
Tax Rate	
Project Tax	\$ -
Equipment Installation	\$ 42,415.75
Project Total	\$ 130,238.10



ForeverLawn

Sourcewell

R
PROPOSAL

Quote Name: General Bragg Playground Turf

Created: January 31, 2024

Modified: March 4, 2024

Prepared By: Parker Chipman
(931) 303-0227
parker@rec-concepts.com

Prepared For: Rachel Singer
(615) 642-3723
rsinger@murfreesboro.tn.gov

Bill To: City of Murfreesboro
697 Veterans Pkwy
Murfreesboro, TN 37128

Ship To: General Bragg Park
1540 W. College Street
Murfreesboro, TN 37129

Please make out purchase orders, contracts, and checks to:

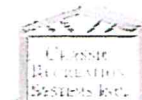
Invoice Address ForeverLawn Inc
8007 Beeson St.
Louisville, OH 44641

Lead Time: 4-6 Weeks
Payment Terms: 50% down at PO, Balance upon completion

We are pleased to submit this proposal to supply the following items:
General Bragg Playground Turf

QTY	WARR. NO.	DESCRIPTION	UNIT WT.	UNIT PRICE	WEIGHT	EXTENDED AMT.
1	FPDC	2438 sq. ft. of ForeverLawn Playground Grass Discovery		22,413.75		\$ 22,413.75
1		Sourcewell Discount		\$ (2,257.45)		\$ (2,257.45)
1		2" SafetyFoam Pro Underlayment System		\$ 10,416.56		\$ 10,416.56
1		Sourcewell Discount		\$ (1,053.36)		\$ (1,053.36)
1		Concrete Curb, Rock, and Installation Materials		\$ 23,739.20		\$ 23,739.20
		<i>*installation includes tear out and removal of dirt</i>				
		<i>*See attached equipment breakdown, color renderings specifications and warranties</i>				

Subtotal \$ 53,258.70
Freight \$ 1,693.13
Tax Rate
Project Tax \$ -
Installation \$ 21,855.38
Project Total \$ 76,807.21





CIP Funds Reallocation Request

Mr. Tindall:

Submitted for your approval is the following request to reallocate CIP funds.

CIP Loan 2021 Bond

Reallocate CIP funds from:

Reallocate CIP funds to:

Barfield Crescent Park Expansion	\$	(206,000.00)	General Bragg Playground Replacement	\$	206,000.00
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TOTAL TRANSFER	\$	(206,000.00)	TOTAL TRANSFER	\$	206,000.00
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Explanation: Funding is needed for the replacement of the General Bragg playground. It is requested that \$206,000
be reallocated to this project from the Barfield Crescent Park Expansion project. This will leave a remaining balance
of \$1,002,792.47 in the Barfield Crescent Park Expansion project.

<u>[Signature]</u>	3-19-24
Budget Director Signature	Date

Reviewed by Finance	Date
---------------------	------

Approved	<input checked="" type="checkbox"/>	<u>[Signature]</u>	City Manager
Declined	<input type="checkbox"/>	3-19-24	Date

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

**Agreement for Installation of Playground Equipment for the General
Bragg Trailhead For Murfreesboro Parks & Recreation Department**

This Agreement is entered into and effective as of _____, 2024 ("Effective Date"), by and between the CITY OF MURFREESBORO, a municipal corporation of the State of Tennessee ("City"), and LANDSCAPE STRUCTURES, INC., a corporation of the State of Minnesota ("Contractor").

This Agreement consists of the following documents:

- o This Agreement
- o The Sourcewell Contract #010521-LSI with Landscape Structures, Inc., effective date through February 17, 2026
- o Recreational Concepts, LLC's (authorized Landscape Structures, Inc. dealer) Proposal dated March 1, 2024, for playground equipment, hereinafter, "Contractor's Proposal"
- o Any properly executed amendments to this Agreement

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

- o First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority)
- o Second, this Agreement
- o Third, Sourcewell Contract #010521-LSI (all relevant documents) with Landscape Structures, Inc.
- o Lastly, Landscape Structures, Inc.'s authorized dealer Recreational Concepts, LLC's Proposal dated March 1, 2024

1. Duties and Responsibilities of Contractor.

- a. Contractor agrees to provide, and City agrees to purchase the playground equipment LSI Play Booster Tree Tops & Sprig and services (including installation, materials, and freight) set forth on Contractor's Proposal dated March 1, 2024; as set forth in the Sourcewell Contract #010521-LSI with Landscape Structures, Inc. using authorized dealer Recreational Concepts, LLC's proposal dated March 1, 2024.
- b. Contractor must complete installation of playground equipment by, but no later than, 28 weeks (196 days) from the Effective Date of this contract. Installation must be completed per direction of Rachel Singer at the designated park location within Murfreesboro, TN. Installation and all work must comply with stamped plans provided by the landscape architect (Exhibit A).
- c. Installation Addresses: Murfreesboro Parks & Recreation Department
General Bragg Trailhead, 1540 W. College Street
Murfreesboro, TN 37129
- d. Contract shall remove trash and excess materials from site.
- e. Contractor shall provide post-construction warranty and repair as needed for a period of one year upon completion of the Work. Any required repairs during this warranty period will be further warranted for a period of one year with the exception of warranties provided by manufacturer of equipment, all of which must be transferred to the City upon completion of the Work.
- f. Contractor shall provide all supervision, supplies, labor, transportation and equipment reasonably required for the proper execution of the Work and Contractor is solely responsible for all construction means, methods, techniques, sequences, and procedures, including properly coordinating all portion of the Work.

- g. Contractor shall maintain sole responsibility for the safety of Contractor personnel, all subcontractors and materialmen, and all other persons within the worksite and in the immediate vicinity of the worksite that is affected by any Work. Establishment and execution of a comprehensive personnel safety program appropriate for the type of work involved with the various Work assignments as may be required by the appropriate local, state, and federal agencies such as OSHA and TOSHA.
 - h. Contractor shall keep the premises of the Work and the surrounding area free from any accumulation of debris or trash and Contractor will properly dispose of all surplus or waste materials upon completion of the Work. Comply with any additional Contractor duties and responsibilities as specified in the Supplementary Conditions, if attached hereto.
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 Agreement is set forth in the Contractor's Proposal dated March 1, 2024, using Recreational Concepts, LLC's proposal, which reflects a **Total Purchase Price of One Hundred Thirty Thousand Two Hundred Thirty-Eight Dollars and Ten Cents (\$130,238.10), including all freight and installation charges.** 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, installed, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
 - b. Deliveries and installation of all items shall be made within 28 weeks (196 days) of order at General Bragg Trailhead, 1540 West College Street, Murfreesboro, TN. City Contact Rachel Singer (phone: 615-642-3723; email: rsinger@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 Contractor's Proposal dated March 1, 2024. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
 - d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City

may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in Contractor's Proposal dated March 1, 2024, from Contractor's Sourcewell, Contract #010521-LSI, using authorized dealer Recreational Concepts, LLC.

- e. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.
4. **Warranty.** Unless otherwise specified, every item bid shall meet the warranty requirements set forth by the manufacturer, Landscape Structures, Inc. using authorized dealer Recreational Concepts, LLC's proposal dated March 1, 2024, and Contractor's Sourcewell, Contract #010521-LSI.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
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:
 - 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.
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 37130ff

If to Contractor:
 Landscape Structures, Inc.
 Lynn Bartels, Billing Systems Analyst
 601 7th Street South
 Delano, MN 55328
lynnbartels@plavlsi.com

Parker Chipman
 Recreational Concepts, Authorized
 Representative for Landscape Structures, Inc.
parker@rec-concepts.com

- 9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
- 10. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
- 11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
- 12. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
16. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
17. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
18. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
19. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.

- 20. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
- 21. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO

LANDSCAPE STRUCTURES, INC.

By: _____
Shane McFarland, Mayor

DocuSigned by:
By: Fred Caslavka
Fred Caslavka, CFO

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

**Agreement for General Bragg-Trailhead Playground for
Murfreesboro Parks & Recreation Department**

This Agreement is entered into and effective as of _____, 2024 ("Effective Date"), by and between the CITY OF MURFREESBORO, a municipal corporation of the State of Tennessee ("City"), and FOREVERLAWN, INC., a corporation of the State of Ohio ("Contractor").

This Agreement consists of the following documents:

- This Agreement
- The Sourcewell Contract #031622-FVL with ForeverLawn, Inc., effective date through May 26, 2026
- Recreational Concepts, LLC's (authorized ForeverLawn, Inc. dealer) Proposal dated March 4, 2024, from ForeverLawn, Inc. for playground grass and SafetyFoam underlayment system, hereinafter, "Contractor's Proposal"
- 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 Agreement (most recent amendment or change order given first priority)
- Second, this Agreement
- Third, Sourcewell Contract #031622-FVL (all relevant documents) with ForeverLawn, Inc.
- Lastly, ForeverLawn, Inc.'s authorized dealer Recreational Concepts, LLC's Proposal dated March 4, 2024

1. Duties and Responsibilities of Contractor.

- a. Contractor agrees to provide, and City agrees to purchase the ForeverLawn Playground Grass Discovery, SafetyFoam Pro Underlayment System, Concrete Curb, Rock and Materials and services (including installation, materials, and freight) as set forth on Contractor's Proposal dated March 4, 2024, from Contractor's Sourcewell Contract #031622-FVL with ForeverLawn, Inc. using authorized dealer Recreational Concepts, LLC's Proposal.
- b. Contractor must complete installation of playground structures by, but no later than, 28 weeks (196 days) from the Effective Date of this contract. Installation must be completed per direction of Rachel Singer at the designated park location within Murfreesboro, TN. Installation and all work must comply with stamped plans provided by the landscape architect (Exhibit A).
- c. Installation Addresses: Murfreesboro Parks & Recreation Department
General Bragg Trailhead, 1540 W. College Street
Murfreesboro, TN 37129
- d. Contract shall remove trash and excess materials from site.
- e. Contractor shall provide post-construction warranty and repair as needed for a period of one year upon completion of the Work. Any required repairs during this warranty period will be further warrantied for a period of one year with the exception of warranties provided by manufacturer of equipment, all of which must be transferred to the City upon completion of the Work.
- f. Contractor shall provide all supervision, supplies, labor, transportation and equipment reasonably required for the proper execution of the Work and Contractor is solely responsible for all construction means, methods, techniques, sequences, and procedures, including properly coordinating all portion of the Work.

- g. Contractor shall maintain sole responsibility for the safety of Contractor personnel, all subcontractors and materialmen, and all other persons within the worksite and in the immediate vicinity of the worksite that is affected by any Work. Establishment and execution of a comprehensive personnel safety program appropriate for the type of work involved with the various Work assignments as may be required by the appropriate local, state, and federal agencies such as OSHA and TOSHA.
 - h. Contractor shall keep the premises of the Work and the surrounding area free from any accumulation of debris or trash and Contractor will properly dispose of all surplus or waste materials upon completion of the Work. Comply with any additional Contractor duties and responsibilities as specified in the Supplementary Conditions, if attached hereto.
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 Agreement is set forth in the Contractor's Proposal dated March 4, 2024, which reflects a Total Purchase Price of **Seventy-Six Thousand Eight Hundred Seven Dollars and Twenty-One Cents (\$76,807.21)**, including all freight and installation charges. 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, installed, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
 - b. Deliveries and installation of all items shall be made within 28 weeks (196 calendar days) of order at General Bragg Trailhead 1540 West College Street, Murfreesboro, TN. City Contact Rachel Singer (phone: 615-642-3723; email: rsinger@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 Contractor's Proposal dated March 4, 2024. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
 - d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may

- return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in Contractor's Proposal dated March 4, 2024, from Contractor's Sourcewell, Contract #031622-FVL.
- e. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.
4. **Warranty.** Unless otherwise specified, every item shall meet the warranty requirements set forth by the manufacturer, the ForeverLawn, Inc. using authorized dealer Recreational Concepts, LLC's proposal dated March 4, 2024, and Contractor's Sourcewell, Contract #031622-FVL.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
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:
 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.
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:
- | | |
|---|--|
| <p>If to the City of Murfreesboro:
City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130lf</p> | <p>If to Contractor:
ForeverLawn, Inc.
Attn: Amy Enos, Office Manager
8007 Beeson Street
Louiseville, OH 44641
amyv@foreverlawn.com</p> <p>Parker Chipman
Recreational Concepts, Authorized
Representative for ForeverLawn, Inc.
parker@rec-concepts.com</p> |
|---|--|
9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
 10. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
 11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
 12. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
16. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
17. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
18. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
19. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.

- 20. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
- 21. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO

FOREVER LAWN, INC.

By: _____
Shane McFarland, Mayor

DocuSigned by:
Bydmy Fines

City Manager, Office Manager

APPROVED AS TO FORM:

DocuSigned by:
Adams F. Tucker

Adams F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Ceiling Renovations at Hobgood Elementary School

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

Ordinance

Resolution

Motion

Direction

Information

Summary

Agreement for ceiling renovations at Hobgood Elementary School.

Staff Recommendation

Approve the agreement with Thrash Construction Services, LLC.

Background Information

The existing components of the suspended ceiling in the classrooms and hallways of the north and east portions of the building have reached the end of their useful life. This project consists of the removal of the existing ceilings, asbestos abatement of existing water pipe insulation, and installation of new suspended acoustical tile ceilings in those areas. The project was competitively bid, and Thrash was the lowest responsible bidder.

The Agreements have been reviewed and are pending approval by the city's Purchasing and Legal Departments.

Council Priorities Served

Responsible budgeting

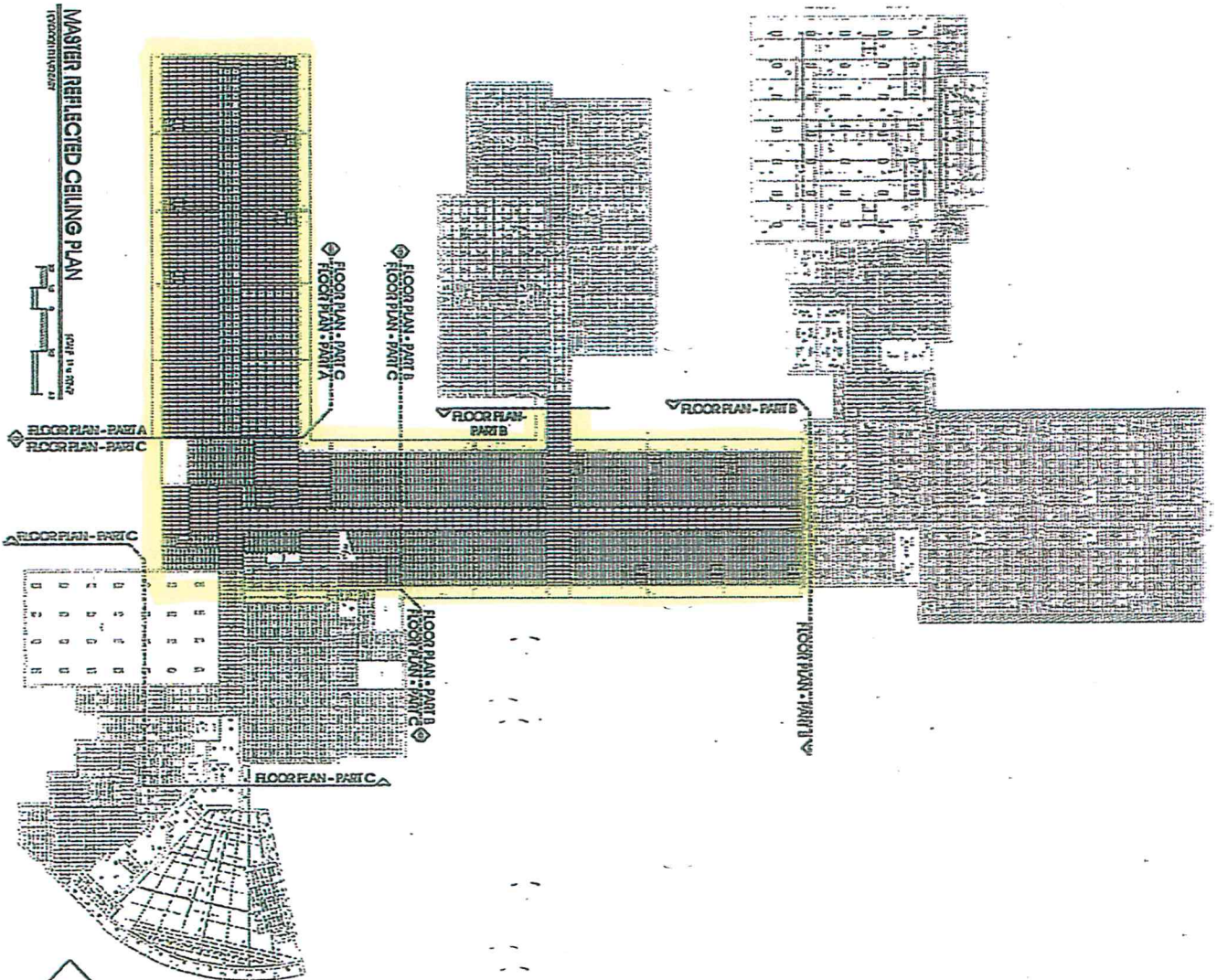
Proactive maintenance of the City's largest asset classification is crucial to responsible budgeting and decreased CIP costs over the long-term.

Fiscal Impact

The expense, \$486,110, is funded by shared proceeds from County facility bonds.

Attachments

1. Building Diagram (Highlighted Portion Depicts Project Area)
2. Agreement with Thrash Construction Services, LLC



MASTER REFLECTED CEILING PLAN
 (EXCLUDING STAIRS)

FLOOR PLAN - PART A
 FLOOR PLAN - PART C

FLOOR PLAN - PART C

FLOOR PLAN - PART C
 FLOOR PLAN - PART A

FLOOR PLAN - PART B
 FLOOR PLAN - PART C

FLOOR PLAN - PART B

FLOOR PLAN - PART B

FLOOR PLAN - PART B

FLOOR PLAN - PART C




Johnson + Ballay Architects
 1000 Parkside Drive
 St. Louis, MO 63104
 (314) 435-4400
 Fax: (314) 435-4404

Collins
 Renovations
 of Harbord
 Elementary
 School

ARCHITECT
 011

10/11/11

A1.1

 **AIA**® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of April in the year 2024
(In words, indicate day, month and year.)

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

City of Murfreesboro, Tennessee, a municipality organized under the laws of the State of Tennessee
111 West Vine Street
Murfreesboro, Tennessee 37130

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

Thrash Construction Services, LLC
1110 Sam R Fertitta Drive
Shreveport, LA 71101

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

Ceiling Renovations at Hobgood Elementary School
307 South Baird Ln, Murfreesboro, TN 37130
J+B No. 2212

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date specified in the Notice to Proceed issued by the Owner. Contractor is not authorized to undertake any Work until the date set forth in the Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than sixty-two (62) calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

Init.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four hundred eighty-six thousand one hundred ten dollars (\$ 486,110.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Quantity
For abatement of existing asbestos containing water pipe insulation and installation of new water pipe insulation on pipes 3 inches or less in diameter	2,463 Linear Feet

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units	Price per Unit (\$0.00)
For abatement of existing asbestos containing water pipe insulation and installation of new water pipe insulation on pipes 3 inches or less in diameter	Linear Feet	\$34.88

§ 4.5 Liquidated Damages

§ 4.5.1 Because failure to complete the Project within the time fixed in Section 3.3 will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, should the Contractor fails to achieve Substantial Completion of the Work within the time so fixed, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Contractor or its Surety shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$2,000.00 for each and every calendar day elapsing between the date fixed for Substantial Completion in Section 3.3 and the date such Substantial Completion shall have been fully accomplished.

§ 4.5.2 Any liquidated damages assessed pursuant to Section 4.2.1. shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the provisions of Article 14 of the General Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delays. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions ("Termination or Suspension of the Contract") or elsewhere in the Contract Documents. The Owner may deduct from the balance of retainage the liquidated damages stipulated herein or in the next paragraph hereof, as the case may be, or such portion thereof as the retained balance will cover.

Init.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 The Owner shall not be liable for the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy of Contractor or any Subcontractor for delays of any cause shall be the allowance of addition time for completion of Work, provided such additional time is reflected in a written, signed Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2

(Paragraphs deleted)

At least every 30 calendar days after the Contractor's commencement of the Work, but not more frequently than once per calendar month, the Contractor shall submit an Application for Payment to the Architect requesting payment for labor, services, and materials rendered or delivered during the preceding 30 calendar days. Each Application for Payment request shall contain such detail and be supported by sufficient information for the Owner and Architect to fully assess the request. The Architect will review the Contractor's Application for Payment and the accompanying data, information, and schedules (which are submitted in accordance with the Contract Document or at the Architect's request) to determine the amount the Contractor is due and, based on such review, together with its inspections of the Work, shall authorize in writing the requested payment to the Contractor.

§ 5.1.3 Provided the Application for Payment and all required supporting documentation is received by the Architect not later than the fifth day of the month, within 30 calendar days following Architect's authorization of payment, the Owner shall pay the sum authorized to the Contractor. No payment nor any use or occupancy of the Project, whether in total or partially, by the Owner constitutes an acceptance of any Work not in accordance with the Contract Documents.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 [Intentionally omitted.]

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect;
- .3 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and
- .4 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-build plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Init.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the *(Paragraphs deleted)* daily interest rate factor (365 days) of the prime interest rate reported by JP Morgan as of the payment due date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

AIA Document A201™–2017, General Conditions of the Contract for Construction Addendum B, Dispute Resolution Procedures

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. In addition, the Owner may terminate this Contract in the event of the unavailability of appropriated funds or a determination by Owner of the absence of continued need for the Project.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Scott Elliott, Project Development Manager
111 West Vine Street
Murfreesboro, TN 37130

Init.

Tel: (615) 642-3228
Email: selliot@murfreesborotn.gov

or his designee as indicated in writing from time to time.

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A, Contractor's Insurance and Bonds Requirements
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction, including Addendum A, Contractor's Standard Form Subcontract, and Addendum B, Dispute Resolution Procedures
- .4 [Intentionally Omitted]

- .5 Drawings

Number	Title	Date	Pages
00 01 15	Drawing Index	January 29, 2024	1

- .6 Specifications

Section	Title	Date	Pages
00 01 10	Table of Contents	January 29, 2024	1

Init.

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Attachment A		January 29, 2024	1

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Section 00 11 13, Advertisement for Bids, January 29, 2024 (2 pages)
 Section 00 21 13, Instructions to Bidders, January 29, 2024 (8 pages)
 Section 00 31 13, Bid Form, January 29, 2024 (6 pages)
 Contractor's Bid Response, March 26, 2024

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

OWNER (Signature)

Shane McFarland, Mayor

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

Init.

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Second Amendment of Old Fort Golf Course Renovation Project Contract

Department: Golf Department

Presented by: Trey Adams, Golf Director

Requested Council Action:

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

Summary

Contract amendment for the Old Fort Golf Course renovation project with Wadsworth Golf Construction Company (WGC) resulting in an increase of \$53,436.

Staff Recommendation

Approve the contract amendment from Wadsworth Golf

Background Information

In August 2023, Council approved a contract with WGC for a total cost of \$1,422,113. That contract included a full greens and bunker renovation and other small improvements. In February of 2024 City Council approved a first amendment of the contract for a reduction of \$15,448. This amendment will result in an increase to the previously amended contract by \$53,436.

The new contract will be for a total of \$1,460,101 and will include added improvements to the driving range tee, as well as some work to the pond between holes 1 and 9. The new driving range tee will increase the length of the driving range to approximately 320 yards as well as angle the tee appropriately so the drivers may be used safely on the range.

Council Priorities Served

Establish strong City brand

Maintaining and improving Old Fort Golf Course supports the City's focus on quality-of-life enhancements that build a vibrant, diverse, and engaging community.

Operational Issues

The driving range will be closed during the course closure for the renovation project for approximately 8–12 weeks to allow the new range tee turf to grow in. It will not affect the timeline for reopening the golf course which is still targeted for September 1, 2024.

Fiscal Impact

Net project costs have increased by \$53,436. By having a driving range that allows guests to use drivers, driving range operating revenues are expected to increase over the next few years to offset the additional costs.

Attachments

1. Wadsworth Golf Construction Company Contract Amendment 2
2. Exhibit A

**SECOND AMENDMENT
TO THE CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR
OLD FORT GOLF COURSE RENOVATIONS**

This Second Amendment ("Second Amendment") to the Contract entered into September 13, 2023 ("Contract"), is effective as of _____ ("Effective Date"), by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Wadsworth Golf Construction Company, a Corporation of the State of Illinois ("Contractor").

RECITALS

WHEREAS, on September 13, 2023, the City entered into the Contract with Contractor for the renovation of Old Fort Golf Course as detailed in ITB-44-2023 and the Contract; and,

WHEREAS, effective February 16, 2024, the Contractor and the City entered into the First Amendment to the Contract mutually agreeing to changes in materials used in the scope of work; and,

WHEREAS, the Contractor and the City have mutually agreed to additional changes in the scope of work as detailed in Exhibit A, Contract Change Order Number 002 dated April 10, 2024.

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

1. City and Contractor agree to implement the changes in the scope of work as listed in Exhibit A resulting in a deduction to the contract in the amount of \$77,537.50; and
2. City and Contractor agree to implement changes in the scope of work as listed in Exhibit A resulting in an increase to the contract in the amount of \$130,973.75.
3. All changes in the scope of work as listed in Exhibit A will increase the total contract price by \$53,436.25 resulting in a revised contract price of **\$1,460,102.06**.
4. The changes in the scope of work listed in Exhibit A extend the completion date by twenty (20) days, for a total of 200 calendar days from the date of the Notice to Proceed.
5. Except as provided herein and detailed in Exhibit A, the parties make no other modifications or amendments, and all other terms of the Contract shall continue in full force and effect.

ENTERED this Effective Date as listed above.

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

WADSWORTH GOLF CONSTRUCTION CO.

DocuSigned by:
Eric Wadsworth
By: _____
Eric Wadsworth, Vice President

Approved as to form:

DocuSigned by:
Adam Tucker

Adam F. Tucker, City Attorney

WATERMARK GOLF NATHAN CRACE DESIGN
 POST OFFICE BOX 1250 | MAGEE, MS | 39111
PHONE 601-849-0461



watermarkgolf.com | watermarkgolf.co.uk

PROJECT: OLD FORT GC (FOR THE CITY OF MURFREESBORO, TN) – GREEN AND BUNKER RENOVATIONS

CONTRACTOR: WADSWORTH CONSTRUCTION

GOLF COURSE ARCHITECT: NATHAN CRACE, ASGCA, PLA

DATE: 10 APRIL 2024

CONTRACT CHANGE ORDER NUMBER: 002

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference change proposal number, cost request bulletin number, field instruction number, change order request number, and any other documents as applicable. A copy of each shall be attached to the Trustees' copy of this Change Order.)

				Description	Extra	Credit	Days Ext.
1			-	Deduct 7,525 SF of bunkers (Better Billy Bunker polymer)		-\$22,575.00	0
2			-	Deduct 7,525 SF of bunkers (Approved Bunker Sand)		-\$26,337.50	0
3			-	Deduct (1) inline T-Drain		-\$375.00	0
4			-	Deduct asphalt/rock base from Schedule 5 of contract		-\$28,250.00	0
5			+	Add 775 LF of 4" ADS N-12 pipe	+\$7,912.75		0
6			+	Add 3.5 days of hauling dirt to site locations for bunkers	+\$4,725.00		0
7			+	Add construction of (7) additional tees throughout the course	+\$28,000.00		0
8			+	Add re-grading/sodding pond edge at #1 / #9 to prevent erosion	+\$8,940.00		0
9			+	Add Driving Range relocation (Staking: \$1,000, Sod Removal: \$4,300, Shaping: \$10,000, Level: \$2,300, Sand Cap: \$5,000, Prep and Sod: \$29,300, Irrigation Allowance: \$10,000, Cart Path Removal/Prep: \$9,246, Drainage Allowance: \$500)	+\$73,396.00		20
10			+	Add teaching tee at back of range (2x on course tee)	+\$8,000.00		0
TOTALS					+\$53,436.25		+20

Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise.

<p>APPROVAL RECOMMENDED</p> <p>GOLF COURSE ARCHITECT DATE: 10 APRIL 2024</p>	<p>Net Extra..... \$53,436.25</p> <p style="text-align: center;">or</p> <p>Net Credit..... - 0 -</p>
<p>CONTRACTOR AGREEMENT <i>The undersigned hereby agrees to the above-described amendment of the contract.</i></p> <p>WADSWORTH CONSTRUCTION <small>(Legal firm name of Contractor)</small></p> <p>SIGNATURE TITLE DATE</p> <p style="font-size: small;">Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.</p>	<p>Calendar days time extended: 20</p> <p>Revised Completion Date: + 20 Days</p>
<p>OWNER'S APPROVAL</p> <p>_____ NAME TITLE DATE</p> <p>_____ SIGNATURE</p>	<p>COPIES TO:</p> <ul style="list-style-type: none"> • Golf Course Architect • Contractor • Owner • Other (specify):

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Cityworks Software License Annual Renewal

Department: Information Technology

Presented by: Matt Jarratt, IT Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Renewal of Cityworks software licensing for City, Water Resources, and Public Safety.

Staff Recommendation

Approve work order for software license renewals.

Background Information

The City utilizes, and continues to implement, an Asset Management System (AMS) and a Permitting, Licensing, and Land (PLL) software suite from Cityworks. Renewal of these licenses allows for the continued use of a premium plan, which offers an unlimited number of seat licenses. This plan was selected as a more affordable option when compared to a per-user licensing model.

Expenditure of \$191,000 is split-funded between the City's General and Enterprise funds. The percentage split will be determined annually by reviewing departmental adoption of the software.

Council Priorities Served

Responsible budgeting

Choosing software licensing plans that allow for multi-departmental adoption helps regulate expenditure City-wide.

Fiscal Impact

The expense, \$191,000 is funded by the Department's operating budget (\$112,700) and MWRD operating budget (\$78,300).

Attachments

1. Cityworks Quote
2. True North Work Order
3. True North MSA



Azteca Systems, LLC - Cityworks
 11075 S State St, Suite 24 | Sandy, UT 84070
 801-523-2751 | Fax # 801-523-3734

Quote Number Q-34515-1
 Created Date 1/26/2024

Contact Information

Contact Name:	Darren Gore	Prepared By Name:	Jenn Miya
Customer:	Murfreesboro (TN), City of	Prepared By Phone:	(801) 872-9528
Contact Address:	300 NW Broad St. ST-37130 PO BOX 1477 Murfreesboro, TN 37133-1477	Prepared By Email:	jennifer_miya@trimble.com

Quote Lines

Product Name	Quantity	Net Unit Price
AMS ELA Premium	1.00	USD 110,000.00
Respond - AMS	1.00	Included
Mobile Native Apps (iOS/Android) - AMS	1.00	Included
Storeroom	1.00	Included
Equipment Checkout	1.00	Included
Contracts	1.00	Included
Cityworks for Excel	1.00	Included
Cityworks Analytics - AMS	1.00	Included
eURL - AMS	1.00	Included
Operational Insights	1.00	Included
Workload - AMS	1.00	Included
Web Hooks - AMS	1.00	Included
OpX Projects	1.00	Included
OpX Contracts	1.00	Included
OpX Budgets	1.00	Included
Service Request API	1.00	Included
Citizen Engagement API	1.00	Included
Work Order API - Basic	1.00	Included
Work Order API - Extended	1.00	Included
Inspection API	1.00	Included
Metrics API	1.00	Included
Storeroom API	1.00	Included
PLL ELA Standard	1.00	USD 75,000.00
Respond - PLL	1.00	Included

Product Name	Quantity	Net Unit Price
Mobile Native Apps (iOS/Android) - PLL	1.00	Included
eURL - PLL	1.00	Included
Public Access - PLL	1.00	Included
Cityworks Analytics - PLL	1.00	Included
Workload - PLL	1.00	Included
Web Hooks - PLL	1.00	Included
Case API - Extended	1.00	USD 6,000.00
TOTAL:		USD 191,000.00

Maintenance Start Date: 4/30/2024 **Maintenance End Date:** 4/29/2025

Quote Notes:

Terms and Conditions

Payment Terms

Payment due within 30 days

IF YOUR ORGANIZATION REQUIRES A PURCHASE ORDER, PLEASE CONTACT YOUR FINANCE DEPARTMENT TO BEGIN THE APPROVAL PROCESS TO AVOID PAYMENT DELAYS.

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery for the Customers listed above.

Unless otherwise referenced, this quotation is for the Cityworks software products referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software or any other third-party software utilized in conjunction with Cityworks will be the responsibility of the Customer.

For “on-prem” installations, the procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the Customer. Currently, Cityworks supports Oracle and SQL Server. The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the Customer.

This quotation and the pricing information herein is confidential and proprietary and may not be copied or released other than for the express purpose of the current system Software and Product selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, LLC or unless otherwise specifically permitted by law. If a “public access” or similar request is made, Customer, shall notify Azteca Systems, prior to any disclosure.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense, and is subject to the terms and conditions of the signed “Cityworks Software License and Maintenance Agreement” (“Agreement”) and any and all addendums or amendments thereto. A fully executed copy of the Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

The terms and conditions of the executed Cityworks Software License Agreement apply to this Quote unless otherwise specifically stated herein. Any additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and dates are void and of no effect.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any applicable state, sales, local, or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for any applicable taxes, including, sales, state, local or use taxes as necessary. Azteca Systems reserves the right to collect any applicable sales, use or other taxes tax assessed by or as required by law. Azteca Systems reserves the right to add any applicable tax to the invoice, unless proof with the order is shown that your organization or entity is tax exempt or if it pays any applicable tax directly.

International Customers

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

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above.

Accepted by:

Title

____/____/____
Date

True North Client Work: **City of Murfreesboro MBORO012-04082024**

This Client Work Order, effective as of April 8, 2024, is made pursuant to the Master Services Agreement dated April 4, 2019, ("MSA") by and between True North Geographic Technologies,LLC ("True North") and the City of Murfreesboro ("Client").

1. Scope and Description of Services/Work: **This is a pass-thru cost for Cityworks AMS/PLL annual maintenance per Cityworks Quote Q-34515-1.**
2. Work Products/Deliverables: **Cityworks has already provided new license codes for the new maintenance term. Product upgrades and support will be available for the new term.**
3. Term: **April 30, 2024** through **April 29, 2025** unless earlier terminated.
4. Total Costs: **\$191,000.00**
5. Supplemental Invoicing and Payment Information: **Cityworks will invoice True North for the full amount of the quote. True North will invoice the Client for the full amount with no markup upon receipt of approved work order. Departmental costs to be split internally between General Services and MWRD.**
6. The Designated Project Management Representatives responsible for this Client Work Order:

True North:

David Speight
119 MTCS Rd
Murfreesboro, TN 37129
Phone: (615) 890-7728
Fax: (615) 890-7729
E-mail: dspeight@tngeo.com

City of Murfreesboro:

Darren Gore
111 West Vine Street
Murfreesboro, TN 37130
Phone:
Fax:
E-mail:

NOTE: Any changes to this Client Work Order, including, but not limited to, any increase in scope, costs, or True North resource hours, shall require a Client Work Order Amendment.

The undersigned designated Client Project Management representative has reviewed and concurs with all aspects of this Client Work Order and is the Client representative authorized to approve True North's expenditure and use of any of this Client Work Order's allotted True North resource hours in the performance of this Client Work Order.

Concurrence By:
Client Management Representative

Accepted By:
True North Geographic Technologies, LLC

Signature: _____

Signature:  _____

Name: Shane McFarland

Name: David Speight

Title: Mayor

Title: President

Date: _____

Date: 4/16/2024

APPROVED AS TO FORM
DocuSigned by:



43A2035E51F8401
Adam F. Tucker, City Attorney

MASTER SERVICES AGREEMENT

Effective as of JULY 1, 2019, this MASTER SERVICES AGREEMENT ("MSA") is entered by and between True North Geographic Technologies, LLC, a Tennessee limited liability corporation having its principal offices at 119 MTCS Rd, Murfreesboro, TN 37129 ("True North") and CITY OF MURFREESBORO, a municipal corporation of the State of Tennessee having its principal offices at 111 West Vine Street, Murfreesboro, TN 37130 ("Client"). (True North and Client may be severally referred to as a "Party" or collectively referred to as "Parties").

WHEREAS, Client desires to purchase from True North and True North desires to provide to Client, Services, as defined in accordance with Section 2.4 of this MSA, and described in the Client Work Order(s), subject to the terms and conditions of this MSA.

NOW, THEREFORE, in consideration of the foregoing premise, together with the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope of Agreement.

1.1 Prior Agreements Superseded. This MSA is a master agreement between the Parties and contains all the terms and conditions that will govern the rights, responsibilities, and obligations of the Parties with respect to Services provided by True North to Client during the term of this MSA. This MSA supersedes and replaces any prior existing Services Agreement between True North and Client, and incorporates any and all prior and ongoing Client Work Orders between the Parties. Such Client Work Orders shall be governed by the terms and conditions of this MSA as if such Client Work Orders were issued hereunder. This MSA may not be amended except in writing signed by both Parties expressly referring to which portion(s) of the MSA are to be amended. This MSA may be terminated in accordance with the terms and conditions of Section 6 of this MSA.

1.2 Conflicts. Each Client Work Order shall incorporate the terms and conditions of this MSA; however if there is any conflict between the terms and conditions of this MSA and the Client Work Order, the MSA shall prevail unless it is explicitly expressed within the Client Work Order that a specific term and/or condition within the Client Work Order does take precedence over any conflicting term and/or condition within the MSA. Information on the composition and changes to a Client Work Order is cited in Section 4 of this MSA.

2. Definitions.

2.1 Confidential Information. Confidential Information shall mean all corporate information and material of a sensitive, proprietary, or non-public nature originating within the disclosing Party, whether in electronic, hard copy or other form, and disclosed as necessary between the Parties but not made openly available or disclosed to the public nor any third party, unless such

disclosure to a specific third party is consented to in writing by the disclosing Party. Confidential Information includes without limitation, information, data and materials relating to the disclosing Party's business, customers, personnel, trade secrets, internal processes, elements of the disclosing Party's information technology infrastructure, and any of the disclosing Party's information not generally available to the public. Confidential Information shall not include information which:

- (a) is at the time of its disclosure already in the public domain and readily available to the public;
- (b) is independently developed by the receiving Party without reference to or prior knowledge of the disclosing Party's Confidential Information; or was already legally in the possession of the receiving Party prior to its disclosure by the disclosing Party and not subject to any agreement of confidence between the receiving and disclosing Parties; or, is obtained by the receiving Party from a third party authorized to possess and disclose such information without restriction; or
- (c) is released into the public domain via an authorized release from the disclosing Party and not via another party's unauthorized, wrongful, illegal or negligent release of this information to the public.

2.2 Consulting Methodology. Consulting Methodology shall mean concepts, techniques, skills, know-how, methodologies, processes, inventions, and information technology tools that True North owns and/or uses to produce the Work Products under the Client Work Order and which are not uniquely related to the project described in the Client Work Order.

2.3 Intellectual Property. Intellectual Property means all ideas, methods, inventions, whether or not patentable, software source and object code, firmware, modules, routines, systems, programs, specifications, products and associated documentation, trademarks, service marks, trade names, trade secrets, materials and methodologies.

2.4 Services. Services shall mean the work or services that True North performs for Client, including any Work Products and cited deliverables which True North provides to Client subject to the terms and conditions of the MSA. The Services are to be described specifically in work orders to be executed by the Parties, in accordance with the form attached hereto as Exhibit A ("Client Work Order") or Exhibit B ("Client Work Order Amendment").

2.5 True North Intellectual Property. True North Intellectual Property shall mean all Intellectual Property developed or owned by True North apart from the Work Products created under this MSA, including without limitation, the Consulting Methodology, True North's software source and object code and all derivative works based thereon.

2.6 Work Products. Work Products shall mean all reports, studies, object or source code, flow charts, diagrams, data, documentation, and any other tangible material of any nature developed/produced by or as a result of the Services. Consulting Methodology is expressly excluded from the definition of Work Products.

3. Obligation of Parties.

3.1 Each Party is responsible for performing its obligations as set forth in this MSA, the Client Work Order(s), and any Client Work Order Amendment(s).

4. Scope of Services/Client Work Order Amendments

4.1 Work Orders. True North will perform the Services set forth in the Client Work Order(s) in a good and workmanlike manner. With the specifics agreed to by the Parties, the Client Work Order(s) shall include, but not be limited to: a description of the nature, scope, and schedule of the Services to be provided; the term/time within which the Services will be provided; Work Products, including any specifically cited deliverables, to be produced for and provided to Client; True North resource(s) to be used; the fixed price for the project or the hourly rate of pay per True North resource(s); costs, invoicing and payment information; and any other relevant terms and conditions relating to the Services.

4.2. Changes. Client may request changes to any Client Work Order by providing True North with a written request that describes the desired change ("Client Work Order Amendment" or "Amendment"). Prior to implementing any Amendment and before the Client incurs any costs associated with any Amendment, True North will provide Client with a written quotation which specifies any change(s) in scope, the applicable increase or decrease in the cost and/or the time that will be necessary to implement the Client requested changes specified within the Amendment. Provided that either the terms and conditions of the written quotation are acceptable to the Client as presented or the terms and conditions are acceptably modified through additional negotiation, the resulting, mutually agreed upon change(s) in scope, and any associated increase or decrease in the cost and/or time required, shall be incorporated into the Amendment and, prior to True North performing any work based on the Amendment, the Amendment must be signed by the designated Client representative responsible for the Client Work Order indicating Client's concurrence and the Amendment must be approved/signed by authorized representatives of both Parties.

4.3. Cancellation. Client may cancel any Client Work Order at its sole convenience upon thirty (30) days' prior written notice to True North. In the event that Client cancels any Client Work Order under this Section 4.3, Client shall pay True North the costs of any mutually agreed upon Client Work Order-cited Services, performed by True North, up to the effective date of cancellation. Such payment by Client will be made to True North no later than thirty (30) days from the date that an undisputed True North invoice is received by Client with such date of receipt of invoice to be no sooner than the effective date of cancellation of the Client Work Order. No later than thirty (30) days following the effective cancellation date of a Client Work Order, True North shall provide Client any and all Work Products, including any cited deliverables, or any parts thereof, that True North developed or produced via the Client Work Order up to the effective date of cancellation. For purposes of clarification, "Client Work Order" as used in this Section 4.3, shall be construed to mean Client Work Order and any Amendment(s) to that Client Work Order.

5. Payment Terms and Conditions.

5.1 Pricing. The costs for Services shall be as agreed upon by True North and Client in the Client Work Order(s).

5.2 Invoicing. True North shall invoice Client for Services based upon the mutually agreed upon terms and conditions set forth in the relevant Client Work Order and any associated Client Work Order Amendment(s). Each invoice shall describe the Services rendered and the charges due. Client agrees to pay True North, within thirty (30) days of receipt of a True North invoice, all undisputed amounts in the invoice for True North Services rendered in accordance with the applicable Client Work Order and any associated Client Work Order Amendment(s). Any undisputed amount not paid within thirty (30) days of receipt of the invoice shall accrue interest at the rate of one and one-half percent (1 ½ %) per month until paid in full. With respect to any disputed amount, Client shall provide True North with a written notice of such a dispute within twenty (20) days of Client's receipt of the relevant invoice. The notice will cite the basis for the dispute, as well as supporting details sufficient to permit True North to cure the dispute. True North shall have thirty (30) days from receipt of the notice to cure the dispute or otherwise provide Client with sufficient information to demonstrate that there is no basis for the dispute. If the Parties cannot resolve the dispute by the end of the cure period, both Parties agree to engage in the dispute resolution in accordance with Section 13.2 of this MSA.

6. Term and Termination.

6.1 Term. This MSA shall be in effect until terminated by either Party pursuant to Section 6 hereof.

6.2 Termination for Convenience. Either Party may terminate this MSA upon thirty (30) days prior written notice thereof to the other Party.

6.3 Termination for Cause. In the event of a material breach of this MSA, the non-breaching Party may notify the other Party in writing of the material breach and the breaching Party will have 30 days to cure such material breach. If the breaching Party neither effects such a cure to the material breach within the aforementioned thirty (30) days nor initiates actions for resolution via arbitration in accordance with Section 13.2 of this MSA within the same aforementioned thirty (30) days period, the non-breaching Party may terminate this MSA immediately without further notice to the breaching Party.

6.4 Effect of Termination. No later than thirty (30) days following termination: (a) Client shall pay True North for all mutually agreed upon Client Work Order-cited Services performed, up to and including the effective date of termination; (b) True North shall provide Client any and all Work Products, including any cited deliverables and any parts thereof, that True North developed for Client as part of any and all Client Work Orders up to and including the date of termination; and (c) True North shall provide Client any software and documents, information and materials, including copies thereof, that True North received from Client during the term of any and all Client Work Orders up to and including the date of termination. The Parties expressly agree that True North's obligation to deliver the Work Product(s), including any cited deliverables, is contingent on Client's payment for

such Work Products, including any deliverables, in accordance with the MSA and the Client Work Order(s). For purposes of clarification, "Client Work Order" as used in this Section 6.4, shall be construed to mean Client Work Order and any Amendment(s) to that Client Work Order.

7. Use of Confidential Information.

7.1 RESTRICTIONS. BOTH PARTIES ACKNOWLEDGE THAT THIS MSA CREATES A RELATIONSHIP OF CONFIDENCE AND TRUST BETWEEN TRUE NORTH AND CLIENT WITH RESPECT TO THE BUSINESS OF BOTH PARTIES, INCLUDING, BUT NOT LIMITED TO, BOTH PARTIES' CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION SHALL ONLY BE USED BY THE RECEIVING PARTY IN ITS PERFORMANCE UNDER THIS MSA AND SHALL NOT BE DISCLOSED BY THE RECEIVING PARTY TO ANY THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE DISCLOSING PARTY. THE RECEIVING PARTY MAY DISCLOSE THE CONFIDENTIAL INFORMATION TO ITS EMPLOYEES AND INDEPENDENT CONTRACTORS WHO HAVE A NEED TO KNOW AND WHO HAVE AGREED TO MAINTAIN THE CONFIDENTIALITY OF THE CONFIDENTIAL INFORMATION AS REQUIRED HEREIN. EITHER PARTY SHALL ONLY USE THE OTHER PARTY'S CONFIDENTIAL INFORMATION TO ORDER, DELIVER, INSTALL, EVALUATE, USE, SUPPORT AND/OR MAINTAIN THE SERVICES AND WORK PRODUCT FURNISHED HEREUNDER. THE RECEIVING PARTY: (A) SHALL NOT REPRODUCE OR COPY THE CONFIDENTIAL INFORMATION IN WHOLE OR IN PART, EXCEPT AS AUTHORIZED IN THIS MSA OR WHEN REQUESTED BY THE DISCLOSING PARTY; (B) SHALL, AT THE DISCLOSING PARTY'S WRITTEN INSTRUCTION, DESTROY OR RETURN THE CONFIDENTIAL INFORMATION UPON THE TERMINATION OF THIS MSA OR WHEN REQUESTED TO DO SO; AND (C) SHALL PROVIDE THE CONFIDENTIAL INFORMATION PURSUANT TO A REQUIREMENT OF A DULY EMPOWERED GOVERNMENTAL AGENCY OR COURT OF COMPETENT JURISDICTION AND, IF POSSIBLE PRIOR TO PROVIDING SUCH CONFIDENTIAL INFORMATION, PROVIDE THE DISCLOSING PARTY WITH COMMERCIALY REASONABLE NOTICE AND OPPORTUNITY TO INTERVENE, UNLESS LEGALLY PROHIBITED.

7.2 Level of Protection. The receiving Party will safeguard the Confidential Information with at least the same degree of diligence one employs with respect to their own proprietary and/or Confidential Information and in no event shall the receiving Party employ protection which is less than reasonable under all the circumstances.

7.3 Survival. The provisions of this section shall survive the termination of this MSA.

7.4 Injunctive Relief. The Parties recognize specifically that the obligations of confidentiality contained herein are reasonable and necessary for the protection of Confidential Information and to prevent damages to the disclosing Party. The Parties further recognize and agree that any breach or threatened breach of duties with respect to Confidential Information by either Party or such Party's authorized agent might cause the other Party irreparable injury for which there is no adequate remedy at law. Thus, it is agreed by both Parties that the non-breaching Party shall be

entitled, in addition to any other remedies that are available, to seek injunctive relief in the case of any breach or threatened breach of the duties with respect to Confidential Information as set forth herein.

8. Intellectual Property.

8.1 Title for Client. Except as expressly provided elsewhere in this Agreement, any and all Work Products, including any cited deliverables, or portions thereof, that True North developed or produced at the direction of Client and in accordance with specifications provided by Client, pursuant to this MSA shall be the sole property of Client provided that Client paid True North for the True North performance of the Services under the Client Work Order that produced the Work Products, cited deliverables, or portions thereof. Thereafter, Client shall own all right, title and interest in the Work Products subject to a perpetual, royalty-free, transferable, worldwide license hereby granted by Client to True North to copy, create derivative works, distribute, reproduce and otherwise use such Work Products in any manner is True North's sole discretion. Notwithstanding any other provision of this MSA, to the extent that a Work Product incorporates or is based upon True North Intellectual Property or any third party Intellectual Property, such True North Intellectual Property or third party Intellectual Property remains the sole property of True North or such third party and the Client shall receive only a limited, non-assignable license to copy, distribute, reproduce and otherwise use the True North Intellectual Property or third party Intellectual Property subject to the express terms and conditions set forth in the separate EULA governing such Intellectual Property.

8.2 Title for True North. All rights, title, and interest in and to the Consulting Methodology and the True North Intellectual Property remain the property of True North. True North retains full ownership of the Consulting Methodology and True North Intellectual Property and is free to use the Consulting Methodology and True North Intellectual Property, specifically including all derivative works in such property created under this MSA in future projects without limitation, royalty or termination right possessed by Client.

8.3 Trademarks, Service Marks and Trade Names. Each Party retains all right, title and interest in its respective trademarks, service marks and trade names and except as provided hereinafter, this Agreement does not constitute a license by either Party to use the trademarks, service marks and/or trade names of other Party. As an express exception to the foregoing sentence, Client grants True North a royalty-free perpetual, world-wide right and license to use the Client's trademarks, service marks and trade names in True North's promotional activities when identifying the Client as a True North customer. True North shall, in exercising this right and license, follow the reasonable requirements imposed by Client on the use of the Client's trademarks, service marks and trade name consistent with the uniform usage of such marks and names by Client in its own promotional activities.

9. Limitations and Warranties.

9.1 Disclaimer. True North warrants to Client that the Services will be performed by knowledgeable and experienced personnel and will be of good and workmanlike quality and will be performed in accordance with the specifications agreed upon by the Parties. Except as stated

above. True North does not make any warranty, express or implied, with respect to the Services and True North SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE. THE SERVICES AND ANY WORK PRODUCTS OR DELIVERABLES RELATED THERETO ARE PROVIDED AS IS. THE PARTIES AGREE THAT THIS AGREEMENT IS NOT SUBJECT TO THE VIRGINIA UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, §59.1-501.1, ET. SEQ., AND HEREBY WAIVE ANY APPLICATION OF SUCH LAW TO THIS AGREEMENT TO THE FULL EXTENT PERMISSIBLE.

9.2 Consequential Damages. In no event shall either Party be liable to the other Party for any consequential, incidental, special, punitive or indirect damages related to or arising from the formation, performance or breach of this Agreement under any theory of liability and regardless of whether either Party has been advised of the foreseeability or possibility of such damages.

9.3 Limitation of Liability. True North's total liability under this MSA, regardless of the theory of liability or form of action, shall not exceed the total amount paid or owed to True North for Services performed under the specific Client Work Order upon which such liability is premised. However, this liability limitation does not apply in the event of a Confidential Information-related material breach by True North.

9.4 Force Majeure. Neither Party shall be liable to the other Party for any failure of or delay in performance of its obligations under this Agreement, except for the payment of money due hereunder, to the extent that such failure or delay is due to circumstances beyond their reasonable control, including, without limitation, acts of God, acts of a public enemy, terrorism, fires, floods, onsite or regional power outages, wars, civil disturbances, sabotage, accidents, insurrections, blockades, ice and/or snow storms, explosions, labor demonstrations, acts of any governmental body, failure or delay of third parties or governmental bodies from whom either Party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits (collectively referred to herein as "Force Majeure"). In the event that either Party claims Force Majeure to excuse performance of its obligations under this Agreement, the Party shall notify the other Party promptly after such occurrence and shall provide weekly written updates on the status of such Force Majeure during the continuation of such event while using reasonable efforts to overcome the impact of the Force Majeure event and resume performance.

10. Non-Solicitation.

10.1 Non-Solicitation. Each Party agrees that during the Non-Solicitation Term, defined herein, that it shall not directly or indirectly solicit or hire any employee, consultant, independent contractor, agent or other representative of the other Party ("Employee") to work or provide any services in direct competition with such other Party.

10.2 Non-Solicitation Term. "Non-Solicitation Term" shall mean the shorter of (a) the term of this MSA plus a period of twelve (12) months after the termination of this MSA, or (b) a period of six (6) months after the relevant Employee last worked for the non-soliciting Party.

10.3 Cure. In the event that either Party breaches Section 10.1 of this MSA, the other Party shall be entitled to recover a stipulated fee from the other Party equivalent to fifty percent (50%) of the relevant Employee's first year's total compensation promised by the other Party. A cure letter shall be sent to the other Party if this option is invoked. Exercise of this option documented by such cure letter shall not be construed to be a material breach of this Agreement.

11. Relationship of the Parties.

11.1 Independent Contractor. True North's relationship to Client shall be that of an independent contractor. Nothing in this MSA shall be construed to constitute True North, or any of its employees, as agents, employees, partners or joint venturers of Client. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the Parties hereto.

11.2 Employees; Restrictions of Access. Client is solely responsible for its employees and for any third parties and subcontractors that Client directly manages and True North is solely responsible for its employees that it directly manages. Client shall not have the right, nor shall it attempt to exercise the right, to establish the rate of pay, benefits, hours of work, or other terms and conditions of employment of the employees of True North. Client reserves the right to restrict movements and access rights of any and all True North employees, subcontractors, and agents within the Client's facilities. True North shall be obligated to employ and/or provide the qualified staff necessary to perform Services requested in Client Work Orders. True North shall instruct all of its employees, subcontractors, and agents to behave in accordance with Client's rules and regulations.

12. Waiver. The failure of either Party to insist upon performance of any provision of this MSA, or to exercise any right, remedy or option provided herein, shall not be construed as a waiver of such right, remedy or option.

13. Governing Law; Disputes.

13.1 Governing Law. State of Tennessee laws, without reference to its conflict of laws provision, will govern the interpretation and enforcement of this MSA and Client Work Orders, and amendments thereof with such legal action to be brought exclusively in either the United States District Courts for the Middle District of Tennessee, or the state courts in Rutherford County, Tennessee, provided only that such court has proper subject matter jurisdiction.

13.2 Meet and Confer; Option of Arbitration. In the event of a claim, controversy or dispute arising out of or related to this MSA, Client Work Order, and/or Amendment, each Party agrees to give the other prompt notice of such, and both agree to meet and confer promptly to engage in good faith

discussions to try to resolve the matter. If that fails to resolve the matter promptly, then such claim, controversy or dispute may be settled by arbitration before a sole arbitrator, who is an attorney, under the then current Commercial Arbitration Rules of the American Arbitration Association if the parties so agree at that time. The option to agree to arbitrate will extend to any employee, officer, director, shareholder, agent, or affiliate of the Parties to the extent such right or duty arises through a Party or is related to this MSA, Client Work Order, and/or Amendment. The decision and award of the arbitrator in such an agreed-upon arbitration will be final and binding, and the award rendered may be entered in any court having jurisdiction thereof. The arbitrator is directed to hear and decide dispositive motions in advance of the hearing-on-the-merits by applying the applicable law to uncontested facts and documents. The arbitration will be held in Rutherford County, Tennessee. The arbitrator will enforce the terms of the **MSA**, Client Work Order, and/or Amendment and will have no authority to award punitive damages, non-compensatory damages or any damages other than direct damages, nor award direct damages in excess of the limitations and exclusions set forth in this **MSA**.

13.3 Statute of Limitations. Each Party hereby waives its right to bring any claim against the other Party arising in any way from or relating in any way to this MSA more than one (1) year after the underlying cause of action first arises.

13.4 Jurisdiction; Venue. The Parties hereby waive any challenge to the exercise of personal jurisdiction by the courts identified in Section 13.1, above, as well as defenses and motions based upon improper venue, inconvenience of forum or similar challenge to venue in any action or suit brought relating to or arising from this MSA.

13.5 Caveat. The Parties agree that the United Nations Convention of Contracts for the International Sale of Goods shall not apply to this Agreement.

14. Notices. All notices or communications required by this Agreement or desired to be given hereunder, shall be in writing and given by electronic mail, certified or registered mail, return receipt requested of courier and shall be deemed to be given when received. Notices shall be addressed to the individual identified below and at the addresses first specified above. Either Party may change its point of contact by written notice to the other.

True North:

David Speight
119 MTCS Rd
Murfreesboro, TN 37129
Phone: (615) 890-7728
Fax: (615) 890-7729
E-mail: dspeight@tngeo.com

Client:

Craig Tindall, City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 849-2629
E-mail: ctindall@murfreesborotn.gov

15. Authority. The Parties represent on their own behalf: (a) they have full power and authority to enter into and perform this MSA; (b) there is no contract, agreement, promise or undertaking that would prevent the full execution and performance of this MSA; and (c) the persons executing this MSA are duly authorized to do so and have the authority to bind their respective principals.

16. Construction. If any part of this MSA or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be deemed inapplicable and deemed omitted to the extent deemed so contrary, prohibited or invalid but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. All headings contained in this MSA are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this MSA or any provisions hereof and should not be considered in interpreting this MSA. In this MSA, the use of any gender shall be deemed to include the other gender, and the use of the singular shall include the plural, wherever it appears appropriate from the context. This MSA shall not be construed against either Party as the drafter as both Parties contributed to the drafting of this MSA.

17. Entirety. This MSA, including any Client Work Orders and Client Work Order Amendments, constitutes the entire agreement between the Parties with respect to True North Services provided to Client; and this MSA takes precedence over and supersedes any and all additional and conflicting prior oral or written communications and any other promises or representations that have been made between the Parties up until now. This MSA may be modified or amended only in writing signed by both Parties.

18. Counterparts. This MSA, including all attached exhibits, may be executed at different times and in any number of originals or counterparts and by each Party on a separate counterpart, each of which shall be deemed an original but all of which together shall constitute only one agreement.

19. Assignability. This MSA and the rights, duties and obligations of the Parties hereunder shall be deemed to be personal to True North and Client, and as such, may not be assigned by either Party without the prior written consent of the other Party which consent shall not be unreasonably withheld.

20. Survivability. Sections 1, 2, 5, 6, 7, 8, 9, 10, 13 and 14 shall survive the termination of this MSA.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties, having read and understood the foregoing, and having had the opportunity to consult with legal counsel, have caused this Agreement to be executed by their duly authorized representatives effective as of April 4, 2019 (the "Effective Date").

TRUE NORTH, INC

By: 
David Speight, President

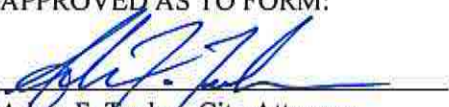
Date: 4/11/2019

CITY OF MURFREESBORO

By: 
Shane McFarland, Mayor

Date: 4/4/2019

APPROVED AS TO FORM:


Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Amendment One to Violent Crime Intervention Fund Grant Contract

Department: Police

Presented by: Chief Bowen

Requested Council Action:

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

Summary

Amendment One to Violent Crime Intervention Fund grant contract.

Staff Recommendation

Approve the grant amendment.

Background Information

Council approved the State Grant Contract for the Violent Crime Intervention Fund on May 18, 2023. The State has recently submitted Amendment One to the grant contract for the purpose of reallocating some of the funding from FY24 to FY25 to allow the department to complete some of the budgeted purchases. There were no changes to the overall funding or terms.

Council Priorities Served

Maintain public safety


Equipment purchased by the VCIF will enhance public safety by providing crime investigation tools and data analytics for crime solvability.

Fiscal Impact

Grant revenue and expenditures for FY24 will decrease by \$906,280 and will be increased in FY25 for the same amount.

Attachments

Amendment One to Grant Contract

 GRANT AMENDMENT					
Agency Tracking #	Edison ID	Contract #		Amendment #	
NA	50917	50917		1	
Contractor Legal Entity Name				Edison Vendor ID	
City of Murfreesboro				4110	
Amendment Purpose & Effect(s)					
Revises Clauses, Revises Budget, and Extends Expiration Date					
Amendment Changes Contract End Date:			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	End Date: 6/30/2025	
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):					\$ 0.00
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY23	\$0.00				\$ 0.00
FY24	\$250,000.00				\$250,000.00
FY25	\$906,280.00				\$906,280.00
TOTAL:	\$1,156,280.00				\$1,156,280.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE</i>		
Speed Chart		Account Code			
FA00003518		City - 71302000			

**AMENDMENT ONE
OF GRANT CONTRACT 50917**

This Grant Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs, hereinafter referred to as the "State" and City of Murfreesboro, hereinafter referred to as the "Grantee." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Grant Contract is hereby amended as follows:

1. Grant Contract section B.1. is deleted in its entirety and replaced with the following:
 - B.1. This Grant Contract shall be effective on 6/15/2023 ("Effective Date") and extend for a period of Twenty Four (24) months and Sixteen (16) days after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
2. Grant Contract section B.2. is added with the following:
 - B.2. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed three hundred sixty-five (365) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.
3. Grant Contract section C.1. is deleted in its entirety and replaced with the following:
 - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed One Million One Hundred Fifty Six Thousand Two Hundred Eighty Dollars (\$1,156,280.00) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment A-1 for fiscal year 2023, Attachment A-1 for fiscal year 2024, Attachment A-1 for fiscal year 2025, is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
4. Grant Contract section D.19. is deleted in its entirety and replaced with the following:
 - D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.

At least ninety (90) days before the end of its fiscal year, the Grantee shall complete the Information for Audit Purposes ("IAP") form online (accessible through the Edison Supplier portal) to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed form online during the Grantee's fiscal year. Immediately after the fiscal year has ended, the Grantee shall fill out the End of Fiscal Year ("EOFY") (accessible through the Edison Supplier portal).

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

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

- 5. Grant Contract Attachment A-1 is deleted in its entirety and replaced with the new attachment A-1 attached hereto.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective 05/15/2024. All other terms and conditions of this Grant Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

CITY OF MURFREESBORO:

GRANTEE SIGNATURE

DATE

Shane McFarland, Mayor

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

JIM BRYSON, COMMISSIONER

DATE

APPROVED AS TO FORM

Adam Tucker

Adam F. Tucker, City Attorney

GRANT BUDGET			
AGENCY NAME: Murfreesboro Police Department			
FUND SOURCE: VCIF			
SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant			
The grant budget line-item amounts below shall be applicable only to expense incurred during the following			
Applicable Period:	BEGIN: 06/15/2023	END: 06/30/2023	
EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
Salaries, Benefits & Taxes ²	\$0.00	\$0.00	\$0.00
Professional Fee, Grant & Award ²	\$0.00	\$0.00	\$0.00
Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications ²	\$0.00	\$0.00	\$0.00
Travel, Conferences & Meetings ²	\$0.00	\$0.00	\$0.00
Interest ²	\$0.00	\$0.00	\$0.00
Insurance ²	\$0.00	\$0.00	\$0.00
Specific Assistance To Individuals ²	\$0.00	\$0.00	\$0.00
Depreciation ²	\$0.00	\$0.00	\$0.00
Other Non-Personnel ²	\$0.00	\$0.00	\$0.00
Capital Purchase ²	\$0.00	\$0.00	\$0.00
Indirect Cost ²	\$0.00	\$0.00	\$0.00
In-Kind Expense ²	\$0.00	\$0.00	\$0.00
GRAND TOTAL	\$0.00	\$0.00	\$0.00

¹ Each expense object line-item is defined by the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

GRANT BUDGET LINE-ITEM DETAIL:

AGENCY NAME: Murfreesboro Police Department

FUND SOURCE: VCIF

SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant

SALARIES, BENEFITS & TAXES	AMOUNT
TOTAL	\$0.00

Note: Benefits must be calculated at the same or lesser percentage as the salary for each position.

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
TOTAL	\$0.00

SUPPLIES (includes "Sensitive Minor Equipment"), TELEPHONE, POSTAGE & SHIPPING, OCCUPANCY, EQUIPMENT RENTAL & MAINTENANCE, PRINTING & PUBLICATION	AMOUNT
TOTAL	\$0.00

TRAVEL, CONFERENCES & MEETINGS	AMOUNT
TOTAL	\$0.00

INSURANCE	AMOUNT
TOTAL	\$0.00

SPECIFIC ASSISTANCE TO INDIVIDUALS	AMOUNT
TOTAL	\$0.00

DEPRECIATION	AMOUNT
TOTAL	\$0.00

OTHER NON-PERSONNEL	AMOUNT
TOTAL	\$0.00

CAPITAL PURCHASE	AMOUNT
TOTAL	\$0.00

INDIRECT COST	AMOUNT
TOTAL	\$0.00

IN-KIND EXPENSE	AMOUNT
TOTAL	\$0.00

GRANT BUDGET			
AGENCY NAME: Murfreesboro Police Department			
FUND SOURCE: VCIF			
SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant			
The grant budget line-item amounts below shall be applicable only to expense incurred during the following			
Applicable Period:	BEGIN: 07/01/2023	END: 06/30/2024	
EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
Salaries, Benefits & Taxes ²	\$0.00	\$0.00	\$0.00
Professional Fee, Grant & Award ²	\$250,000.00	\$0.00	\$250,000.00
Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications ²	\$0.00	\$0.00	\$0.00
Travel, Conferences & Meetings ²	\$0.00	\$0.00	\$0.00
Interest ²	\$0.00	\$0.00	\$0.00
Insurance ²	\$0.00	\$0.00	\$0.00
Specific Assistance To Individuals ²	\$0.00	\$0.00	\$0.00
Depreciation ²	\$0.00	\$0.00	\$0.00
Other Non-Personnel ²	\$0.00	\$0.00	\$0.00
Capital Purchase ²	\$0.00	\$0.00	\$0.00
Indirect Cost ²	\$0.00	\$0.00	\$0.00
In-Kind Expense ²	\$0.00	\$0.00	\$0.00
GRAND TOTAL	\$250,000.00	\$0.00	\$250,000.00

¹ Each expense object line-item is defined by the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

GRANT BUDGET LINE-ITEM DETAIL:

AGENCY NAME: Murfreesboro Police Department

FUND SOURCE: VCIF

SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
Gunshot Detection System (2 year Professional Services Contract approximately from July 1, 2023 through June 30, 2025)	\$250,000.00
TOTAL	\$250,000.00

GRANT BUDGET			
AGENCY NAME: Murfreesboro Police Department			
FUND SOURCE: VCIF			
SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant			
The grant budget line-item amounts below shall be applicable only to expense incurred during the following			
Applicable Period:	BEGIN: 07/01/2024	END: 06/30/2025	
EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
Salaries, Benefits & Taxes ²	\$0.00	\$0.00	\$0.00
Professional Fee, Grant & Award ²	\$0.00	\$0.00	\$0.00
Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications ²	\$0.00	\$0.00	\$0.00
Travel, Conferences & Meetings ²	\$0.00	\$0.00	\$0.00
Interest ²	\$0.00	\$0.00	\$0.00
Insurance ²	\$0.00	\$0.00	\$0.00
Specific Assistance To Individuals ²	\$0.00	\$0.00	\$0.00
Depreciation ²	\$0.00	\$0.00	\$0.00
Other Non-Personnel ²	\$0.00	\$0.00	\$0.00
Capital Purchase ²	\$906,280.00	\$0.00	\$906,280.00
Indirect Cost ²	\$0.00	\$0.00	\$0.00
In-Kind Expense ²	\$0.00	\$0.00	\$0.00
GRAND TOTAL	\$906,280.00	\$0.00	\$906,280.00

¹ Each expense object line-item is defined by the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

GRANT BUDGET LINE-ITEM DETAIL:

AGENCY NAME: Murfreesboro Police Department

FUND SOURCE: VCIF

SOLICITATION IDENTIFICATION TITLE: Violent Crime Intervention Fund: Formula Based Grant

CAPITAL PURCHASE	AMOUNT
17 Pole Camers (Includes all hardware, software, video storage, warranties and installation)	\$490,924.00
44 LPR Cameras (Includes all hardware, software, video storage, warranties and installation)	\$415,356.00
TOTAL	\$906,280.00

COUNCIL COMMUNICATION

Meeting Date: 04/18/2024

Item Title: Contract with Pen-Link LTD for Software Purchase

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Contract with Pen-Link, LTD for software purchase.

Staff Recommendation

Approve the contract with Pen-Link for PLX Analysis software suite.

Background Information

Pen-Link PLX software is a powerful tool used for analyzing, managing, and visualizing communication data. It will allow Real Time Crime Center analysts to efficiently organize and interpret large volumes of information aiding in investigations and intelligence gathering.

Pen-Link, LTD is the sole source provider of all Pen-Link software products.

Council Priorities Served

Maintain public safety

Maintaining public safety IT infrastructure is critical to effective and efficient operations.

Fiscal Impact

The one-year contract price of 77,377, is funded by the department's FY24 operating budget.

Attachments

Contract with Pen-Link, LTD.

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
PEN-LINK, LTD.
FOR SOFTWARE SUBSCRIPTION**

This Contract is entered into and effective as of _____, by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **PEN-LINK, LTD.**, a corporation of the State of Nebraska and Sole Source Provider of PLX Software ("Contractor").

This Contract consists of the following documents:

- *This Contract*
- *Contractor's Quote #00040667 dated March 11, 2024 ("Contractor's Quote")*
- *Sole Source Letter Dated March 11, 2024*
- *PLX-Terms and Conditions - North America*
- *Any properly executed amendments to this Agreement*

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

- *First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)*
- *Second, this Contract*
- *Third, PLX-Terms and Conditions – North America*
- *Lastly, Contractor's Quote #00040667 dated March 11, 2024 ("Contractor's Quote").*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase one PLX Analysis Suite, consisting of 10 software licenses, search warrant edition, pen-proxy, cell phone forensics, and training as set forth on Contractor's Quote.
2. **Term.** The term of this contract shall be for one-year from _____ to _____. The City must notify Contractor to renew any subscription-based software purchased per this Agreement.
3. Contractor's performance may be terminated in whole or in part:
 - a. Upon 30 days 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 and services to be provided under this Contract is set forth in Contractor's Quote 00040667 dated March 11, 2024, reflecting a total **Purchase Price of Seventy-Seven Thousand, Three Hundred Seventy-Seven Dollars and Seventy-Seven Cents (\$77,377.77)**. 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 with a copy to the Contact person listed below.
- b. Deliveries of all items shall be made within 4-6 weeks of order to: 1004 N. Highland Ave., Murfreesboro, TN 37130. Delivery Contact: Captain Jeff Keaton (email: 0294@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.

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:
Pen-Link, Ltd.
Attn: Sheri Madison
5944 Vandervoort Drive
Lincoln, NE 68516
smadison@penlink.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 three (3) full years from the date of final payment

and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.

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.
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 Bid, 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 Bid, 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

PEN-LINK, LTD.

By: _____
Shane McFarland, Mayor

DocuSigned by:
By: *Cory O'Donnell*
A9FD75E907504BE
Cory O'Donnell, Global Controller
codonnell@penlink.com

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F9491
Adam F. Tucker, City Attorney



Quote

Company Address 5944 Vandervoort Dr.
Lincoln, Nebraska 68516
United States

Quote Number 00040667
Created Date 3/11/2024

Bill To:

Murfreesboro Police Department (TN)
1004 N Highland Ave
Murfreesboro, Tennessee 37130
United States

Ship To:

Murfreesboro Police Department (TN)
1004 N Highland Ave
Murfreesboro, Tennessee 37130
United States

Prepared By Sheri Madison
Freight Terms FOB Origin

Expiration Date 6/4/2024
Payment Terms Net 30

Quantity	Product	Sales Price	Discount Each	Total Price
1.00	PLX Analysis Suite - 10 Licenses	USD 0.00		USD 0.00
10.00	PLX SOFTWARE LICENSE - PROFESSIONAL EDITION (PHONE)	USD 5,679.00	1,135.80	USD 45,432.00
10.00	PLX SOFTWARE LICENSE - SEARCH WARRANT EDITION (IP) to be combined with PROFESSIONAL or INTERCEPT EDITION (TELEPHONE)	USD 2,344.00	468.80	USD 18,752.00
10.00	ADD-ON: PEN-PROXY FOR PLX SOFTWARE LICENSE - PROFESSIONAL EDITION (TELEPHONE)	USD 577.00	57.70	USD 5,193.00
10.00	ADD-ON: CELL PHONE FORENSICS FOR PLX SOFTWARE LICENSE - PROFESSIONAL EDITION (TELEPHONE)	USD 546.00	54.60	USD 4,914.00
1.00	PenLink Academy Training Subscription	USD 4,115.70	1,028.93	USD 3,086.78
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00
1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00		USD 0.00

Pen-Link, Ltd is a U.S. - Based Small Business, DUNS: 195956636 / TIN: 47-0707585 / CAGE: 0K6H9

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TERMS AND CONDITIONS:

<https://www.penlink.com/terms-and-conditions-north-america>



Quote

1.00	Annual Training Subscription - Free In-Person Seat	USD 0.00	USD 0.00
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Totals

Subtotal	USD 95,575.70
Discount	USD 18,197.93
Tax	USD 0.00
Total price	USD 77,377.77

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TERMS AND CONDITIONS:

<https://www.penlink.com/terms-and-conditions-north-america>

The logo for PENLINK, featuring the word "PENLINK" in a white, sans-serif font. The letter "i" in "LINK" has a small dot above it. The logo is set against a dark blue background that shows a blurred image of a modern building at night.

DATE: March 11, 2024
TO: Murfreesboro Police Department
FROM: Sheri Madison, Pen-Link, Ltd.
RE: Sole Source

Pen-Link, Ltd. Is the sole source provider of all Pen-Link Software Products in the United States, including but not limited to PLX, GeoTime and Tangles. We utilize no agents, dealers or distributors. Pen-Link Software can only be purchased directly from Pen-Link, Ltd., which is located in Lincoln, Nebraska.

Sincerely,

Sheri Madison

Sheri Madison
Inside Sales Representative

PLX Terms And Conditions — North America

1. Terminology

1. **Pen-Link Software.** Pen-Link Software is software developed and manufactured by Pen-Link, Ltd.
2. **Pen-Link Customer (also “Customer”).** A Pen-Link Customer, or Customer, is any agency or other entity that has one or more current, valid Licenses for Pen-Link Software purchased from or through Pen-Link, Ltd.
3. **Basic Technical Support Package.** Entitles our customers to normal business hours telephone support at Pen-Link, Ltd.’s published number and/or assistance via e-mail.
4. **Standard Maintenance and Support.** Standard Maintenance is a Maintenance option that includes Software Updates, Software Upgrades, and Basic Technical Support as defined herein.
5. **Premium Maintenance and Support.** Premium Maintenance is a Maintenance option that includes Software Updates, Software Upgrades, and Premium Technical Support as defined herein.
6. **Software Update.** A Software Update is an enhancement including additions, changes, and bug fixes to Pen-Link Software that is already in the applicable commercial market. Software Updates occur within the same major version number of an existing software product. For example, replacing Pen-Link v8.129.0 with Pen-Link v8.130.0 would constitute a Software Update. Such an update is often referred to as a New Build of the Pen-Link Software.
7. **Software Upgrade.** A Software Upgrade is the replacement of an older major version of an existing Pen-Link Software product or products, with a newer major version of a Pen-Link Software product or products, to the extent required to maintain the same operational functionality that was supported by the Pen-Link

Software prior to the upgrade. For example, upgrading from Pen-Link Version 7 to Pen-Link Version 8 (where 8 is the newer major version) would constitute a Software Upgrade, so long as the installation of the newer version of the PenLink Software supported at least the same operational functionality that the Customer had under Pen-Link version 7. Upgrades do not apply to new software products that Pen-Link, Ltd. may release to the commercial market from time to time in the future.

8. Basic Technical Support (also “Basic Support”). Basic Technical Support is a Support option that includes telephone-based Technical Support for the Pen-Link Software licensed by the Customer. Basic Technical Support also includes assistance via email or other automated processes such that Pen-Link, Ltd. may deem fit to offer. Basic Technical Support may be obtained by contacting Pen-Link, Ltd. via its published, main telephone number (currently 402-421-8857), its general support email account (support@penlink.com), or its World Wide Web site (www.penlink.com). Basic Technical Support is available Monday through Friday, from 8:00 AM to 5:00 PM Central time, except for holidays.
9. Premium Technical Support (also “Premium Support”). Premium Technical Support is a Support option that includes all of the support services offered with Basic Technical Support (Section 1.8), plus Emergency After-Hours support for live communication interception and collection operations. Emergency After-Hours support services may be accessed through methods, including telephone access, that are provided to the customer at the time of purchase. Emergency After-Hours support services are

available Monday through Friday, from 5:01 PM – 7:59 AM Central time and all-day Saturday & Sunday, including holidays.

10. Maintenance and Support Agreement (“Agreement”). This Maintenance and Support Agreement is the Agreement between Pen-Link, Ltd. and the Customer regarding the terms and conditions under which the Maintenance and Support Services described in this document are purchased and provided.

2. Software

1. Maintenance is an optional service offered by Pen-Link, Ltd. to augment a purchase of Pen-Link Software. Maintenance may be purchased by a Pen-Link Customer along with, or subsequent to, the purchase of Pen-Link Software.
2. Maintenance is offered only pursuant to a Maintenance and Support Agreement between the Customer and Pen-Link, Ltd.
3. Pen-Link, Ltd. offers two levels of Maintenance that a Customer may purchase: Standard Maintenance and Premium Maintenance, as defined in Sections 14 and 15 respectively.
4. Maintenance applies only to software developed and manufactured by Pen-Link, Ltd. Maintenance does not apply to software developed and manufactured by companies other than Pen-Link, Ltd. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Maintenance does not include updates, upgrades, or bug fixes to, or new releases of, any third-party software or hardware purchased through Pen-Link, Ltd. or with the assistance of Pen-Link, Ltd. Support for third party software and hardware products bundled with Pen-Link, Ltd. licensed Pen-Link Software is available only according to the third-party manufacturer’s support policies.

5. All Maintenance deliveries are subject to the terms and conditions of the applicable End User License Agreement EULA for the Licensed Software.

3. Technical Support (“Support”)

1. Technical Support is an optional service offered by Pen-Link, Ltd. to support a Customer in the authorized use of licensed PenLink Software.
2. Support is offered only pursuant to a Maintenance and Support Agreement between the Customer and Pen-Link, Ltd.
3. Pen-Link, Ltd. offers two levels of Technical Support: Basic Technical Support and Premium Technical Support, as defined in Sections 1.8 and 1.9 respectively.
4. Pen-Link, Ltd. will make every reasonable attempt to answer a Customer's Support questions and address a Customer's Support concerns. However, Support is offered on a good faith, diligent effort basis only, and Pen-Link, Ltd. may not be able to resolve every request for Support.
5. Technical Support is provided for ongoing, operational use of the licensed Pen-Link Software; Support is not intended to be a substitute for training or professional services necessary for the implementation or system redesign of the licensed Pen-Link Software, which are outside the scope of this agreement. All such services, including without limitation, training, on-site assistance, consultation, custom programming and other software customizations, network design, and database and network administration, may be provided pursuant to separate agreements with and by Pen-Link, Ltd.
6. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Support is available only for the current and

immediately preceding version of the licensed Pen-Link Software. Support for a previous version of Pen-Link Software is provided up to a maximum of eighteen (18) months after the release of the current version of software, provided that the Customer and Pen-Link, Ltd. are parties to a current Maintenance and Support Agreement.

7. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Support does not include any of the following:
 1. Support for database products or so-called DBMS or Database Management Systems, including without limitations, setup and alteration and/or configuration of such products, and resolution of errors related directly to such products.
 2. Resolving network, workstation, or other environmental errors not directly related to the licensed Pen-Link Software.
 3. Support for any licensed Pen-Link Software working on or with any version of any database, Database Management System, operating system, or other hardware or software product or system that is not specifically identified as interoperable and compatible with the specific version of the license Pen-Link Software being used.
 4. Support for any alpha, beta, or other preproduction release of any software, including Pen-Link Software.

5. Support for any changes to Pen-Link Software made outside of the product's scope by a customer or by any third party.
6. Support for any licensed Pen-Link Software that is used for a purpose, or in a manner, for which it was not designed.

4. Terms and Conditions

1. Maintenance and Support Agreements are options made available by Pen-Link, Ltd. for a Customer to purchase.
2. Maintenance and Support Agreements are offered on an annual basis.
3. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Maintenance and Support Agreements will renew automatically at the end of each annual term, provided that the Customer pays the applicable renewal fees.
4. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, a Customer's Maintenance and Support Agreement is to be paid at the start of each annual term.
5. The Customer will be invoiced prior to any annual Maintenance and Support term (initial or renewal terms). The Customer agrees to make payment to Pen-Link, Ltd. no later than thirty (30) days from the date of the invoice, unless otherwise agreed upon in writing. Unless otherwise instructed, the Customer will make payment directly to Pen-Link, Ltd.
6. Pen-Link, Ltd's obligations hereunder are subject to the Customer's timely payment for Maintenance and Support. Failure of the Customer to pay fees in a timely manner for any term of Maintenance and Support may, at the sole discretion of Pen-Link,

Ltd., result in the termination or suspension of Maintenance and Support services.

7. Lapses and Reinstatement. If a Customer's Maintenance and Support agreement terminates as a result of expiration or otherwise pursuant to this Agreement, and the Customer decides to reinstate the Agreement, the Customer will be required to pay the applicable Maintenance and Support fees for the lapsed period (the time elapsed between the Agreement expiring and subsequently being reinstated), plus a reinstatement fee equal to 10% of the fees for the lapsed period.
8. The Customer is responsible for payment of all applicable taxes, value added taxes, or other taxes (however designated) related to the Maintenance and Support of the Licensed Software, unless otherwise agreed upon and stated in writing.
9. This Agreement will automatically terminate for each Licensed Pen-Link Software product upon termination of the EULA corresponding to such Pen-Link Software product.
10. The Customer may terminate this Agreement for Convenience, but the Customer will not be entitled to a refund of any paid fees in such an event.
11. Additional Orders. Orders by the Customer for additional Pen-Link Software products or additional licenses of Pen-Link Software products will increase the Customer's Maintenance and Support fees under this Agreement.
12. We reserve the right to impose a convenience fee of 2.0% for credit card processing on amounts over \$10,000.

5. Warranty and Liability Disclaimer

1. Pen-Link, Ltd. warrants that the Maintenance and Support services provided to the Customer under this Agreement shall be performed with due care, and in a professional and workmanlike

manner. Pen-Link, Ltd. does not otherwise warrant the accuracy or completeness of any services provided pursuant this Agreement. PEN-LINK, LTD. DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, IN CONNECTION WITH THE SUBJECT OF THIS AGREEMENT. IN NO EVENT, UNDER ANY THEORY OF LAW, SHALL EITHER PARTY AND/OR ITS AFFILIATES BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS AND/OR ITS AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PEN-LINK, LTD'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PREPAID AND UNUSED PORTION OF THE CUSTOMER S MAINTENANCE AND SUPPORT FEES PAID TO PEN-LINK, LTD. PEN-LINK, LTD. SPECIFICALLY DISCLAIMS ALL RESPONSIBILITY FOR ANY SERVICES PROVIDED BY ANY PARTNER OR ANY OTHER THIRD PARTY.

2. It is the sole responsibility of the Customer to make and maintain adequate backup copies of software and data.
3. In no event will Pen-Link, Ltd. be responsible for lost data.

6. Miscellaneous

1. Entire Agreement. This Agreement constitutes the entire Agreement between the Customer and Pen-Link, Ltd. related to the subject matter hereof, and additions or modifications shall be binding upon the parties only if the same shall be in writing and duly executed by the Customer and a duly authorized officer of Pen-Link, Ltd. The Licensed Pen-Link Software is licensed under a separate End User License Agreement (EULA) and professional services, if any, are provided under a separate professional services agreement. The terms and conditions of any Customer purchase order are only binding on Pen-Link, Ltd. if they are

agreed to in writing by an authorized Pen-Link, Ltd. officer and in a document other than the purchase order.

2. The waiver or failure of either party to exercise in any respect any right shall not be deemed a waiver of any further or future right.
3. The Customer may assign this Agreement only in connection with a proper and valid assignment of the corresponding EULA to the extent permitted there under; provided that the Customer gives written notice of such assignment to Pen-Link, Ltd. Pen-Link, Ltd. may freely assign this Agreement to a purchaser of that portion of Pen-Link, Ltd's business to which this Agreement relates, to the surviving corporation in the event of a merger, and to any affiliate or third-party whom Pen-Link authorizes to provide Maintenance and Support for the Licensed Pen-Link Software of the nature contemplated hereby.

No Items.

